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

+ W.P.(C) 2848/2024

MASTER ARPIT Petitioner

Through: Mr. Vivek Kumar Tandon, Ms.
Mamta Tandon and Ms. Prerna Tandon,
Adv.

versus

ADRIEL HIGH SCHOOL & ANR. Respondents

Through: Ms. Swati Surbhi, Adv. for R-1
Mr. Utkarsh Singh and Ms. Nikita Vir,
Adv. for Mr. Santosh Kumar Tripathi,
Standing Counsel for DoE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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30.04.2024

1. The petitioner is a student belonging to the economically weaker section (EWS). He applied, through his father, Mr. Rajesh, for admission to the Directorate of Education (DoE) for admission to KG/Pre-primary in various schools, including the Respondent 1 school, for the academic year 2023-24.

2. After circulating the general and EWS/DG seat matrix of various schools and considering any objections thereto, as may have been submitted by any of the school, the DoE conducted draw of lots on 14 March 2023.



3. As a result, the petitioner was shortlisted for admission to KG/Pre-primary in the Respondent 1 school. As the school declined to admit the petitioner, the present writ petition has come to be filed, seeking a mandamus to the school to admit the petitioner in KG/Pre-primary in accordance with the outcome of the computerised draw of lots conducted by the DoE.

4. Pursuant to interim orders passed in this petition, the petitioner already stands admitted to KG/Pre-primary in the Respondent 1 school albeit on a provisional basis and subject to the outcome of this writ petition.

5. The issue in controversy in this writ petition is similar to that which has arisen before this Court in a large number of cases including some of which were taken up even today. This Court has consistently adopted the view that, if a child applies for admission to a school as an EWS candidate, and the DoE circulates the seat matrix of the schools indicating the number of general and EWS category of seats available with them, any school which does not represent against the seat matrix within the time granted in that regard would be bound by the outcome of the draw of lots conducted by the DoE.

6. The children who are shortlisted for admission to various schools on the basis of the computerised draw of lots would be entitled as a right to such admission and the schools cannot refuse to admit them.



7. Conversant, as she is, with this position of law, Ms. Swati Surbhi, learned Counsel for the Respondent 1 school did not seek to canvass the case of her client on these grounds. She, however, sought to submit that no direction for provisional admission to a school could be passed after 31 December of that academic year. She relies, for this purpose, on the judgment of a coordinate Single Bench of this Court in *Neeraj Kumar v. Venkateshwar Global School*¹.

8. She further cites judgment of another learned Single Judge of this Court in *Radha Krishan v. Bal Bharti Public School*² which follows *Neeraj Kumar*.

9. She further submits that the issue of correctness of fixing of a cut-off date is at large before the Division Bench of this Court in *Justice for All v. Venkateshwar Global School*³ (LPA 5/2022) and draws my attention, in this context, to order dated 17 January 2022 passed in the said case.

10. On her attention being drawn to the fact that this Court has considered these decisions in its order dated 22 March 2024 in *Arun Kumar v. P.P. International School*⁴ (WP(C) 3446/2024) and in its judgment dated 8 April 2024 in *Jai v. Directorate of Education*⁵ (WP(C) 12113/2023), Ms. Swati Surbhi submits that the concluding paragraphs in *Baby Nikshita v. DoE*⁶ do not constitute a declaration of

¹ 2017 SCC OnLine Del 7842

² 249 (2018) DLT 364

³ Order dated 17 January 2022 in LPA 5/2022

⁴ 2024 SCC OnLine Del 2302

⁵ 2024 SCC OnLine Del 2537

⁶ Order dated 18 February 2022 in WP (C) 1580/2022



law and are of no precedential value as they are merely incidental directions. She relies, for this purpose, on para 21 of the judgment of the Supreme Court in *State of UP v. Jeet S. Bisht*⁷.

11. In fine, Ms. Surbhi also relies on the order of a Coordinate Bench of this Court in *Bushra Riyaz v. Govt. of NCT of Delhi*⁸ which, she points out, also follows *Neeraj Kumar*.

12. All arguments, except the argument dealing with the decision in *Jeet S. Bisht* and *Bushra Riyaz*, have been considered by me in my judgment dated 22 March 2024 in *Arun Kumar* and judgment dated 8 April 2024 in *Jai*.

13. The binding value of the principle enunciated in the judgment of the learned Single Judge in *Neeraj Kumar* that a court is proscribed from directing provisional admission of a petitioner child once the 31 December of that year has crossed, has been considered at length in these decisions as well as in an interim order passed by me in *Anaysha Dhika v Maxfort School*⁹.

14. There is no doubt that, in *Neeraj Kumar*, the learned Single Bench of this Court of Hon'ble Mr. Justice V.K. Rao has held that provisional admission ought not to be granted to petitioner child once 31 December of that year has crossed. The decision in *Neeraj Kumar* was carried in appeal to a Division Bench *vide* LPA 255/2018 (*Master*

⁷ (2007) 6 SCC 586

⁸ 2022 SCC OnLine Del 4648

⁹ 2024 SCC OnLine Del 2020



Vansh v. Venkateshwara Global School). The LPA was, however, dismissed on an entirely different consideration vide order dated 16 July 2018.

15. The Division Bench in the order in the LPA, therefore, cannot be said to lend its imprimatur to the principle that 31 December was the cast iron cut-off date beyond which no order for provisional admission could be granted.

16. In fact, this precise issue is presently in *seisin* before the Division Bench of this Court in *Baby Nikshita*. In para 6.1 of the order dated 18 February 2022 passed in the said writ petition, the Division Bench of this Court has observed thus:

“6.1 As indicated above, the issue concerning the cut-off date which has been stipulated by a learned single judge of this Court, via judgment dated 31.03.2017 passed in W.P(C) 7945/2016 out of which LPA 5/2022 has arisen, requires consideration.”

17. Thus, the Division Bench of this Court is presently clearly of the view that the issue of whether 31 December can be adopted as a hard and fast cut-off date beyond which no order of provisional order can be passed requires consideration.

18. Para 9 of the said order is of stellar significance, though Ms. Surbhi sought to submit that it was merely an incidental observation. In para 9, the Division Bench has in fact directed the DoE to issue afresh advertisement against which the petitioners before it and others are eligible have been given permission to apply. The DoE has been directed, thereafter, to conduct draw of lots and allocates schools to



the successful students.

19. This order was passed on 18 February 2022 much after 31 December.

20. Thus, after the order dated 18 February 2022 of the Division Bench in *Baby Nikshita*, it can no longer be said that the fixing of cut-off date 31 December as a date beyond which no order of provisional admission can be passed, is a principle which should be regarded as judicially binding, till a hierarchically superior court speaks on it.

21. The reliance, by Ms. Surbhi, on the judgment of the Division Bench in *Jeet S. Bisht* is misconceived. Para 21 of the said decision, on which she places reliance, reads thus:

“21. It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that I will amount to a precedent.”

22. Quite obviously, the enunciation of law in para 21 of *Jeet S. Bisht* is with respect to Article 141 of the Constitution of India and the declaration of law by the Supreme Court thereunder.

23. We are not concerned with any such situation in the present case. The simple position is that, once the Division Bench of this Court in its order in *Baby Nikshita*, passed provisional directions for admission after 31 December had been crossed, it is no longer open to a single judge to refuse orders of provisional admission on the ground that the cut-off date of 31 December has already passed.



24. Single Judges of this Court have to follow the view that is adopted by Division Benches. If a single Judge of this Court were to adopt a view that no order of provisional admission can be passed after 31 December, it would amount to the single Judge taking a view contrary to para 9 of the order dated 18 February 2022 in *Baby Nikshita*.

25. That is obviously impermissible.

26. This is not a matter of treating the decision in *Baby Nikshita* as a precedent. It is merely a matter of maintaining judicial consistency and ensuring that a course of action which has been commended itself to the Division Bench should also commend itself to the single Judge. The decision in *Jeet S. Bisht* can be of no assistance in that regard.

27. As *Baby Nikshita* is a judgment of the Division Bench of this Court, I need not burden this judgment by reference to *Radha Krishan*, which is an order passed by a learned single Judge.

28. Insofar as *Bushra Riyaz* is concerned, that case dealt with an entirely different issue of whether, on the basis of shortlisting based on a computerised draw of lots conducted by the DoE for one particular year, the court could pass order directing admission of the candidate for succeeding year, for which no allotment had been finalised.



29. We are not concerned, in the present case, with such a situation, as the petitioner approached this Court for admission in the respondent school for 2023-2024, for which the petitioner had been shortlisted on the basis of a computerised draw of lots conducted by the DoE.

30. In that view of the matter, the Court regrets that it is unable to agree with the submissions advanced by Ms. Surbhi.

31. This writ petition, therefore, has to follow the course set by various other orders of this Court including *Jai* and *Niharika v. DOE*¹⁰.

32. Resultantly, the provisional admission granted to the petitioner in the Respondent 1 school is finalised and is made regular. The petitioner would continue to be educated by the Respondent 1 school as an EWS candidate in accordance with the RTE Act and would be entitled to all amenities and conveniences to which such a student is entitled such as textbooks, uniforms and the like.

33. The writ petition is accordingly allowed, with no order as to costs.

C. HARI SHANKAR, J.

APRIL 30, 2024

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Click here to check corrigendum, if any

¹⁰ Judgement dated 23 April 2024 in WP (C) 11579/2023