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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13112/2024 & CM APPL. 54779/2024**

**DARBARI LAL DAV MODEL SCHOOL THROUGH THE
CHAIRMAN**

.....Petitioner

Through: Mr.Yogesh Kumar, Mr.Raj K.Mittal,
Ms.Bharti Kapil and Ms.Uma,
Advocates

versus

**DIRECTORATE OF EDUCATION, GOVT. OF NCT OF DELHI
AND ANR**

.....Respondents

Through: Mr.Divyam Nandrajog, Panel
Counsel for GNCTD with Ms.Sreeja
Pal, Advocate for R-1 and 2

**CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER
20.01.2025**

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1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner challenging the impugned order dated 07.08.2024, vide which the representation of the petitioner-School for reduction of the number of seats under EWS category, was dismissed.
2. The seats under EWS category are decided in terms of the Right of Children to Free and Compulsory Education Act, 2009, and notification No. 15(172)/DE/Act/2010/7792-7806 dated 28.02.2012. The said notification is reproduced as under:-



No.F.15(172)/DE/Act/2010/ 7792-7806

Dated 4th/02/2012

NOTIFICATION

No. F.15(172)/DE/Act/2010- In exercise of the powers conferred by sub-section (1) of Section 3 of the Delhi School Education Act, 1973 (18 of 1973) read with rule 43 of the Delhi School Education Rules, 1973 and under the provisions of Right of Children to Free and Compulsory Education Act, 2009, the Lt. Governor of the National Capital Territory of Delhi is pleased to amend the Delhi School Education (Free Seats for students belonging to Economically Weaker Section and disadvantaged Group) order, 2011 published vide Notification No. 15 (172)/DE/Act/2010/69 dated 07.01.2011 as following, namely :-

1. Short title & commencement :

(1) This order may be called Delhi School Education (Free Seats for students belonging to Economically Weaker Section and disadvantaged Group) Amendment order, 2012.

(2). It shall come into force with immediate effect.

2. Amendment in Clause 4 :

In the Delhi School Education (Free Seats for students belonging to Economically Weaker Section and disadvantaged Group) order, 2011, in clause 4, for sub-clause (b) the following shall be substituted, namely :-

→“(b) Total number of seats at the entry level i.e. Nursery or Ist Class as the case may be, shall not be less than the highest number of seats in the entry class in the previous three academic years.”

By order and in the name of the
Lt. Governor of the National
Capital Territory of Delhi

(SURESH GUPTA)

SPL. SECRETARY OF EDUCATION(ADMN)

No.F.15(172)/DE/Act/2010/ 7792-7806

Dated 28th/02/2012

Copy to :-

1. Secretary, MHRD, Govt. of India.
2. Pr. Secretary to Lieutenant Governor, GNCT of Delhi.
3. Pr. Secretary to Chief Minister, GNCT of Delhi.
4. Secretary to Minister of Education, GNCT of Delhi.
5. OSD to Chief Secretary, GNCT of Delhi.
6. Secretary (Education), GNCT of Delhi.
7. Director (Education), GNCT of Delhi.
8. Director (Education), Municipal Corporation of Delhi.
9. Director (Education), New Delhi Municipal Council.
10. Chief Executive Officer, Delhi Cantonment Board.
11. Director, Directorate of Information and Publicity, GNC of Delhi.
12. All Addl. Directors/RDEs/JDEs/DDEs/ADEs, Dte. of Education, GNCT of Delhi.
13. All Branches Incharges, Dte. of Education, GNCT of Delhi.
14. OS (IT) with the request to place it on the website of Directorate of Education.
15. Guard file.

(SURESH GUPTA)

SPL. SECRETARY OF EDUCATION(ADMN)



3. Learned counsel for the respondents submits that in view of the aforesaid notification, the seats under EWS category in the petitioner-School have been decided.
4. In this regard, attention has been invited to Paragraphs 19, 20 and 21 of the counter affidavit filed on behalf of the respondents, which read as under:-

“...19. It is evident from the data that the highest declared sanctioned strength of the petitioner-school was 332 in last 3 years, i.e. in year 2021-22 and 2022-23. Accordingly, the petitioner-school was allotted 73 seats under EWS/DG/CWSN category.

20. The actual number of admissions in Pre-School/Nursery as per UDISE data filled by the school in last 5 years is as under:

<i>Academic Year</i>	<i>Total Admission in Nursery/Pre- School</i>
<i>2019-20</i>	<i>310</i>
<i>2020-21</i>	<i>246</i>
<i>2021-22</i>	<i>203</i>
<i>2022-23</i>	<i>244</i>
<i>2023-24</i>	<i>137</i>

21. In light of the UDISE records, the answering respondent rejected the representation of the petitioner-school to reduce its strength from 332 seats to 246 seats in Nursery class from the academic session 2024-25 and onwards. However, based on the highest number of admissions in the last five years, i.e., 310 students in 2019-20 in Pre-School/Nursery class, 310 seats were allotted in the Pre-School/Nursery class for



the academic session 2024-25.”

5. The academic year in question is 2024-25. Admittedly, the highest number of students admitted in the three previous academic years is of 2022-23 i.e. 244.
6. At this stage, learned counsel for the respondent submits that since in the year 2021 and 2022, COVID-19 pandemic was there, therefore, the Directorate of Education has taken three academic years as 2019-20, 2022-23 and 2023-24. Learned counsel for the respondents submits that since during the pandemic period, in sessions 2020-21 and 2021-22, the actual strength of the school decreased drastically, therefore, the academic sessions from this period cannot be taken into consideration.
7. Learned counsel for the petitioner, on instructions, fairly submits that the students, who have already been admitted under EWS category, shall continue their studies and shall receive all statutory rights.
8. The Court, *prima facie*, finds no substance in the aforesaid contention of learned counsel for the respondents. In the writ jurisdiction, the Court is primarily concerned with the process of the decision making. There is no proper rational behind excluding the sessions 2020-21 and 2021-22.
9. In view thereof, the matter is remanded back. The Directorate of Education is directed to consider the representation of the petitioner afresh for reduction of the number of seats under EWS category, in accordance with the law, within a period of four weeks. It is also



directed that the Directorate of Education shall take a decision regarding the students, regarding allocating them to some other school, who have yet not been given admissions in the petitioner-School.

10. With the aforesaid directions, the instant petition alongwith pending application stands disposed of.

DINESH KUMAR SHARMA, J

JANUARY 20, 2025

Dy/ht..