

Prabhu Dayal Public School vs Directorate Of Education Government Of ... on 17 December, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~57, 60, 61, 49 & 50 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 14339/2021

PRABHU DAYAL PUBLIC SCHOOL

.....

versus

DIRECTORATE OF EDUCATION

GOVERNMENT OF NCT OF DELHI

..... Re

60

+ W.P.(C) 14519/2021

PRUDENCE SCHOOL

.....

versus

DIRECTORATE OF EDUCATION & ORS.

..... Re

61

+ W.P.(C) 14530/2021

SHRI RAM SHIKSHA MANDIR

SENIOR SECONDARY SCHOOL

.....

versus

GOVT OF NCT OF DELHI AND ANR

..... Re

49

+ W.P.(C) 13594/2021

CHINMAYA VIDYALAYA

.....

versus

DIRECTORATE OF EDUCATION & ANR.

..... Re

50

+ W.P.(C) 13665/2021

PP INTERNATIONAL SCHOOL

.....

versus

GOVT. OF NCT OF DELHI & ORS.

..... Re

Present:-

For Petitioners

Mr. Kamal Gupta, Mr. Sparsh Aggarwal & Mr. Aabhaas Sukhramani,
Advocates in Item no. 49 [M:- 9810988094]

Ms. Jyoti Taneja, Ms. Sayesha Suri & Ms. Isha Arora, Advocates
no. 50.

Signature Not Verified

Digitally Signed

By:HARMINDER KAUR

Signing Date:19.12.2021

14:30:41

W.P.(C) 14339/2021 & Other Connected Matters

Mr. Mohinder Singh & Mr. Ankur Goel, Advocates in Item no. 57 [M:- 9810037765].

Ms. Savita Malhotra & Ms. Suman Malhotra, Advocates in Item no.
Mr. Parvinder Chauhan & Mr. Nitin Jain, Advocates in Item no.

For Respondents

Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) GNCTD with Mr. Arun Panwar & Ms. Vrinda Singh, Advocates for DOE with Mr. Rajeev Tanwar, LA, PSB in Item nos. 57, 60, 61, 49 & 50.
Mr. Prashant Kumar, Advocate for DCPCR in Item no. 50 [M:- 9999691983].

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 17.12.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 45688/2021 (exemption) in W.P.(C) 14519/2021 CM APPLs. 45706-45707/2021 (exemption) in W.P.(C) 14530/2021 Exemption allowed, subject to all just exceptions. The applications stands disposed of.

W.P.(C) 14339/2021 & CM APPL. 45192/2021(stay) W.P.(C) 14519/2021 & CM APPL. 45687/2021(stay) W.P.(C) 14530/2021 & CM APPL. 45708/2021(stay) Issue notice. Mr. Santosh Kumar Tripathi, learned Standing Counsel (Civil) Government of NCT of Delhi ["GNCTD"], accepts notice on behalf of the Directorate of Education ["DoE"], GNCTD. With the consent of learned counsel for the parties, these petitions are taken up for hearing alongwith other similar petitions listed today.

W.P.(C) 14339/2021 & CM APPL. 45192/2021(stay) W.P.(C) 14519/2021 & CM APPL. 45687/2021(stay) W.P.(C) 14530/2021 & CM APPL. 45708/2021(stay) W.P.(C) 13594/2021 & CM APPL. 42916/2021(stay) W.P.(C) 13665/2021 & CM APPL. 43157/2021(stay)

1. These writ petitions have been filed by various schools challenging the orders of the DoE by which the schools' applications for exemption from admission of the allotted Economically Weaker Section["EWS"]/Disadvantaged Groups ["DG"] category candidates have been rejected.

2. The details of the rejection orders are as follows:-

S.No. Writ Petition Number Date of Rejection Order

1. W.P.(C) 14339/2021 30.11.2021

2. W.P.(C) 14519/2021 17.11.2021

3. W.P.(C) 14530/2021 13.10.2021

4. W.P.(C) 13594/2021 23.09.2021

5. W.P.(C) 13665/2021 18.08.2021

3. The petitions arise out of the obligation of private unaided schools to admit 25% candidates from the EWS/DG category under the Right of Children to Free and Compulsory Education Act, 2009. The issue is covered by several circulars issued by the DoE, GNCTD. However, a question arose as to whether the ratio of 25% has to be computed on the basis of the total declared strength of General category students or on the basis of the General category students actually admitted. The matter was considered by this Court in a judgment dated 30.09.2013 in W.P.(C) 3385/2013 [The Sovereign School vs. Directorate of Education Govt. of NCT of Delhi]. It was held that a school would be entitled to exemption from admission of EWS/DG category candidates in the event it had made a genuine effort to admit General category candidates upto the declared strength, but was unable to do so.

4. The aforesaid judgment has been noticed in a circular dated 09.07.2021, issued by the DoE. By the said circular, schools have been directed to admit all the EWS/DG category candidates allotted to them. However, the circular also contemplates an application being made by schools for exemption from this direction in the event the school has not been able to admit sufficient number of General category students despite its best efforts.

5. The interpretation of the said circular came up for consideration in W.P.(C) 10839/2021 [Action Committee Unaided Recognized Private Schools vs. Directorate Of Education Govt of NCT of Delhi], wherein this Court passed an interim order dated 24.09.2021, to the following effect :-

"6. Read in this context, I am of the view that the impugned circular is not contrary to the judgment in Sovereign School (supra). The direction in the second paragraph to grant admission to all eligible candidates allotted to the schools, is subject to the qualification contained in the following paragraph that a school can seek exemption from the DOE on the ground of lesser general admission. The circular, in fact, itself makes reference to the judgment in Sovereign School. On a holistic reading of the circular, it requires schools to admit all the EWS/DG candidates whose names have been forwarded by the DOE, subject to the exemption granted on the ground of lesser general category admissions. The circular to this extent incorporates the judgment of this Court in Sovereign School.

7. Mr. Santosh Kumar Tripathi, learned Standing Counsel for the DOE, who appears upon advance notice, also confirms that this is the interpretation placed upon the circular by the DOE itself.

8. The mechanism of the circular appears to be that if a school despite its best effort is unable to admit the sanctioned number of candidates in the general category, then it may seek exemption from admitting all the eligible EWS/DG category candidates. The school will naturally be required to admit the number of EWS/DG category candidates forwarded by the DOE corresponding to the

number of general category candidates admitted. In the event the school contends that it has been unable to admit the sanctioned number of general category candidates despite its best efforts, it may make an application for exemption to DOE and the admission to the balance number of EWS/DG category candidates will be subject to the result of the exemption application, which is required to be considered in terms of the parameters laid down in Sovereign School."

6. In these writ petitions, the schools claim to have made all due efforts in this regard and applied to DoE in terms of the circular dated 09.07.2021, seeking exemption from admitting all the EWS/DG category candidates which were allotted to them. However, by the impugned orders, their applications have been rejected by the DoE.

7. By an order dated 02.12.2021 in W.P.(C) 13665/2021 and order dated 15.12.2021 in W.P.(C) 14339/2021, this Court stayed the rejection orders of the DoE on the ground that they were not adequately reasoned.

8. From a perusal of the rejection orders in the cases which are being disposed of by this order, it appears that in atleast two cases [W.P.(C) 14339/2021 and W.P.(C) 14530/2021], the denial orders are identical. A similar rejection order was passed in W.P.(C) 14564/2021 [Darbari Lal D.A.V. Model School vs. Directorate of Education, through Govt. of NCT of Delhi] which is also listed today. The rejection order reads as follows:-

"Refer to the request/representation/petition dated 03/12/2021 filed by ----- for granting exemption from admitting all the eligible selected EWS/DG category candidates allotted to the school for admission session 2021-22.

In this regard, keeping in view of your earlier request dated 12.07.2021 received for granting of exemption for the admission to eligible candidate allotted to your school with clear direction to comply with the directions of DoE vide circular No. DE. 15(22) /PSB/2021-22/2318-2323 dated

09.07.2021.

In this connection, the request of the school has been examined in pursuance to Section 12(1)(c) of RTE Act, 2009, the judgment of Hon'ble Court of Delhi in W.P.(C) 3358 of 2013 titled as The Sovereign School vs. Directorate of Education GNCTD and also in pursuance to the observation/interpretation made by the Hon'ble High Court of Delhi vide order dated 24.09.2021 in W.P.(C) 10839/2021; titled as Actional committee Unaided Recognised Private School V/s Directorate of Education, GNCTD in detail as per following criteria:

- i) Total no. of seats declared under open admission category.
- ii) Total no. of application received by the school.
- iii) Selection process adopted by the school.

iv) Efforts made by the school.

i. Whether advertisement published in the newspaper? ii. Whether vacancy status displayed board of the school?

iii. Whether vacancy status displayed outside the gate of the school at prominent place? If yes, copy of photograph in support of the same.

iv. Whether all remaining applicant who applied for admission have been approached by the school for admission? If yes then relevant supporting record.

v. Whether the school requested to DOE (Zone/District) to provide the candidates for remaining vacant seats under open category.

5. What is the present status of admission from class 2nd onward to class 11th under EWS/freeship category.

6. The details of admission done at management seats. After evaluation and analyzing the request of the school as per the above criteria, it is found that the school has failed in ensuring the steps/action as per the spirit of the Act as well as above referred judgment and order of the Hon'ble High Court of Delhi, hence, the request of the school is not found fit for approval, hence, is hereby rejected. In the light of latest Directorate of Education circular No. DE.15(22)/PSB/2021-22/4958-4963 dated 03.12.2021, the school is hereby once again directed to admit all the eligible allotted EWS/DG candidates allotted to the school immediately, failing which an action under section 24(4) of DSEA & R, 1973 shall be taken against the school without giving any further opportunity to the school."

9. In W.P.(C) 13594/2021, the order ultimately passed is not identical to these orders, but the petitioner has placed on record a proforma order apparently circulated by the DoE to the Deputy Directors of Education which are in the same format.

10. As the impugned orders are insufficiently reasoned, and appear to be based on a proforma order, rather than on consideration of the materials placed by each of these petitioner- schools, Mr. Tripathi submits that the DoE will reconsider the cases of the petitioner schools, and take appropriate decisions thereupon, in accordance with law.

11. The impugned orders are, therefore, set aside, and the matters are remanded to the DoE for fresh consideration. The petitioners are at liberty to submit their comprehensive representations to the DoE by tomorrow, i.e. 18.12.2021 in terms of the circular dated 09.07.2021. It is expected that the DoE will consider the materials placed on record by the schools, at least against the criteria laid down in the above extracted order and pass a reasoned order thereupon.

12. Learned counsel for the petitioners also submit that DoE be directed to lay down guidelines regarding steps to be taken up by the schools to satisfy it with regard to the efforts made by them to attract a sufficient number of General category candidates. The manner in which the applications

have thus far been dealt with by the DoE, demonstrates that it would be advisable to the DoE to consider laying down such criteria so that schools are aware of the steps which they are required to take well in time. While a post facto consideration of the measures is being undertaken, it is in the interest of transparency and fairness that schools should also be made aware in advance of the steps that they are required to take. Mr. Tripathi submits that the necessary measures would be dependent upon the nature and character of the school in question. It is for the DoE to consider how to incorporate these variations within a set of guidelines which can inform schools as to the manner in which the DoE proposes to assess the requirements in terms of Sovereign School (supra). The DoE is directed to consider this issue and frame the necessary guidelines well in time for admission of the General category students in the next academic year.

13. In W.P.(C) 13665/2021, certain orders passed by the Delhi Commission for Protection of Child Rights ["DCPCR"] have also been challenged. These orders have been passed pursuant to the directions of the DoE with regard to admissions of EWS category students. As the issue of exemption has been remanded to the DoE by virtue of this order, the DCPCR is also directed to consider the further orders passed by the DoE pursuant to this order, in the event any further action is contemplated.

14. The writ petitions, alongwith the pending applications, are disposed of with these directions.

PRATEEK JALAN, J DECEMBER 17, 2021 'pv'