

(2023) 06 DEL CK 0043
In the Delhi High Court
Case No : CONT.CAS(C) No. 83 Of 2022

Shahnaz Khatoon & Ors.

APPELLANT

Vs

GD Goenka Public School

RESPONDENT

Date of Decision : 01-06-2023

Acts Referred:

Constitution of India, 1950 — Section 21A

Right of Children To Free And Compulsory Education Act, 2009 — Section 2(n), 12

Citation : (2023) 06 DEL CK 0043

Hon'ble Judges : Mini Pushkarna, J

Bench : Single Bench

Advocate : Aayush Agarwala, Siddham Nahata, Bhumika Sharma, Auritro Mukherjee, Randhir Kumar, Santosh Kr. Tripathi, Utkarsh Singh, Arun Panwar, Kartik Sharma, Mahak Rankawat

Final Decision : Disposed Of

Judgement

Mini Pushkarna, J

1. The present contempt petition has been filed for non compliance of the order dated 22.12.2021 passed in W.P.(C) 13143/2021. By the said order, directions had been passed by this Court directing the respondent school to grant admission under the Economically Weaker Section (EWS)/Disadvantaged Group (DG) category to the petitioners herein.

2. There are three petitioners in the present case who are seeking admission in respondent school in Class – 1 under the EWS/DG category. They were successful in the draw of lots conducted by the Directorate of Education (DOE), Government of NCT of Delhi and were allotted the respondent school for admission under the EWS/DG category. However, the petitioners were denied admission on account of various objections raised by the school.

3. As far as the case of petitioner No.1, Sumayya, is concerned, she was allotted the respondent school for admission in Class Nursery in Academic Session

2021-2022. She was denied admission by the respondent school solely on the ground that the address of the petitioner was not found.

4. Ld. Counsel appearing for respondent School has handed over the verification report of selected candidates under the EWS/DG category for the Academic Session 2022-2023. He submits that the address of the petitioner No.1, i.e., Sumayya was not traceable during physical verification as per the report of the Directorate of Education (DOE).

5. The petitioner No.1 was initially allotted respondent School for admission in Class Nursery under the EWS/DG category in the Academic Session 2021-2022. Since she was not granted admission, the DOE again allotted the respondent school to the petitioner for admission in KG/Primary Class in the Academic Session 2022-2023. Despite the same, the petitioner was not granted admission. Thus, now the petitioner seeks admission in Class – 1 under the EWS/DG category.

6. The Date of Birth of the petitioner No.1, Sumayya, is 27.01.2018. Thus, the age of the petitioner No.1 is five years and she is still eligible to be granted admission under the EWS/DG category.

7. As regards the objection on behalf of the school with respect to address of the petitioner not being traceable, the same has been answered by letter dated 18.11.2021 issued by the Directorate of Education. With respect to petitioner No.1, Sumayya, the report of DOE states as under:

"... .."

b) Ms. Sumayya (Regn. No.20210119980): Shri Nafees F/o Ms. Sumayya has changed residence from B-32 Rajapur Village to B-14, Rajapur Village (the same colony) after draw of lots as per copy of rent agreement and copy of Aadhar card of the parent.

"... .."

8. Perusal of the aforesaid shows that petitioner No.1 stays in a rented accommodation in a rural area. The fact remains that in rural areas it is sometimes not possible to find the given address, as the property numbers given in rural areas are private numbers in many cases that have not been allotted by the Municipal authorities, making it difficult to trace them on many occasions.

9. Further, the aforesaid report of DOE shows that the petitioner No.1 was earlier residing in some rented accommodation in Rajapur village. Subsequently, the petitioner shifted to another rented accommodation in the same area of Rajapur village, near Rohini, New Delhi. It is usual for people living in rented accommodation to shift their residences as per their needs and on account of other factors. Further, when the DOE has already verified the address of the petitioner on an earlier occasion, the objections raised on behalf of the respondent school in this regard, cannot be countenanced.

10. Thus, the report on behalf of the DOE for the year 2022-2023 that the address of the petitioner No.1 was not traceable during physical verification, does not give rise to any cause of action in favour of respondent school. This Court cannot shut its eye to the fact that petitioner No.1 belongs to disadvantaged group in the society. Thus, petitioner No.1 who is living in a rural area and in a rented accommodation cannot be denied admission merely because the nominee of the DOE was unable to trace the address of the petitioner on subsequent physical verification. This is especially so, when a report already exists given on behalf of the DOE confirming the address of the petitioner.

11. This Court also notes that in the earlier report dated 08.11.2021 of the DOE wherein DOE had confirmed the address of petitioner No.1, the address is the same as was reflected in the Rent Agreement. Further, the said address was also reflected in the Adhaar Card of parents of petitioner No.1.

12. In view of the aforesaid, it is directed that the respondent School shall grant admission to the petitioner No.1 in Class – 1 forthwith under the EWS/DG category.

13. The order is being continued from yesterday, i.e., 31.05.2023.

14. As regards petitioner No.2, the said petitioner, i.e., Vihaan was granted admission in the respondent school in Class KG/Pre-Nursery in the Academic Session 2021-2022. The Date of Birth of petitioner No.2 is 17.02.2016, and as per the age of the petitioner No.2, admission is now sought in Class – 1 in the current Academic Session 2023-2024.

15. Ld. Counsel for the respondent school has submitted that the residence of the petitioner is 5 to 6 Kms away from the school. He further submits that all the requisite documents were not submitted on behalf of the petitioner. Therefore, admission was not granted to the petitioner.

16. Ld. Counsel for the respondent school has handed over copy of the application form filled on behalf of the petitioner No.2. In the said application form, the respondent school has been filled as choice No.1, shown in the range of 0 to 1 Kms. Thus, he submits that the respondent school is 5 to 6 Kms away from the residence of the petitioner, while there are other schools which are available within 1 Km distance from the residence of the petitioner No.2.

17. On the other hand, Id. Counsel for the petitioner has handed over the acknowledgment slip issued by the school showing submission of the documents on behalf of petitioner No.2. As per the said acknowledgment slip, as issued by respondent school, documents pertaining to Adhaar Card of the child as well as that of his mother and father; photographs of the child as well as that of his mother and father; Date of Birth Certificate of the child, i.e., petitioner No.2 and Scheduled Caste Certificate, were duly deposited in the school on 30.06.2021. The said acknowledgment slip as given by the Id. Counsel for the petitioner No.2, is taken on record.

18. Ld. Counsel for the petitioner further submits that the address as given by the petitioner No.2 in the application form, shows the same address that is reflected in the Adhaar Card of the petitioner No.2 and his parents. Thus, he submits that no wrong information has been given on behalf of the petitioner No.2 as far as address of petitioner No.2 is concerned. He further submits that the petitioner is willing to travel 5 to 6 Kms for the purposes of studying in the school in question.

19. Ld. Counsel for Directorate of Education (DOE) submits that the petitioner No.2 was duly allotted the school in question, therefore, there is no impediment to grant admission to petitioner No.2 in the respondent school.

20. As regards the contention on behalf of the respondent school with respect to petitioner No.2 staying at a distance of approximately 5 to 6 Kms away from the school and denying the admission on that ground, the same is totally unjustified. Such objections as taken on behalf of the respondent School are not acceptable. When a seat under the EWS/DG category has been allotted to petitioner No.2, the respondent school cannot be allowed to deny admission by raising one or the other objection, which are found to be unjustified.

21. As far as admission under the EWS/DG category is concerned, the strict criteria of neighborhood cannot be followed. The DOE receives large number of applications under the EWS/DG category. Whereas, the seats which are available under the EWS/DG category are very limited. Thus, once a school has been validly allotted by the DOE to an applicant for admission under the EWS/DG category, the schools cannot deny admission to students under EWS/DG category by raising such objections.

22. This Court cannot ignore the fact that the disadvantaged groups of the society have to be given equal opportunities to come forward in life. This includes giving opportunity to the students belonging to the disadvantaged groups and economically backward classes to study in schools along with other children, so that they are part of the mainstream of the society. Further, if the admissions are denied to such applicants under the EWS/DG category on such unjustified grounds, then the limited seats which are available under the EWS/DG category will go waste. Such a situation cannot be allowed to perpetrate, as every vacant seat against EWS/DG quota signifies denial of quality education to a child belonging to poor strata of society.

23. Denial of admission to a child under the EWS/DG category, would violate the rights of such children under Article 21A of the Constitution of India as well as rights available to such students under the Right to Education Act, 2009 (RTE Act).

24. As far as the objection on behalf of respondent school with respect to documents having not been submitted by the petitioner No.2, the same is belied by the acknowledgment slip which has been issued by respondent school itself. The acknowledgment slip as issued on behalf of respondent school clearly shows

that all the requisite documents including the Adhaar Card of petitioner No.2 as well as that of his parents; photographs of the petitioner No.2 as well as that of his parents; the Date of Birth Certificate of petitioner No.2 as well as Scheduled Caste Certificate, have duly been submitted on behalf of petitioner No.2 with the respondent school. Thus, the said objection on behalf of respondent school is also rejected.

25. The Date of Birth of petitioner No.2 is 17.02.2016. Therefore, as on date, the petitioner No.2 is 7 years and 4 months and is eligible for grant of admission to Class – 1.

26. The respondent school is directed to forthwith grant admission to petitioner No.2 in Class – 1 in the current Academic Session 2023-2024.

27. As regards petitioner No.3, he was allotted the respondent school in the Academic Session 2021-2022 for Class Nursery/Pre School under the EWS/DG category. The petitioner No.3 was denied admission by the school by raising the objection that there was mismatch in the income certificate.

28. Id. Counsel for respondent school has drawn the attention of this Court to the affidavit dated 24.09.2021 which has been filed on behalf of petitioner No.3 along with rejoinder dated 23.05.2022.

29. By referring to the aforesaid affidavit, it is submitted that the father of the petitioner No.3 himself has deposed that while attaching the EWS certificate, he had given old income certificate, which according to the said affidavit, was incorrect certificate. Thus, it is submitted on behalf of respondent school that incorrect EWS Certificate has been attached by the petitioner No.3.

30. On the other hand, Id. Counsel for petitioner No.3 has handed over the EWS Certificate as issued by the Revenue Department, Govt. of NCT of Delhi, which has been issued on 15.02.2023. As per the said certificate as issued by the Revenue Department, Govt. of NCT of Delhi, Office of District Magistrate, the father of the petitioner No.3 has been issued the certificate, showing him as belonging to Economically Weaker Section of society. The said income certificate, as handed over by Id. Counsel for petitioner No.3, is taken on record.

31. As regards EWS Certificates, bare perusal of the same show that the income certificates that are issued by the Revenue Department, Govt. of NCT of Delhi, are valid only up to 6 months from the date of issue. Thus, a person concerned is required to take income certificate from the Revenue Department, Govt. of NCT of Delhi after every 6 months. Therefore, the certificates issued by the Revenue Department after every 6 months, would certainly have different certificate numbers. Thus, the objection as raised on behalf of respondent School that there is mismatch in the income certificate, is rejected.

32. The date of birth of petitioner No.3 is 01.08.2016. Therefore, the current age of the petitioner No.3 is 6 years and is within the age limit for granting admission under the EWS/DG category.

33. Since the petitioner was earlier allotted the school in the year 2021-2022 for admission in Class Nursery/Pre School, now as per the current age of petitioner No.3, the admission is sought in Class – 1.

34. In view of the aforesaid, it is directed that petitioner No.3 shall be forthwith given admission in Class – 1 under the EWS/DG category in the respondent school.

35. This Court also notes the fact that the DOE has made it very clear that no other child has been allotted seats under the EWS/DG category in the school in question against the seats as allotted to the petitioners herein.

36. At this stage, it is to be noted that the respondent school is under an obligation to reserve 25% of its seats against the available/declared strength of its classes at the entry level in the school under The Right of Children To Free And Compulsory Education Act, 2009 (RTE Act). The DOE allots seats and confirmed admissions to the respective schools after taking into account such available/declared strength of the classes by the school. Thus, there is no justified reason for the school to deny admission to the petitioners.

37. This Court in batch petitions, Rameshwar Jha Vs. Principal Richmond Global School and Others, reported as 2022 SCC OnLine Del 4438, has laid down that all schools within the meaning of Section 2 (n) of the RTE Act shall ensure that the provisions of the Act as interpreted therein, shall be given effect in letter and spirit. It has been mandated that all schools shall ensure that no student belonging to “weaker sections” as defined in the RTE Act and recommended by the DOE for being admitted in an academic session, shall be denied admission or treated with conduct that is unwelcoming to them, on any pretext whatsoever.

38. The respondent school cannot shun its responsibility under Article 21A of the Constitution of India, which provides a categorical obligation on the State to ensure to provide free and compulsory education to all children of the age 6 to 14 years as a fundamental right.

39. It is to ensure that the fundamental right as granted by the Constitution of India under Article 21A is made available, that the RTE Act was promulgated. The RTE Act inter-alia under Section 12 mandates that every school shall admit at least 25% of the strength of its class, the children belonging to weaker sections and disadvantaged groups and provide them with free and compulsory elementary education. Therefore, the respondent school is under an obligation to reserve 25% of its seats against the available/declared strength of its classes at the entry level in the school under the RTE Act.

40. Consequently, the present petition is allowed.

41. All the petitioners are directed to approach respondent school within a period of one week to seek admission in Class – 1 under the EWS/DG category. The respondent school is directed to immediately process the documents as submitted on behalf of the petitioners and grant admission under the EWS/DG

category in Class – 1 for the current Academic Session 2023-2024.

42. In case the petitioners face any difficulty, the DOE is directed to extend full cooperation and assistance to petitioners to take admission in respondent school.

43. With the aforesaid directions, the present Contempt Petition is disposed of.