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

Reserved on: 19 March 2024
Pronounced on: 22 March 2024

+ W.P.(C) 4683/2023 and CM APPL. 18067/2023

JIYA THROUGH HER NEXT FRIEND AND
NATURAL MOTHER MS. SUSHMA Petitioner
Through: Mr. Khagesh B. Jha, Mr. Manoj
Kumar, and Mr. Kumar Utkarsh, Advocate

versus

MAHARAJA AGRASEN MODEL SCHOOL
& ANR. Respondents
Through: Mr. Pramod Gupta, Adv. with
Ms. Nicole Gomez, Adv. and Ms. Adyanshi
Kashyap, Adv. for R-1
Mr. Utkarsh Singh and Ms. Prasansha
Sharma for Mr. Santosh Kumar Tripathi,
SC (Civil) for DoE

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T
22.03.2024

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1. Jiya was born on 17 August 2016. She is presently a little over 7 ½ years of age.
2. Jiya belongs to the Economically Weaker Section (EWS) of society. On her behalf, her mother applied to the Directorate of Education (DoE) for securing Jiya admission under the EWS category in Class I for the academic session 2022-23. A computerized draw of



lots was conducted by the DoE, following which Jiya was shortlisted for admission to Class I in the Maharaja Agrasen Model School (Respondent 2, hereinafter) for the academic session 2022-23.

3. Despite her mother visiting the school on several occasions, the Respondent 2 school refused to admit Jiya. Jiya's mother accordingly addressed representations to the DoE on 24 June 2022, 18 July 2022, 7 January 2023 and 27 March 2023 seeking the intervention of the DoE to secure admission for Jiya in the Respondent 2 school but to no avail.

4. Jiya has, therefore, instituted the present writ petition through her mother before this court. The petition was filed on or around 11 April 2023. Jiya seeks issuance of a writ of mandamus directing the Respondent 2 school to grant admission to her as an EWS student in Class II for the academic session 2023-24.

5. Jiya contends that, in the light of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter "the RTE Act"), read with the circulars issued by the DoE from time to time, the Respondent 2 school could not have refused to grant admission to her after her name was shortlisted for admission following the computerized draw of lots conducted by the DoE.

6. Counter affidavits have been filed by the DoE and by the Respondent 2 school.



7. The DoE, in its counter affidavit, supports Jiya. It is stated in the counter affidavit of the DoE that the Respondent 2 school had declared a total of 200 seats in the general category for the academic session 2022-2023, on the basis of which the DoE allotted 50 nursery/pre-school seats, 28 KG/pre-primary seats and 8 Class-I seats in the school in the EWS category. All 50 seats in the nursery/pre-school class were entry level seats; of the 28 seats in KG/pre-primary, 21 were carry forward unfilled nursery/pre-school seats of the previous year; and of the 8 Class I seats, 6 were unfilled KG/pre-primary seats of the previous year.

8. Consequent on receipt of a complaint that the Respondent 2 school was not admitting EWS students shortlisted by the DoE in the computerized draw of lots conducted by it, the DoE, by the following e-mail dated 13 April 2023 addressed to the Principal of the school, directing the school to admit Jiya, as per the guidelines of the DoE, that very day:

**“Subject:- Denial of Admission of JIYA (Regn. No.20220026605)
for the academic
session 2022-23 in Maharaja Agrasen Model School, CO-Block,
Pitampura, Delhi**

Dr. RAKESH RAHI, DOE, ZONE-XI zonezonexi@gmail.com

13April 2023 at 11:23

To: MAMS CD-Block Pitampura agrasenschool1985@gmail.com

To
The Principal/HOS,
Maharaja Agrasen Model School (1411182)
CD Block, Pitampura, Delhi

Sir/Madam



Find enclosed herewith a complaint/representation dated 27.03.2023, received from Ms. Sushma M/o JIYA in this office regarding denial of admission in r/o Baby J IYA (Reg.No. 202200266605) D/o Mr. Amit Kumar, who was selected through computerised draw lots for class-1st for the academic session 2022-23 and allotted your school.

With reference your reply vide letter dated 29.08.2022 & 07.02.2023 regarding complaint of admission in respect of Baby Jiya (Reg.No.202200266605) in class 1st, which was not found satisfactory; hence not acceptable.

The Principal/HOS of the school is hereby directed to admit the child as per DoE's guidelines and submit the Action Taken Report today (i.e. 13.04.2023 by 12.00 noon) positively.

This may be given TOP PRIORITY.

Dy. Director of Education,
Zone-XI : Distt. NWB-(1)''

The DoE contends that Section 12(1)(c)¹ of the RTE Act mandatorily requires all schools except minority schools to admit at least 25% of children belonging to the EWS category at the entry level.

9. Reliance has also been placed by the DoE on its circular dated 9 July 2021, which requires any school desirous of obtaining exemption from the requirement of admitting 25% students belonging to EWS category in its entry level class, to seek specific permission from the Deputy Directorate of Education (DDE) after following all steps and due process in that regard, as held by this Court in its order dated 30 September 2013 in W.P. (C) 3358/2013 (*The Sovereign School v.*

¹ 12. **Extent of school's responsibility for free and compulsory education. –**

(1) For the purposes of this Act, a school,—

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:



Directorate of Education). It is pointed out, in the counter affidavit of the DoE, that the circular dated 9 July 2021 was challenged before this Court in W.P. (C) 10839/2021 (*Action Committee Unaided Recognized Private Schools v. Directorate of Education*). By its order dated 24 September 2021, this Court clarified that no school could deny admission to eligible students under the EWS/DG category, once their names were forwarded by the DoE. It was reiterated, in the said order, that, if any school desired to admit fewer students than that computed by the DoE, it had to seek specific exemption from the DoE in that regard. Once the child was shortlisted by the DoE for admission to a particular school in a particular class as an EWS student, the school had no option but to grant admission to the child.

10. The counter affidavit of the DoE further avers that, w.e.f.² the 2017-18 academic session, the DoE introduced a concept of carry forward seats, whereunder EWS category seats which remained unfilled in a particular class in a particular school were carried forward and added to the number of EWS category seats required to be filled in the next higher class in the next year in that school. This principle, it is pointed out in the counter affidavit of the DoE, stands endorsed by the Division Bench of this Court in *Siddharth International Public School v. MACT*³, and also stands affirmed by the Division Bench of this Court in its order dated 14 March 2018 in *Justice for All v. GNCTD*⁴.

² with effect from

³ 2016 SCC OnLine Del 5272

⁴ W.P.(C) 3684/2013



11. Finally, relying on the judgment of a Coordinate Bench of this Court in *Rameshwar Jha v. Principal Richmond Global School*⁵, the counter affidavit of the DoE asserts that the act of school in denying admission to Jiya, despite her name having been shortlisted by the DoE, was completely illegal.

12. The School, through Mr. Pramod Gupta, learned Counsel, has also filed a detailed counter affidavit, seeking to defend its decision in not admitting Jiya in Class I in the 2022-23 academic session.

13. Mr. Gupta has also placed reliance on the judgment of a Coordinate Bench of this Court in *Bushra Riyaz v. GNCTD*⁶ which held that the petitioner, in that case, could not be directed to be granted admission at the school in one academic session on the basis of an application filed for the previous academic session.

14. At the outset of proceedings, I queried of Mr. Khagesh B. Jha, learned Counsel for Jiya, as to how this Court could direct the school to admit her in Class II in 2023-2024 when she had neither applied for admission as an EWS category student nor, quite obviously, been shortlisted by the DoE for admission as an EWS student to Class II in any school in the 2023-2024 academic year.

15. Mr. Jha has placed reliance on Section 4⁷ of the RTE Act,

⁵ 2022 SCC OnLine Del 4438

⁶ 2012 SCC Online Del 4648

⁷ 4. Special provisions for children not admitted to, or who have not completed, elementary education. – Where a child above six years of age has not been admitted in any school or though admitted,



which provides that, where a child above six years of age, has either not been admitted in any school, or has not been able to complete her elementary education, she shall be admitted in a class appropriate to her age. Thus, submits Mr. Jha, there was nothing illegal in the DDE, *vide* the email dated 13 April 2023, directing the Respondent 2 school to admit Jiya in Class I. Besides, he submits, the said e-mail dated 13 April 2023 of the DDE has not been challenged by the Respondent 2 school and is, therefore, binding on it.

16. Mr. Jha submits that the allotment of Jiya, following the computerised draw of lots conducted by the DoE, conferred on her the right to admission in accordance with the outcome of the draw of lots. This right, he submits, is indefeasible. He places reliance, in this context, on Article 21A⁸ of the Constitution of India which obligates the State to provide free and compulsory education to all children of the age of six to fourteen in the manner determined by the State in accordance with the law.

17. Mr. Jha submits that, therefore, the Respondent 2 school cannot refuse to admit Jiya, after her name was shortlisted for admission to Class I in the Respondent 2 school following the computerised draw of lots conducted by the DoE. He also places reliance on the directive

could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

⁸ **21-A. Right to education.** – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.



contained in the email dated 13 April 2023⁹ whereby the Principal/Head of the Respondent 2 school was directed to admit the petitioner as per the guidelines issued by the DoE and submit an action taken report that very day. This command, reiterates Mr. Jha, was never challenged by the Respondent 2 school and was, therefore, binding on them.

18. To substantiate his contention that the above directive of the DoE, contained in the e-mail dated 13 April 2023, was binding, Mr. Jha draws my attention to Notification dated 7 January 2011 issued by the Education Department, GNCTD. He invites particular attention to para 7 of the said Notification which constitutes a District Admission Monitoring Committee (DAMC) in each district, to be chaired by the concerned Deputy Director (Education). He submits that the directive contained in the e-mail dated 13 April 2023 is in exercise of the power conferred by Clause 7(d) of the above Notification dated 7 January 2011, which reads thus :

“(d). The DAMC shall prepare cluster/zone-wise vacancy data for free-seats and shall forward the names of children to schools where vacant seats are available, for admission against free-seats, following the principle of neighbourhood school.”

19. As such, the DoE having acted within its jurisdiction and authority in directing the Respondent 2 school to admit the petitioner in Class I, the School had no option but to do so. Mr. Jha has also invited my attention to Section 32¹⁰ of the RTE Act, which deals with

⁹ Refer para 8 *supra*

¹⁰ 32. Redressal of grievances. –



redressal of grievances relating to the rights of a child under the RTE Act. He submits that it was in exercise of the right conferred by Section 32(1) that Jiya had, through her parents, approached the DAMC in January 2023. He submits that the DAMC, in directing the Respondent 2 school to admit the petitioner, only moulded the relief to which she was entitled.

20. Mr. Jha places reliance on the judgment of Hima Kohli J. (as she then was) sitting singly in this Court in *Araav Porwal v. The Mother International School*¹¹, which was subsequently affirmed by the Division Bench, against whose decision the Special Leave Petition stands dismissed by the Supreme Court.

21. Finally, Mr. Jha presses for compensation against the Respondent 2 school in terms of prayer (iii) in the writ petition, though he submits that, if his client is granted admission, he would not press the said prayer.

Analysis

22. To my mind, in order to maintain a writ petition seeking a mandamus to a school to admit a child as an EWS student at the entry

(1) Notwithstanding anything contained in Section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.

(2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.

(3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be.

(4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of Section 31, as the case may be, as provided under clause (c) of sub-section (1) of Section 31.



level class in a particular school in any particular academic year, the child must, in the first instance, have applied to the DoE for admission to that class in that year as an EWS student and must have been shortlisted by the DoE for admission to the school concerned. It is only if the computerized draw of lots conducted by the DoE identifies a particular child as entitled to admission as an EWS student at the entry level class in a particular school, that the child acquires a right to such admission. The application, the shortlisting by the DoE and the allocation in favour of the child must be class-, school- and academic year-specific. It is only if, on the basis of the computerized draw of lots conducted by the DoE, the child is found entitled for admission as an EWS student to *a particular entry level class, in a particular school, for a particular academic year*, that the child can claim admission to that class in that school for that year.

23. A detailed and intricate exercise is conducted by the DoE prior to children being shortlisted for EWS admissions at entry level classes in schools. The DoE first invites data from schools regarding the number of general category and EWS seats available with them for the ensuing academic year. On the basis of the data so provided by the schools, the DoE uploads, on its website, the school-wise data of availability of EWS and general category seats at the entry level. The schools are given time to represent to the DoE, against any error or inaccuracy in the said data, within a stipulated time. If no such representation is received within the time so provided, the data uploaded by the DoE on its website is treated as correct and, on the

¹¹ 2012 SCC OnLine Del 2454



basis thereof, a computerized draw of lots is held. Based on the result thereof, children are allocated to entry level classes in various schools.

24. No child, without her application suffering the rigour of this exercise, can directly claim a right to be admitted *to a particular class in a particular school in a particular year* as an EWS student.

25. The right guaranteed to every child under Article 21A of the Constitution or under the RTE Act is only for free and compulsory education till the age of fourteen. The State is only obligated to ensure that every child receive such education free of charge. The child, therefore, has a right only to receive such education. Article 21A does not, however, confer, on any child, a constitutional right to be educated in a particular school of her choice. That right would arise only if the child applies to the DoE as an EWS student for admission in the entry level class for that year and is shortlisted therefor, in the computerized draw of lots conducted by the DoE.

26. Absent such application, holding of a computerized draw of lots and shortlisting of a child for admission to a particular class in a particular school, no right to seek such admission enures in favour of the child. The right available under Article 21A of the Constitution or under Section 12 of the RTE Act is only to free and compulsory education till the age of fourteen, not for being provided such education *in a particular school*.

27. There is no dispute that Jiya never applied to the DoE for admission as an EWS student in Class II for the year 2023-2024.



Absent such an application, the case of Jiya was obviously not subjected to any draw of lots by the DoE for admission to Class II for the academic year 2023-2024. Absent such draw of lots and absent any resultant allocation of any school to Jiya for the academic year 2023-2024, Jiya has no enforceable right in law to seek such admission in that year to any *particular* school.

28. The GNCTD notification dated 7 January 2011 does not help the petitioner. It merely empowers the DAMC to forward the names of children to schools where vacant seats are available, for admission against said seats following the neighbourhood school principle. The letter dated 13 April 2023 is not issued by the DAMC. Moreover, it is clearly not issued in exercise of the jurisdiction vested in the DAMC by Clause 7(d) of the GNCTD notification dated 7 January 2011.

29. The directive of the DoE to the Respondent 2 School to admit the petitioner as contained in the e-mail dated 13 April 2023 *supra* could not, therefore, be sought to be justified on the basis of the GNCTD notification dated 7 January 2011.

30. In fact, the directive was, even otherwise, unenforceable, as it was issued on 13 April 2023, by which time the 2022-2023 academic year, for which Jiya had been shortlisted for admission in Class I in the Respondent 2 school, was over. Neither had Jiya applied for admission to any school for the academic year 2023-2024, nor had she been found eligible for such admission. The mere fact that the DoE had found her entitled for admission to Class I in the Respondent 2 school for the academic year 2022-23 cannot make that right available



in perpetuity for all times to come.

31. Each year constitutes a fresh academic session. A child, who, for whatever reason, is unable to secure admission into a school as an EWS candidate despite having been shortlisted therefor by the DoE, and allows that academic year to pass without initiating any legal action in that regard, cannot claim, that on the basis of the said shortlisting, that she or he has an enforceable right to admission in that school *for the next academic year to the next higher class*. There is no such automatic carry forward of the right which enures in favour of the student, consequent to the draw of lots conducted by the DoE for a particular academic year, to the next academic year, in that class or in any higher class. Rights, it must be appreciated, extinguish with time.

32. The directive of the DoE in the email dated 13 April 2023 to the respondent school to enlist the petitioner that very day is not, therefore, either legal or enforceable. By 13 April 2023, the 2022-23 academic session had come to an end. With it, it must unfortunately be said, perished Jiya's right to admission as an EWS student in the Respondent 2 school as well. Beyond that, Jiya's right to education under the RTE Act, or under Article 21A of the Constitution, is only for being educated till the age of 14, and not for being educated specifically in the Respondent 2 school.

33. The reliance, by Mr. Jha, on Section 32 of the RTE Act, is also misconceived. Section 32 only enables a person having any grievance relating to the right of the child under the RTE Act, to make a written complaint to the local authority. I do not know whether the petitioner



has made any such complaint. Assuming she, through her parent(s), has done so, the complaint would be dealt with in accordance with law. Section 32(1) cannot entitle Jiya to admission to Class II in the Respondent 2 school, for which she never approached the DoE in the first place, as an EWS student.

34. The decision in *Araav Porwal* is also of little use to the petitioner. Araav Porwal had specifically applied for admission to Class I as a Disadvantaged Group (DG) category student for the year in question. Araav approached this Court on the said admission being denied to him. In the present case, however, there is no such application made by the petitioner for admission as an EWS student to Class II for the academic year 2023-2024. The application made for the academic year 2022-23, and the allotment of the petitioner to the respondent school consequent to the computerized draw of lots conducted by the DoE as a result of the said application, has, unfortunately, outlived its welcome.

35. That said, it would be entirely contrary to Section 12 of the RTE Act as well as Article 21A of the Constitution of India not to protect the interests of Jiya insofar as her right to education, guaranteed by the said provisions, is concerned. The said guarantee, however, as already noted, only entitles Jiya to be educated till the age of fourteen as an EWS student and to nothing more.

Conclusion

36. Jiya is not, therefore, entitled to admission to Class II in the



Respondent 2 school as sought by her. The said prayer has therefore, necessarily to be rejected.

37. The DoE would, however, make every endeavour to ensure that Jiya is granted admission as an EWS student in Class II in some other school. This should be done as expeditiously as possible and, at any rate, within four weeks from the date of pronouncement.

38. The writ petition stands disposed of in the above terms.

C. HARI SHANKAR, J.

MARCH 22, 2024

Dsn/yg

Click here to check corrigendum, if any