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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13238/2018**
MASTER LALIT KUMAR THROUGH FATHER RAM KUMAR

.....Petitioner

Through: Mr Khagesh B. Jha, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms Anubha Bhardeaj, CGSC with Ms
Astha Dwivedi, Advocate for R1.
Mr Abhinav Sharma, Advocate for
R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

02.07.2025

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1. The petitioner has filed the present petition, *inter alia*, praying as under:

“a) an appropriate writ order or direction to quash section 3(2) of RTE Act, 2009 up to extent the same excludes newly inserted section 3(iii) of RTE Act, 2009 which was earlier covered under proviso of section 3(i) before the amendment in section 3 of the RTE Act, 2009.

Alternatively

an appropriate writ or direction to read the section 3(3) in such a manner that child covered under section 3(3) is also covered under section 3(1) of the RTE Act, 2009 and right under section 3(3) is in addition to the right under section 3(1) of the RTE Act, 2009.

b) an appropriate writ or order or direction to quash the present form of Rule 8(1) which narrows down the entitlements under section 3(2) and reframe the rule in conformity with section 3(2) of RTE Act, 2009 as interpreted by Hon'ble Supreme court in Society for unaided private schools of Rajasthan Vs. Union of India.”



2. The learned counsel appearing for the petitioner submits that prayer (c) does not survive as the cochlear implant would not be of any assistance to the petitioner. He is confined the present petition to prayers (a) and (b) as noted above.

3. Section 3 of the Right of Children to Free and Compulsory Education Act, 2009 [hereafter **RTE Act**] reads as under:

“3.(1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

Provided that a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.”

4. It is the petitioner’s case that since the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereafter **the 1995 Act**] has since been replaced by Rights of Persons with Disabilities Act, 2016. The reference to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in Section 3 of the RTE Act ought to be construed as reference to the Rights of Persons with Disabilities Act, 2016.

5. An affidavit has been filed on behalf of the Union of India, in effect, conceding to the aforesaid prayer. It is pointed out that in terms of Section 8



of the General Clauses Act, 1897, reference to an enactment, which has been replaced with another enactment would, unless indicated to the contrary would be deemed to be the fresh enactment. Thus the reference to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in the RTE Act is required to be construed as Rights of Persons with Disabilities Act, 2016.

6. It is also clear that the reference to a child with disabilities under the Proviso 2 Rule 8 of the Delhi Right of Children to Free and Compulsory Education Rules, 2011 would necessarily be required to be read in conjunction with the Rights of Persons with Disabilities Act, 2016 and the expression 'Child with Disabilities' is required to be construed accordingly.

7. In view of the above, no further orders are required to be passed in this petition. The same is disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 02, 2025/tr

Click here to check corrigendum, if any