

Action Committee Unaided Recognized ... vs Directorate Of Education Govt Of Nct Of ... on 24 September, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~39 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 10839/2021

ACTION COMMITTEE UNAIDED
RECOGNIZED PRIVATE SCHOOLS

..... Petiti

Through: Mr. Rakesh Kumar Khanna, Sr.
Advocate with Ms. Anjana Gosain
and Ms. Shalini Nair, Advocates.

versus

DIRECTORATE OF EDUCATION
GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Santosh Kumar Tripathi, Std.
Counsel (Civil) GNCTD with
Mr. Arun Panwar and
Mr. Siddhant Krishan Diwedi,
Advocates for R-1/DOE

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 24.09.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 33445/2021 (exemption) Exemption allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 10839/2021 & CM APPL. 33444/2021 (stay)

1. Issue notice. Mr. Santosh Kumar Tripathi, learned Standing Counsel, accepts notice on behalf of the Directorate of Education ["DOE"].

2. The present petition is directed against a circular dated 09.07.2021, issued by the DOE with regard to admission of Economically Weaker Section/Disadvantaged Group ["EWS/DG"] candidates in private schools. The aforesaid circular reads as follows:

"Subject:- Direction to all concerned private schools to ensure EWS/DG & CWSN admission at Entry Level Classes for the session 2021-22 selected through computerized draw of lots.

A large number of complaints have been received in this Directorate regarding denial of admission of successful candidates under EWS/DG & CWSN category by the school concerned on the pretext of lesser number of general category admissions against the available/declared strength of the classes at the entry level in the school for the session 2021-22.

In this connection, all the concerned Private Unaided Recognized Schools are hereby directed to grant admission to all the eligible candidates allotted to them as per declared strength of the early level classes by school through computerized draw of lots.

If any school requires exemption from granting admission to all eligible candidates allotted to them specifically on the ground of lesser general admission, the school shall seek specific permission from concerned DDE/District, after following all steps/due process in pursuant to the order of Hon'ble Delhi High Court in W.P.(C) 3358 of 2013 and W.P.(C) No. 5172 of 2013 in letter and spirit.

Non-compliance will invite strict action against the defaulter school as per provisions of RTE Act 2009 & DSEAR 1973.

The issues with the prior approval of the Competent Authority. "

[Emphasis supplied]

3. The contention of Mr. Rakesh Kumar Khanna, learned Senior Counsel for the petitioner, is that the mechanism laid down in the impugned circular is contrary to the judgment of this Court dated 30.09.2013 in W.P.(C) 3358/2013 [The Sovereign School vs. Directorate of Education, Govt. of NCT of Delhi]. The parties are ad idem that the Right of Children to Free and Compulsory Education Act, 2009 ["the Act"], requires private schools to admit children belonging to weaker sections and disadvantaged groups, and provide them free elementary education, to the extent of at least 25% of the strength of the class.

4. The context of the judgment in Sovereign School (supra) was that the DOE forwarded names of EWS/DG category candidates for admission in the petitioner-School, corresponding with the total number of sanctioned seats in the entry level classes. The contention of the School was that, despite its efforts, it had been unable to admit general category candidates in terms of the sanctioned strength. The School therefore contended that it was liable to admit only such number of EWS candidates as would result in maintenance of the 25% ratio. The Court broadly accepted the contention of the School and held inter alia as follows:-

"6. The main question, which arises for consideration in this case is as to what is the true import of the words "to the extent of 25 per cent of the strength of that class" appearing in Section 12 (1) (c) of the Act. The learned counsel for the petitioner contended that this would mean the total number of students actually admitted to the class in a particular academic year whereas according to the learned counsel for the respondent it would mean the sanctioned strength of the class in which the admission were made.

XXXX XXXX XXXX

8. Thus, the school education was sought to be used as a means of social cohesion and inclusion as well as to remove the existing social and economic hierarchies so that children from different background and with varying interest and ability are able to study in a shared classroom environment. The legislature in its wisdom felt that a proportion lower than 25 per cent will not be able to achieve the desired goal of strengthening social cohesion and bringing about a strong and effective representation of economically weaker sections in the classroom. Therefore, if a school despite having admitted higher number of students in the previous years and being in a position to admit, at least, the same number of students in the academic year in question deliberately makes lesser admission, without adequate explanation for the reduced admissions, such an act on the part of the school would be in complete derogation of the legislative intent and tend to defeat the purpose behind this highly desirable social objective. On the other hand, if a school makes genuine attempt to admit as many students as it possibly can, considering the infrastructure available to it but is not able to fill up all the seats in the General category, it would be unjust and unfair to them if they are asked to admit 25 per cent of the sanctioned intake of the class, from amongst EWS category alone. Considering the provisions of Section 12 (1) (c) of the Act in the light of the Notification dated 28.2.2012, the logical and fair interpretation of the said clause and the notification would be that if the school attempts to admit as many students as the infrastructure available with it permits but is able to admit lesser students from the General category, it will be required to admit 1/3rd of the number of General category students from amongst EWS category students. If, however, the school makes no attempt to admit as many students as its infrastructure permits and deliberately admits lesser students from General category, it cannot deprive the required number of students belonging to EWS category from admission to the school, since, in such a case the school alone would be responsible to create a situation where number of students belonging to EWS category exceeds 25 per cent of the total students admitted in the class.

XXXX XXXX XXXX

11. In fact, during the course of arguments, the learned counsel for the petitioner specifically stated that even now the petitioner is ready to admit more students from the General category and if that happens, it would also be willing to admit 1/3rd of

the additional admission from EWS category. He also stated that the petitioner-school is willing to accept nominations made by the Directorate of Education from amongst the students of General category in order to fill up the General category seats which have remained unfilled despite best efforts of the petitioner. However, there was no response from the respondent to the aforesaid offer made by the learned counsel for the petitioner during the course of argument.

12. For the reasons stated hereinabove I hold that if the petitioner-school made attempt to admit 105 students from the General category but was able to admit only 51 students, it cannot be compelled to admit more than 17 students belonging to Economically Weaker Sections of society. The impugned order dated 15.5.2013 passed by the Directorate of Education is hereby quashed subject to the Directorate verifying and confirming, within one (1) week from today that the petitioner-school had actually made attempt to admit 105 students from the General category during the academic year 2013-2014."

[Emphasis supplied]

5. It appears from the aforesaid judgment that the Court took the view that a school which makes a bonafide attempt to admit students in the general category in accordance with the sanctioned strength, but is unable to do so, would be justified in admitting EWS category candidates only to the extent corresponding with the number of general category candidates admitted. However, if a school did not make the effort to admit the sanctioned number of general category candidates, it could not deny admission to the EWS category candidates as forwarded by the DOE. Thus, while maintaining the ratio of a minimum of 25%, as laid down in the Act, the Court clarified that the schools would be required to make their best efforts to fill the seats in the general category and grant admission correspondingly to the number of EWS category candidates recommended by the DOE.

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.

9. Mr. Khagesh B. Jha, learned counsel, appears upon having noticed the petition in the cause list, and submits that the aforesaid circular dated 09.07.2021 and a prior circular dated 15.06.2021, issued by the DOE are the subject matter of challenge at the instance of EWS/DG category candidates in W.P.(C) 7243/2021 and W.P.(C) 7888/2021.

10. After the order is dictated, Mr. Tripathi submits that this order would create "several issues", although he does not dispute the interpretation placed upon the circular.

11. In view of this submission, the DOE is directed to file a counter affidavit to the petition within four weeks. Rejoinder thereto, if any, may be filed within two weeks thereafter. The observations made in this order are prima facie observations, pending the decision in the petition. As an interim arrangement, parties will abide by this interpretation until the next date of hearing.

12. List on 01.12.2021.

PRATEEK JALAN, J SEPTEMBER 24, 2021 'hkaur'