



2025:DHC:10775



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 27th November, 2025

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W.P.(C) 17985/2025

**MASTER JANMESH SAGAR THROUGH HIS NEXT FRIEND
AND NATURAL FATHER SH. ARVIND SAGAR**Petitioner
Through: Mr. Ashok Agarwal, Mr. Kumar
Utkarsh, Mr. Manoj Kumar and Ms. Ashna Khan,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ANR.Respondents
Through: Mr. Sameer Vashisht, SC (Civil) with
Ms. Harshita Nathrani and Ms. Khushboo Mittal,
Advocates for R-1/GNCTD,.
Ms. Anubha Bhardwaj, CGSC with Mr. Aakash
Kr. Singh, G.P., Ms. Ananya Shamshery and Ms.
Anchal Kashyap, Advocates for R-2/UoI.

JUDGEMENT**JYOTI SINGH, J. (ORAL)**

1. This writ petition is filed on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“i) Grant a writ of mandamus thereby declaring that Section 13 of Right of Children to Free and Compulsory Education Act, 2009 does not exempt CM SHREE Schools from the ambit of its applicability; and/or

ii) Grant a writ of mandamus thereby declaring that subjecting the petitioner to the admission test for admission in class VI in CM SHRI Schools under Respondent no. 1 is violative of Article 21-A read with Section 13 of Right of Children to Free and Compulsory Education Act, 2009;

iii) Issue any appropriate writ or direction quashing the impugned circular dated 23.07.2025 (Annexure P-1) of the respondent no.1 GNCTD;

iv) Grant a writ of mandamus thereby directing respondent no. 1 to admit students in CM SHRI Schools through draw of lots.; and

v) allow the present writ petition with costs, in favour of the petitioner.”



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2. Issue notice.
3. Counsels, as above, accept notice on behalf of the respective Respondents.
4. Mr. Ashok Agarwal submits that the Petitioner had approached the Supreme Court under Article 32 of the Constitution of India seeking the reliefs sought in this petition and while disposing the petition vide order dated 17.11.2025, the Supreme Court granted liberty to the Petitioner to approach the High Court with a direction that as and when the writ petition is filed, the High Court shall consider and dispose of the same in accordance with law and this writ petition is filed pursuant to the liberty granted by the Supreme Court. It is urged that subjecting the Petitioner to a test in the nature of a screening test for admission to Class VI in CM SHRI School is violative of Section 13 of Right of Children to Free and Compulsory Education Act, 2009 ('2009 Act') and Article 21-A of the Constitution of India as no discrimination can be made on the basis of socio-economic conditions for imparting education.
5. Mr. Vashisht, learned counsel appearing for Respondent No. 1 submits that the issue raised in this writ petition is no longer *res integra* and is covered by the judgment of the Division Bench of this Court in ***Social Jurist, A Civil Rights Group v. Govt. of NCT of Delhi and Anr., 2012 SCC OnLine Del 3587*** and takes the Court through the judgement.
6. As brought out in the petition, Petitioner is a student studying in Class VI in Government Sarvodaya Bal Vidyalaya and is eligible in terms of age criteria to apply for admission in Class VI in CM SHRI School for academic session 2025-2026. It is averred in the petition that on 23.07.2025, Respondent No. 1 issued a Circular laying down Guidelines for admission in Classes VI, VII and VIII in CM SHRI Schools for session 2025-2026.



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Petitioner applied on 02.08.2025 for admission to Class VI in CM SHRI School and on 13.09.2025, admission test was conducted. On 22.09.2025, Petitioner made a representation to Respondent No. 1 alleging that the action of the Government in subjecting him to admission test for admission in Class VI was against the provisions of Section 13 of 2009 Act and the Constitutional mandate inasmuch as the admission test was in fact a screening test as defined in Section 2(o) of 2009 Act and defeated the rationale behind enacting Section 13, which is that differences in learning levels among children stem primarily from unequal educational opportunities and the 2009 Act seeks to correct these inequities by ensuring access to education, free from any kind of discrimination on the basis of social or economic background.

7. Not getting any response, Petitioner filed a petition before the Supreme Court on 26.09.2025 under Article 32 of the Constitution being W.P.(C) No. 1048/2025. On 29.09.2025, Petitioner's result was declared and he scored 56 marks out of 100 and was declared 'failed'. On 17.11.2025, the Supreme Court disposed of the writ petition with liberty to approach the jurisdictional High Court and hence this petition.

8. After hearing the counsels for the parties and on reading of the writ petition as also the judgment of the Division Bench of this Court in ***Social Jurist (supra)***, I am of the view, that there is merit in the contention of Mr. Vashisht that the legal issue raised by the Petitioner in this writ petition is covered by the said judgment. Broadly understood, Petitioner seeks a declaration that Section 13 of 2009 Act be applied to admissions at elementary level in all schools, including schools of specific category defined in Section 2(p) of 2009 Act as also a declaration that subjecting the Petitioner to admission test in Class VI in CM SHRI Schools under



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Respondent No. 1 is violative of Article 21-A of Constitution of India read with Section 13 of 2009 Act. Petitioner also lays a challenge to validity of Circular dated 23.07.2025 issued by Respondent No. 1 laying down modalities and criteria for admission test.

9. This very issue came up for consideration before the Division Bench of this Court in ***Social Jurist (supra)***. The writ petition related to Rajkiya Pratibha Vikas Vidyalayas ('RPVVs') established as Pace Setting Government Schools vide Cabinet Note dated 27.03.1997 of GNCTD. One of the contentions of the Petitioner was that admission process to RPVVs in Class VI must be random and cannot be by way of selection as that would violate the provisions of 2009 Act. It was urged that Government should strive for upholding the standards of all Government, Government aided, Municipal and Cantonment Board Schools and not of one category of schools only. The Division Bench observed that while establishing RPVVs, there must have been a rationale in providing 'selection' for admissions in Class VI. By the time the child reaches Class IX, he is generally found to have become set in his ways and difficult to mould. The spark/talent in a child in Class V can be extinguished by the time he/she reaches Class IX, if not provided the right environment and may not be capable of rekindling. It was held that once the experts in the field of education decided to make admission on selection basis in Class VI, Court should not interfere.

10. The Division Bench also negated the argument of discrimination and observed that though right to elementary education cannot be denied by adopting a screening procedure, but providing better opportunities and education to those amongst the elementary level students, who show the potential and the spark, cannot be said to be discriminatory, as discrimination can only be amongst those equally placed. However, when



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institutions of learning of superior quality are few and admission seekers thereto far in excess, nothing wrong can be found in allowing those few only who are found capable of utilization thereof, to avail of the best. Every march in the direction of excellence has its own martyrs and such martyrdom cannot be allowed to thwart or scuttle a step taken in public interest.

11. Having so observed, the Division Bench posed a question as to whether the selection process for admission could be said to be violative of Section 13 of 2009 Act. In this context, Court looked into the preamble of 2009 Act, which states that it is an Act to provide for free and compulsory education to all children between the ages of 6 to 14 years. Reference was made to Section 5 of 2009 Act, which provides that where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school for completing the elementary education, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2. It was observed that the right of a child already admitted to a school under Section 5 to be transferred to any other school for completing elementary education is only where there is no provision for completion of elementary education in the school to which the child stands admitted. Even where such right exists, Section 5 excludes therefrom the right to be transferred *inter alia* to a specified category school. Selection for admission to Class VI in RPVVs was from Government/Government aided/Municipal/Cantonment Board Schools, all of which have a provision for completion of elementary education and the 2009 Act does not vest any right in a child, already admitted to a school, to be transferred to RPVVs and that being the position, transfer by way of selection cannot be said to be prohibited by the said Act. It was further observed that the position that bar



under Section 13 to admission by selection does not apply to transfer at the level of Class VI becomes further clear from Delhi School Education (Free Seats for Students belonging to Economically Weaker Sections and Disadvantaged Group) Order, 2011, issued under 2009 Act. Therefore, the prohibition in Section 13 of subjecting a child to screening procedure during admission is applicable only to admission at entry level, which is Nursery or Class I and hence, subjecting a child to a selection test at the level of Class VI does not violate Section 13 of 2009 Act. In this backdrop, the Division Bench struck down the decision of NCPCR to the contrary and held that procedure for admission to RPVVs in Class VI involving selection, was not violative of Section 13 of 2009 Act. Relevant passages from the judgment are as follows:-

“16. The contention of the counsel for the petitioner is two fold. Firstly, it is contended that about 1400 seats which earlier existed in RPVVs in Class VI to VIII should be restored as the same would ease the over crowding in the other government schools. Secondly, it is contended that the admission process to RPVVs in Class VI has to be random as under the RTE Act and cannot be by way of selection. It is argued that the government should strive for upholding the standards of all the Government, Government Aided, Municipal, Cantonment Board schools and not of one category of schools only.

17. NCPCR in its counter affidavit/report has harped upon Section 13 of the RTE Act. The counsel for the GNCTD has raised the same arguments as already noted above; on instructions it is further stated that the Government is willing to restore RPVVs from Class VI if the admission procedure as prevalent earlier is permitted.

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19. We are unable to accept the argument that the 1400 odd seats in Classes VI to VIII (which are a part of elementary education) need to be restored with admission thereto on random basis. If any and all, as distinct from only bright and talented students were to be admitted to RPVVs, RPVVs will cease to have the cutting edge environment and the advantage they enjoy; also no purpose will be so served by transferring students, in Class VI, from one school to another. The students admitted on random selection in Class VI will necessarily have to be promoted to Class IX in RPVVs thereby not leaving any vacant seats for admission by selection, as



proposed, in Class IX even. We are further of the view that confining RPVVs from Class IX to XII, as proposed will also adversely affect the functioning and result of RPVVs. As aforesaid, there must have been a rationale in, while establishing RPVVs, providing for admission on selection basis in Class VI and not in Class IX. A child by the time reaches Class IX is generally found to have become set in his ways and difficult to mould; the spark/talent in a child in Class V can be extinguished by the time reaches Class IX, if not provided the right environment and may not be capable of rekindling. Once the experts in the field of education had decided to make admission on selection basis in Class VI, we are of the view that the same should not be interfered with.

*20. Though the petitioner and the petitioner's counsels have done humungous service in the field of education, at least in the city of Delhi but we are unable to accept their contention that the best, as RPVVs represent should either be made available to all or to none. The Courts cannot shut their eyes to the dependency, of providing the best education, on the availability of resources financial as well as manpower. From the material placed before us, it is apparent that the teachers and the principals appointed to the RPVVs are the best from their respective stocks. The Supreme Court, in *State of Punjab v. Ram Lubhaya Bagga* (1998) 4 SCC 117, *Delhi Development Horticulture Employees' Union v. Delhi Administration* (1992) 4 SCC 99 and in *Viklad Coal Merchant, Patiala v. Union of India* (1984) 1 SCC 619 has taken notice of the limited resources available with the government and of the justifiability of optimum use thereof and the need for distribution of the scarce resources to achieve and accomplish desired results including by prioritization. What we have wondered is, whether a wait for a utopian state of affairs (when all schools can be raised to the level of RPVVs) should be allowed to come in the way of the small steps which can be taken in the interregnum. Though the 19 RPVVs form a drop in the sea of over 1000 Government, Government Aided, Municipal, Cantonment Board schools in the city of Delhi but we at the same time cannot shut our eyes to the difference which they have made. Though the Courts are unable to issue general directions for raising the level of education in all the Government, Government Aided, Municipal, Cantonment Board schools to the best possible or as in RPVVs but the same would not prevent this Court from, in the exercise of wide jurisdiction under Article 226 of the Constitution of India, to come to the rescue of an illustrious institution as the RPVVs represent, from being shut down.*

21. The argument of discrimination also is not available. Though right to elementary education cannot be denied by adopting a screening procedure but providing better opportunities and education to those amongst the elementary level students who show the potential and the spark cannot be said to be discriminatory. Discrimination can be only amongst those equally placed. However, when institutions of learning of superior quality are few and the admission seekers thereto far in excess, nothing wrong can



be found in allowing those few only who are found capable of utilization thereof, to avail of the best. Every march in the direction of excellence has its own martyrs and such martyrdom cannot be allowed to thwart or scuttle a step taken in public interest. The policy of effecting change in a phased manner is a well accepted one. The Supreme Court as far back as in State of Jammu & Kashmir v. Shri Triloki Nath Khosa (1974) 1 SCC 19 observed that in this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to Procrustean cruelty or sanctions indolent inefficiency and therefore an imaginative and constructive modus vivendi between commonness and excellence must be forged to make the equality clauses viable. It was further held that the social meaning of Articles 14 to 16 is neither dull uniformity nor specious 'talentism'; it is a process of producing quality out of larger areas of equality. Shortlisting of candidates on some rational and reasonable basis, though in the context of employment was upheld in Union of India v. T. Sundararaman (1997) 4 SCC 664. The State is permitted to treat unequals differently with the objective of creating a level-playing field in the social, economic and political spheres.

22. We will however still have to deal with the question whether the procedure aforesaid, earlier prevalent of admission to RPVVs can be said to be in violation of Section 13 of the RTE Act inasmuch as, howsoever laudatory the concept of RPVV may be, if it is found to be in violation of Section 13 of the RTE Act (as held by NCPDR), it is not in the domain of this Court to allow the same.

23. The preamble to the RTE Act describes the same as an Act to provide for free and compulsory education to all children of the age of six to fourteen years. The same is not in conflict with RPVVs. Section 3 of the Act vests in a child of the age of 6 to 14 years, a right to free and compulsory education in a neighbourhood school till completion of elementary education. Transfer by selection from a Government, Government Aided, Municipal, Cantonment Board school to RPVVs does not affect that right. Section 5 of the RTE Act is relevant and the relevant part thereof is as under:

"5. Right of transfer to other school. - (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education.

RPVVs as aforesaid are specified category schools within the meaning of Section 2(p) and falling in sub-clause (iii) of Section 2(n) of the Act. The right of a child already admitted to a school, under Section 5 (supra) to be transferred to any other school for completing elementary education is only where there is no provision for completion of elementary education in the school to which the child stands admitted. Even where such right exists, Section 5 excludes therefrom the right to be transferred inter alia to



a specified category school. The selection as aforesaid for admission to Class VI in RPVVs was from Government, Government Aided, Municipal, Cantonment Board schools, all of which have a provision for completion of elementary education. The RTE Act has thus not vested any right in a child already admitted to a school, to be transferred to RPVVs and that being the position, transfer by way of selection to RPVVs cannot be said to be prohibited by RTE Act.

24. The aforesaid position including that the bar under Section 13 supra to admission by selection does not apply to admission by transfer from one school to another at the level of Class VI becomes further clear from the Delhi School Education (Free Seats for Students belonging to Economically Weaker Sections and Disadvantaged Group) Order, 2011 issued under the provisions of the RTE Act. While Clause 3 thereof mandates all schools to admit children belonging to weaker sections and disadvantaged groups in Class I or at preschool level if available in the school to the extent of 25% of the strength of that class, Clause 4(b) thereof prescribes the total number of seats at the entry level i.e. Nursery or Class I to be not less than the total number of seats in any other class of the school. The transfer by selection at the level of Class VI to RPVVs thus does not affect the right created under the RTE Act. The Supreme Court in Indian Drugs & Pharmaceuticals Ltd. v. Punjab Drugs Manufacturers Association (1999) 6 SCC 247 negated the challenge to the policy on the ground that the same did not affect the right of others. It is thus clear that the prohibition in Section 13 of subjecting a child to screening procedure during admission is applicable only to admission at the entry level which is Nursery or Class I. Mention may be made of Section 4 of the RTE Act providing for admission in a class appropriate to the age of a child who has not been admitted in any school or though admitted could not have completed elementary education. However, RPVVs do not admit such children. Thus, the admission procedure by selection in RPVVs is not in violation of Section 13 of the RTE Act and the decision aforesaid of the NCPCR in this regard cannot be sustained and is set aside.

25. Though, we are conscious that in the present proceedings, we are not directly concerned with the challenge to the decision of NCPCR, the government itself having given up the said challenge in W.P.(C) No. 4973/2010 but it will be a pity if inspite of the matter having been brought before us and finding RPVVs to have become a victim of circumstances aforesaid, we, on technicalities fail to interfere and allow the RPVVs, unarguably established for public purpose, for good of the society, to die. Even otherwise, the thrust of the establishment of RPVVs is affirmative and reformatory and, therefore, should be scrutinized under judicial principles sensitive to the nature of the State's efforts. The Supreme Court in Union of India v. Rakesh Kumar (2010) 4 SCC 50 held that the enquiry while examining the validity of affirmative action measures should be governed by the standard of proportionality though ofcourse such affirmative action measures should be periodically reviewed. The



establishment as aforesaid of RPVVs is one such affirmative action measure. This Court is also empowered to suo moto take notice of the situation which has arisen and to take remedial steps. We are emboldened in our said endeavour by the recent dicta of the Apex Court in Dev Sharan v. State of Uttar Pradesh (2011) 4 SCC 769. It was held that the courts, especially the higher courts, cannot afford to act as mere umpires while examining these questions of public importance; the Judges as Constitutional invigilators and statutory interpreters are also one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order. It was yet further held that the judiciary in its sphere, shares the revolutionary purpose of the Constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. Moreover, the present is not an inter-party dispute and has been raised by way of PIL. The Apex Court in Rural Litigation and Entitlement Kendra v. State of U. P. 1989 Supp (1) SCC 504 had approved a relook by the Court of the matter not directly before it.

26. *We therefore in exercise of our extraordinary jurisdiction:*

- (i) strike down the order dated 17.06.2010 (supra) of the NCPCR;*
- (ii) hold that RPVVs cannot be compelled to make admissions on random basis in Class VI by transfer of children already studying in Government, Government Aided, Municipal, Cantonment Board schools to RPVVs;*
- (iii) hold that the procedure for admission to RPVVs in Class VI as earlier existing is not violative of Section 13 of the RTE Act;*
- (iv) direct the GNCTD to restore the admission in Class VI through selection to RPVVs from the next academic year onwards;*
- (v) as far as the present academic year is concerned, GNCTD to within 15 days take a decision whether any admissions to the current year can be made by holding of selection process and if possible to hold the same, to avail of the existing infrastructure in RPVVs and to prevent a gap year."*

12. In light of the decision of the Division Bench, contention of the Petitioner that the procedure of holding an admission test for admission in Class VI in CM SHRI Schools is violative of Section 13 of 2009 Act or Article 21-A of the Constitution is rejected. Mr. Agarwal contends that since this petition is filed pursuant to liberty granted by the Supreme Court, the petition must be considered. Perusal of the order of the Supreme Court shows that the writ petition filed by the Petitioner under Article 32 of the



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Constitution was disposed of granting liberty to approach the High Court under Article 226 of the Constitution of India with an observation that if such a writ petition is filed before the jurisdictional High Court, the same shall be considered and disposed of in accordance with law. There can be no dispute on this fact. The direction of the Supreme Court is to consider the writ petition in accordance with law, which has been done. The argument of Mr. Agarwal borders on a submission that consideration would mean allowing the writ petition, which is not the intent of the order of the Supreme Court. I have considered the issues raised in this writ petition and as noted above, the issues flagged are covered by the judgment of the Division Bench, which binds this Court and in light of the observations and findings therein, I am unable to hold in favour of the Petitioner that subjecting a child to an admission/selection test for admission to Class VI is violative of Section 13 of 2009 Act.

13. Accordingly, the writ petition is dismissed being bereft of merit.

JYOTI SINGH, J

NOVEMBER 27, 2025

S.Sharma