

(2011) 03 DEL CK 0479

In the Delhi High Court

Case No : Writ Petition (C) 1063 of 2011

Master Aaditya Birmani

APPELLANT

Vs

Sardar Patel Vidyalaya and Another

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 38(2)

Citation : (2011) 03 DEL CK 0479

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Kusum Sharma, for the Appellant; T.R. Andhyarujina, Sr. Adv, Sakesh Kumar and Rita Kumar for R-1, Neha Kapoor and Najmi Waziri for R-2, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The writ petition was filed for quashing the draw of lots held by the Respondent No. 1 School for admissions to nursery class in the year 2011 and seeking direction to the Respondent No. 1 School to re-hold the draw of lots after including the name of the Petitioner therein. Finding that the Petitioner, a resident of Mayur Vihar, Phase-II, Delhi was claiming admission to a distant School, it was enquired from the counsel for the Petitioner when the writ petition came up first on 21st February, 2011 as to why admission was not being sought to a neighbourhood School. The counsel for the Petitioner had then stated that the facilities for children with special needs as the Petitioner is, are available in the Respondent No. 1 School and for this reason the Petitioner was seeking admission to Respondent No. 1 School, even though distant.

2. Notice of the writ petition was issued. The Respondent No. 2 Directorate of Education was also directed to in the meanwhile look into the matter and to place a report before this Court.

3. The counsel for the Petitioner today states that he has received advance copy of the counter affidavit of the Respondent No. 1 School. The counsel for the Respondent No. 1 School states that the same could not be filed and he has been

permitted to hand over the same in the Court and the same is taken on record. The counsel for the Petitioner states that he does not need to file any rejoinder thereto.

4. The counsel for the Respondent No. 2 Directorate of Education states that in pursuance to the earlier direction, an enquiry was conducted and she has handed over for perusal of this Court, the file in that regard, containing the report dated 9th March, 2011 of the said enquiry.

5. As per the said report, the Respondent No. 1 School had received 2124 applications for admission in the General Category; out of these applications, 333 applications were shortlisted on the basis of admission criteria, for final selection for 63 seats in the General Category; the Petitioner did not have the minimum score required for admission and was as such not shortlisted in the General Category. It is further reported that for 21 seats in the Economically Weaker Section (EWS) Category, 1018 applications were received by the Respondent No. 1 School of which 24 applications were shortlisted on the basis of neighbourhood criteria and of which shortlisted candidates, 21 were admitted. It is thus reported that the Respondent No. 1 School has complied with the procedure prescribed for admission.

6. The counsel for the Petitioner states that he does not need to file any response to the said enquiry report also. The counsels have been heard.

7. The senior counsel for the Respondent No. 1 School has at the outset contended that the Petitioner got the notice of the writ petition issued on misrepresentation in response to the query of the Court, that the Respondent No. 1 School has provisions for children with special needs. It is contended that the Respondent No. 1 School is like any other School and there is no plea in the writ petition also in this regard.

8. The counsel for the Petitioner has fairly stated that though the Petitioner had applied for admission in the General Category also and in which he did not made the requisite minimum score but had subsequently applied under the EWS Category and the grievance now of the Petitioner is for not being shortlisted in the said Category only.

9. The senior counsel for the Respondent No. 1 School has contended that for the EWS Category, the criteria applied was of neighbourhood; the first preference was given to the children residing within the radius of 3 Km. and thereafter successively to those residing within 5 and 7 Km radius of the School. It is contended that since the residence of the Petitioner is at a distance of 12 Km., the Petitioner was not shortlisted in the EWS category also.

10. The counsel for the Petitioner has confined his arguments to the Delhi Government having not defined "neighbourhood", though required to do so u/s 38(2)(b) of The Right of Children to Free and Compulsory Education Act, 2009. He seeks a direction in this regard. He has next contended that no provision has

been made for education of the children with special needs. He invites attention to the judgment dated 16th September, 2009 of the Division Bench of this Court in W.P.(C) No. 6771/2008 titled Social Jurist A Civil Rights Group v. Govt. of NCT of Delhi W.P.(C) No. 6771/2008 regarding appointment of teachers for children with special needs and states that in pursuance thereto Notification dated 4th November, 2010 has been issued. He contends that a status report ought to be called from the Govt. of NCT of Delhi and the Directorate of Education as to the steps being taken for fulfilling the educational needs of children with special needs.

11. Upon it being put to the counsel for the Petitioner that the Petitioner for the said purposes ought to file a Public Interest Litigation (PIL), the counsel states that since the issue has arisen for consideration in the present writ petition, the same be considered herein only.

12. Though it is permissible for any writ petition/proceeding to be converted into a PIL but I do not find any necessary/relevant averments in the present writ petition in this regard for the said course to be followed. Even for a PIL to be maintained, the Petitioner is required to make the requisite pleas for the Court to entertain the litigation.

13. The counsel for the Petitioner has also contended that since "neighbourhood" has not been defined in the Act till now, the Respondent No. 1 School could not have fixed its own criteria of "neighbourhood" as has been done. I am of the opinion that till the "neighbourhood" is not defined, the common sense view with respect thereto is to prevail and the criteria for admission followed by the Respondent No. 1 School is found to be inconsonance therewith.

14. In the circumstances, while dismissing the writ petition, liberty is granted to the Petitioner to if so desires, take up the aforesaid two reliefs in PIL before the appropriate Bench.

15. The counsel for the Petitioner at this stage states that a direction be issued to the Respondent No. 1 School at least to have provision for educating children with special needs. Without any specific pleadings in this regard, such direction also cannot be issued.

No order as to costs