



\$~52 and 53

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

+ LPA 401/2024 & CM APPL. 30414-30415/2024

APEEJAY SCHOOL, SHEIKH SARAI Appellant

Through: Mr. Kamal Gupta, Mrs. Tripti Gupta,
Mr. Sparsh Aggarwal, Mr. Karan
Chaudhary and Ms. Yosha Dutt,
Advocates

versus

DEEPAK RAJ & ANR. Respondent

Through: Mr. Santosh Kr. Tripathi, Standing
Counsel (Civil), GNCTD with Mr.
Arun Panwar and Mr. Rishabh
Srivastava, Advocates for R-2/DOE

53

+ LPA 402/2024 & CM APPL. 30420-30421/2024

APEEJAY SCHOOL, SHEIKH SARAI Appellant

Through: Mr. Kamal Gupta, Mrs. Tripti Gupta,
Mr. Sparsh Aggarwal, Mr. Karan
Chaudhary and Ms. Yosha Dutt,
Advocates

versus

SANDEEP KUMAR & ANR. Respondent

Through: Mr. Santosh Kr. Tripathi, Standing
Counsel (Civil), GNCTD with Mr.
Arun Panwar and Mr. Rishabh
Srivastava, Advocates for R-2/DOE

%

Date of Decision: 20th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present appeals have been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the



High Court of Delhi, challenging the common judgment dated 03rd May, 2024 passed by the learned Single Judge in W.P.(C) 14843/2023 and W.P. (C) 15376/2023, whereby the writ petition(s) filed by separate individuals i.e. Respondent No. 1 in each appeal respectively has been allowed with a direction to the Appellant-School to grant admission to the wards of the Respondent(s) in Class KG/Pre-primary.

2. Learned counsel for the Appellant-School states that prior to uploading of the seat matrix data by the Directorate of Education ('DoE') on its website *vide* circular dated 13th January 2023, the Appellant-School had already made representation to DoE, seeking reduction in Nursery/Pre-School entry level seats in its institution for the years 2023-2024 on 21st November 2022. However, the said representation was rejected by the DoE *vide* order 1st December 2022 which decision has been challenged by the Appellant-School in the WP(C) No. 14287/2023¹. He states in the said writ petition, an interim order dated 02nd November 2023 was passed which restrained the DoE from taking any coercive action against the Appellant-School arising from the DoE order dated 1st December 2022.

2.1. He states that the learned Single Judge has erroneously disregarded the effect of interim order dated 02nd November, 2023 passed in WP(C) No. 14287/2023 while passing the impugned judgment. He states that the interim order dated 02nd November 2023 protected the rights of the Appellant-School to limit its obligation to admit Disadvantaged Group ('DG')/Economically Weaker Section ('EWS') students in proportion to the general category students actually admitted by it in the relevant academic year.

¹ The said writ petition is pending for adjudication and next listed on 22nd July, 2024.



2.2. He states that no relief, as sought by the respective Respondent(s) herein with regard to grant of admission to their wards in the Appellant-School, could have been granted by the learned Single Judge in view of the said interim order dated 02nd November 2023 operating and till the time the WP(C) No. 14287/2023 is finally decided.

2.3. He states that the learned Single Judge failed to appreciate that interim orders in the underlying writ petitions were denied to the Respondent(s) by the learned Single Judge in view of the pendency of WP(C) No. 14287/2023.

3. In reply, learned counsel for Respondent No. 2 i.e., DoE states that the remit of the interim order dated 02nd November 2023 passed in the WP(C) No. 14287/2023 directing the DoE not to take any coercive action against the Appellant-School is intended to restrain DoE from derecognizing the School or taking over the management of the School. He states that the said interim order cannot interdict the rights of the students to seek admission as per the Right of Children to Free and Compulsory Education Act, 2009 ('RTE Act, 2009').

4. We have heard the learned counsel for the parties and perused the record.

5. The learned Single Judge has allowed the underlying writ petitions and given cogent reasons for rejecting the submission of the Respondent which is premised primarily on the pendency of W.P.(C) 14287/2023 and the interim order dated 02nd November, 2023 passed therein. The relevant para of the impugned judgment reads as under:

“21. Having done so, I am unable to subscribe to the submissions of Mr. Gupta, for the following reasons:



- (i) *The respondent school did not submit any representation to the DoE after the uploading, by the DoE, of the data relating to the seat matrix for EWS/DG students in various schools on its website on 13 January 2023, within the period provided in that regard, or even thereafter.*
- (ii) *The only representation made by the respondent was much prior thereto, on 21 November 2022. That representation stood rejected on 1 December 2022. No challenge to the said rejection was made by the respondent school till conducting of the draw of lots by the DoE on 14 March 2023. It was only seven months thereafter that the respondent school chose to challenge the rejection, by the DoE, of its representation dated 21 November 2022, by the order dated 1 December 2022. The challenge was obviously an afterthought.*
- (iii) *Irrespective of the merits of the said challenge, therefore, it cannot operate as an insulation against the respondent school from complying with its obligations to admit the petitioner's daughter consequent on the outcome of the computerized draw of lots conducted by the DoE.*
- (iv) *Besides, there is no interim order passed by this Court in WP (C) 14287/2023, staying the requirement of the respondent having to comply with the outcome of the computerised draw of lots conducted by the DoE.*
- (v) *The decision in **Neeharika Infrastructure**, cited by Mr. Gupta, does not support his stand that the direction not to take coercive action against the respondent school amounts ipso facto to the respondent school not having to comply with the requirement of admitting the petitioner's daughter to its institution, consequent on the outcome of the computerized draw of lots conducted by the DoE. Paras 20, 22, 28 and 29.4 of the said decision, which have been cited by Mr. Gupta, read thus:*

.....
.....

*The Supreme Court, in **Neeharika**, was concerned with the power of the High Court to pass orders to not take any coercive steps against accused in a criminal case. A bare reading of the above paras reveals that there is no parallel between that case and this.*

- (vi) *Based on the vacancy position computed by the respondent school on the basis of admissions made by it till the academic year 2022-2023, the respondent school had already represented to the DoE for sizing down its EWS/DG quota for the academic year 2023-2024 on 21 November 2022. The said representation stood rejected on 1 December 2022. The vacancy circular issued by the DoE on 13 January 2023 was based on the said vacancy position. The respondent school was, therefore, bound by the outcome of the computerized draw of lots conducted by the DoE based on the said data.*

22. *For all these reasons, the present case, in my view, has to follow the path*



set by Jai, Arpit and other such cases.”

6. In addition to the reasons given by the learned Single Judge, we may observe that the Respondent(s) who approached the learned Single Judge were not bound by the interim order dated 02nd November, 2023 passed in W.P.(C) 14287/2023. The Respondent(s) approached the Court to enforce the fundamental rights of their wards to seek admission in accordance with the RTE Act, 2009 and this right cannot be circumvented by the Appellant on the plea of the pendency of W.P.(C) 14287/2023. In our considered opinion, the learned Single Judge has rightly held that the interim order dated 2nd November, 2023 does not interdict the legal obligation of the Appellant to comply with the outcome of the computerised draw of lots conducted by the DoE.

7. Similarly, the reliance placed on the interim order(s) dated 16th November, 2023 and 30th November, 2023 passed in the underlying writ petitions is also of no avail as the writ petitions have been disposed of finally and the learned Single Judge, while deciding the petitions finally, was not bound by the said interim orders.

8. Accordingly, we find that the appeal is without any merits and the same is dismissed. Pending applications are disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 20, 2024/msh/ms