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

Reserved on: 24.09.2013
% Date of Decision: 30.09.2013

\+ W.P.(C) 3358 of 2013

THE SOVEREIGN SCHOOL ..... Petitioner
Through: Mr. P.D. Gupta & Mr. Kamal Gupta, Advs.

versus

DIRECTORATE OF EDUCATION,
GOVT. OF NCT OF DELHI ..... Respondents
Through: Ms. Zubeda Begum, Standing Counsel GNCTD.
Mr. Khagesh B. Jha, Adv. for the Intervener.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The petitioner before this Court is a private recognized but unaided school. The petitioner claims to have notified a total of 140 seats to be filled up in its pre-school level in the academic year 2013-2014 but was able to fill up only 51 seats in general category and it filled up only 17 seats in the Economically Weaker Sections (EWS) category. The respondent, Directorate of Education, however, notified 21 more EWS seats in the school, on the ground that the total number of such seats in the academic year 2012-2014 was to be 38. The petitioner-school made a representation submitting therein that the number of

admissions made by it in the EWS category was more than 25 per cent of the total strength of the class and, therefore, there was no vacancy in EWS category. The Education Officer vide impugned order dated 15.5.2013 held that since the total number of seats at entry level in the previous three (3) years was 151 seats, the number of seats under EWS category is 38 seats, i.e., 25 per cent of 151 seats. Being aggrieved from the said order the petitioner is before this Court seeking quashing of the impugned communication/order dated 15.05.2013 issued by the respondent.

2. In its counter affidavit the respondent-Directorate of Education has stated that in view of Notification dated 28.2.2012, the number of seats at entry level cannot be less than the highest number of seats in entry class during the preceding three (3) years and as per the undertaking dated 10.4.2013 given by the petitioner, it had filled up as many as 151 seats in the academic year 2011-2012. It was, therefore, required to admit 38 students in EWS category in the academic year 2013-2014. It is also claimed in the counter affidavit that the petitioner with a view to deny admission to EWS category students to the extent of 25 per cent of the sanctioned strength has deliberately admitted only 51 students in General category and 17 students in the EWS category in the academic year 2013-2014.

3. Section 12 (1) (c) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the RTE Act') to the extent it is relevant mandates the petitioner-school to admit to the extent of at least 25 per cent of the strength of the class, children belonging to weaker sections and disadvantaged group in the

neighbourhood free and compulsory elementary education till its completion.

Vide notification number F.15(172)/DE/Act/2010/7792-7806 dated 28.2.2012 issued in exercise of the powers conferred by the sub-section (1) of Section 3 of the Delhi School Education Act, 1973 (18 of 1973) read with rule 43 of the Delhi School Education Rules, 1973 and under the provisions of the RTE Act, the Lt. Governor of the National Capital Territory of Delhi amended the Delhi School Education (Free Seats for students belonging to Economically Weaker Section and Disadvantaged Group), 2011. The amended order provides that the total number of seats at the entry level i.e. Nursery or 1st Class as the case may be, shall not be less than the highest number of seats in the entry class in the previous three academic years. Thus, in view of the mandate of the said order, the number of students, to be admitted to the entry level class in a school in Delhi, during the academic year 2013-2014, to the extent it is possible, cannot be less than highest number of seats at the entry level in the years 2010-2011, 2011-2012 and 2012-2013.

4. A somewhat similar issue came up for consideration before this Court in WP (C) No.5172/2013 titled Birla Vidya Niketan School & Anr. Vs. Govt. of NCT of Delhi & Anr. decided on 19.8.2013. The petitioners in that case had admitted 300 students at the pre-school level in the academic year 2010-2011 but they admitted only 175 students in the academic year 2013-2014. Vide order dated 17.7.2013, the Education Officer, noticing that the school had admitted only 44 students under free seats, held that 31 seats under the said category were still available in the school. 86 registrations forms which the Directorate of Education had received for admission to the said school

under EWS category were then sent to the school for the purpose of making admission to the remaining 31 vacancies. The direction issued by the Directorate of Education was challenged by the petitioner by way of the aforesaid writ petition. The above-referred Notification dated 28.2.2012 was also sought to be challenged by the aforesaid petitioners. Dismissing the petition, this Court *inter alia* held as under:

> "6. The notification dated 28.2.2012 was not challenged by the petitioner and the admissions for the academic year 2013-2014 were held, during the validity of the said notification. Though the petitioner is now seeking quashing of the notification dated 28.2.2012, to the extent, the schools are required to fill up the not less than the highest number of seats in the entry class in the previous three academic years, no such challenge can be entertained at this stage when, the admission for the academic year 2013-2014 were made without taking any steps to challenge the said notification. Moreover, considering that the school admitted 300 students at the entry level for the academic year 2010-2011 and in fact had admitted much more students for the academic year 2009-2010, it cannot be accepted that the petitioner-school does not have the requisite infrastructure including the faculty members to impart education to 300 students for the academic year 2013-2014. Even otherwise, I find no legal infirmity in the notification requiring the schools to admit not less than the highest number of students admitted for the last three academic years, at the entry level.
>
> 7. One of the purposes behind issuing the said notification was to give adequate representation to the children belonging to EWSs/Disadvantaged sections of the society, in the private schools and the Government wanted to ensure that the schools do not reduce the number of such students by taking recourse to reducing the overall admissions, to the entry class. Considering the objective behind this stipulation, the said amendment cannot be said to be arbitrary, unfair or unreasonable nor does it contravene any statutory provision.

> 8. It goes without saying that the petitioner, if it so decides can admit, students from other categories so as to fill up 300 seats at the entry level during the academic year 2013-2014. If this is done, the representation of the students belonging to EWSs/Disadvantaged Group would also remain at 25%. In any case, even if the petitioner does not admit students from other categories for the academic year 2013-2014, the number of students belonging to EWSs/Disadvantaged Group cannot be restricted to 44 on the ground that the percentage of such students should not exceed 25%. Reducing the total intake to 175 during the academic year 2013-2014 is petitioner's own creation for which, the students belonging to EWSs/Disadvantaged Group cannot be made to suffer. In any case, there is no illegality in the ratio of the students belonging to EWSs/Disadvantaged Groups being more than 25%, the requirement being to have a minimum ratio of 25% for such students."

5. The contention of the learned counsel for the petitioner, however, is that it is not as if the petitioner-school made no effort to admit 140 students at the pre-school level. According to him they had advertised for making 140 admissions but they could not get enough applications from the General category applicants and that is why they had to restrict the admission under the General category to 51 students. His further contention is that since the petitioner despite best efforts could not fill up more than 51 seats from General category, it was required to admit only 17 students from the EWS category in the academic year 2013-2014. It is also claimed in the rejoinder filed by the petitioner that the petitioner-school had shortlisted as many as 470 students for admission under the General category and had offered admission to all of them after notifying their names on the website of the school but only 51 such students took admissions.

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.

7. The State of Objects & Reasons attached to The Right of children to Free and Compulsory Education Act, 2009 to the extent it is relevant reads as under:

> "The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.
>
> xxxx
>
> 4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is,

therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds."

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.

9. In Birla Vidya Niketan School & Anr. case (supra) the order passed by this Court has proceeded on the basis that the school did not make any attempt to admit students from General category commensurate with the infrastructure available to it. It was noticed that the school had admitted 300 students in the academic year 2010-2011. The Court was of the view that considering the number of admissions made in the year 2010-2011 the school possessed the requisite infrastructure to make that many admissions in the academic year 2013-2014 as well. This was not the case of the petitioners in that case that they had advertised more than the General category seats filled by them but they were unable to find enough number of General category students willing to take admission in their school. Had that been the case of the petitioners in Birla Vidya Niketan School & Anr. case (supra), the position would have been altogether different.

10. A perusal of the print out of the school's website filed by the applicant in CM No.10108/2013 would show that the petitioner school had notified 105 seats. It appears that the aforesaid figure of 105 was

arrived at after deducting 35 (25 per cent of 140) seats. This is not in dispute that the petitioner school had registered about 470 students for admission under the General category and had also notified their name on its website. If the petitioner-school could not fill up all the 105 seats notified by it and able to fill up only 51 seats in the General category, it can hardly be disputed that advertising more seats would have served no purpose at all. Thus, this is not a case where the petitioner-school deliberately admitted lesser students in the General category though it was in a position to admit more students in the said category.

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.

The writ petition stands disposed of accordingly. There shall be no orders as to costs.

SEPTEMBER 30, 2013 V.K. JAIN, J.
b'nesh