



2024 : DHC : 3864



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

+ W.P.(C) 6747/2024

APEEJAY SCHOOL, SHEIKH SARAI Petitioner
Through: Mr. Kamal Gupta, Mrs. Tripti
Gupta, Mr. Sparsh Aggarwal, Mr. Karan
Chaudhary and Ms. Yosha Dutt, Advs.

versus

DIRECTORATE OF EDUCATION Respondent
Through: Mr. Santosh Kumar Tripathi,
SC (Civil) with Mr. Utkarsh Singh, Mr.
Rishabh Srivastava, Ms. Prashansa Sharma,
Advs. with Mr. Vineet Lakra, Assistant
Section Officer, PSB, DoE

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **10.05.2024**

CM APP No. 28130/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 6747/2024 & CM APP No. 28129/2024 (interim relief)

3. The prayer clause in this writ petition reads thus:

“In the facts and circumstances of the case as well as in the interest of justice, it is most respectfully prayed that this Hon’ble Court may be pleased to issue a writ, order or direction in the nature of:



(A) Mandamus directing the Respondent DoE to decide the application dated 25.4.2024 filed by the School seeking exemption/permission to admit EWS/DG/CWSN category students in proportion to the general category admissions actually made by the School in AY 2024-25, before 15th May 2024;

In the alternative to the above,

(B) Mandamus granting exemption/permission to the School to admit EWS/DG/CWSN category students in proportion only to the general category admissions actually made by the School in AY 2024-25, in terms of the law declared by this Hon'ble Court in various judgments;

(C) Mandamus directing deletion of the so-called carry forward vacancies in KG and Class I, Notified by DoE in its tentative vacancies list vide Circular dated 17.1.2024, as being absolutely illegal & arbitrary.

(D) Pass any other further orders granting relief in favour of the petitioner and against the Respondent which this Hon'ble Court may deem fit in the facts and circumstances of the case.”

4. There are, therefore, three prayers in this writ petition which are dealt with, *seriatim*, as under:

Re. Prayer (A)

5. The first prayer is for a direction to the Directorate of Education (DoE) to decide the application dated 25 April 2024 filed by the petitioner-school seeking exemption from admitting EWS/DG/CWSN category students in proportion to general category students actually made by the School in the academic year 2024-2025, before 15 May 2024.



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6. There is no dispute about the fact that the seat matrix, in various schools, showing the number of general category of EWS/DG/CWSN and other such categories of students which the schools would have to admit during the academic year 2024-2025, was uploaded by the DoE on its website under the cover of Circular dated 17 January 2024. The said circular permitted schools, who desired to dispute the figures contained in the annexures thereto, to represent within a period of one week.

7. The petitioner submitted a representation on 23 January 2024, within the time permitted in the circular, seeking reduction in the number of EWS/DG/CWSN seats which, as per the Circular, were required to be filled by it during the 2024-2025 academic session.

8. Mr. Santosh Kumar Tripathi, learned Standing Counsel for the DoE, submits that the said representation has been considered and some reductions have been effected in the number of EWS/DG/CWSN and the students whom the petitioner would have to admit in various classes, reducing the figure below the figures which were uploaded by the DoE under the circular dated 17 January 2024. He has also handed over, across the Bar, the updated tabulated data relating to all the schools, after considering the representations, if any, made by them.

9. Mr. Kamal Gupta, learned Counsel for the petitioner, submits that no individual order, communicating the said decision, was forwarded to his client. However, given the magnitude of the task



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with which the DoE is confronted every year at this time, it would be unrealistic to require the DoE to communicate individual orders on every representation received from a school for reduction of seats, below the figures shown in the seat matrix.

10. Mr. Tripathi submits that the modified figures *qua* all schools were uploaded on the MIS portal of the DoE. He also undertakes to provide a copy of the relevant part of the figures, to the extent it pertains to the petitioner-school, to Mr. Gupta during the course of the day.

11. The representation submitted by the petitioner on 23 January 2024, challenging the figures contained in the seat matrix as uploaded by the DoE under cover of its circular dated 17 January 2024, therefore, already stands decided by the DoE.

12. Mr. Gupta's contention is, however, that the decision on the said representation does not affect prayer (A) in the present petition. He submits that the right to seek exemption from having to fill up 25% of the seats at the entry level by EWS/DG/CWSN candidates is distinct and different from the question of the number of seats which are allocable to that particular school. The representation dated 25 April 2024, he submits, is a representation seeking exemption, which can be preferred after the admissions have been made. He submits that, as the number of general category admissions that he could effect were less than the number which was indicated in the seat matrix uploaded by the DoE, he has a right to seek exemption, which is what



he has done under the representation dated 25 April 2024. This practice, he seeks to point out, has been approved by a Coordinate Bench of this Court in an interim order dated 24 September 2021 passed in *Action Committee Unaided Recognized Private Schools v. Directorate of Education*¹, which stands cited in para 107 of the judgment of the coordinate Bench of this Court in *Rameshwar Jha v. Principal Richmond Global School*² and which is in sync with the DoE circular dated 9 July 2021.

13. I have considered the submission. The Coordinate Bench in *Rameshwar Jha*, by a detailed and exhaustive judgment, which considers and consolidates practically the entire law on the subject and takes into account all circulars issued by the DoE, including the interim order passed in *Action Committee Recognised Private Schools*, has issued comprehensive directions, regarding the manner in which the EWS/DG/CWSN seats are to be filled by the schools, to which Mr. Gupta himself drew my attention. Direction (c) in the said decision, reads thus:

“c. Any exemption/waiver if required by the schools under the provisions of the RTE Act, in the most exceptional and unforeseen circumstances, can be availed by making such request to the DoE as per the scheme as delineated below:

- i. The Application must be made within one week of recommendation and the notification of admission of a particular student under the „weaker section“ quota to the neighborhood school.
- ii. The said Application must state the reasons and circumstances under which the limited liberty or onetime

¹ WP (C) 10839/2021

² 298 (2023) DLT 328



limited exemption is being sought, or in any format as the DoE may deem fit including other details therein in addition to the reasons for the request.

iii. Upon receiving the said Application, the DoE shall give an opportunity of hearing to the concerned school within a week and decide the said application within a week thereafter, upon ascertaining that the prayers and reasons asserted therein are bona fide and stand the test of most exceptional circumstances and accordingly to its satisfaction, if deemed fit, grant a one-time limited exemption to the concerned school.

iv. It is, however, made clear that no such exemption would be granted at the cost of causing prejudice to the admission of the child and shall only be passed after admitting the child, who would otherwise be aggrieved, to an alternate school that is in the closest neighborhood.”

14. As per direction (c) in *Rameshwar Jha*, therefore, the right to seek exemption is student-specific. The application for exemption has to be made within a week of the recommendation and notification of admission of a particular student under the “weaker section” quota to that school. The application has to state the reasons why the school is not in a position to admit that particular student. *Sub-condition (iv) in condition (c) makes it further clear that no exemption would be granted to the school at the cost of causing prejudice to the admission of the child and that the school would be granted exemption only after the child has been admitted to an alternate school in the closest neighborhood.*

15. The decision in *Rameshwar Jha* is under challenge in Letter Patents Appeal, but the Division Bench has not deemed it appropriate to interdict the operation of the directions contained in the judgment.



They, therefore, continue to operate and are binding on the DoE. This is especially so as Mr. Gupta has not been able to show me any decision, not considered in *Rameshwar Jha*, which holds to the contrary.

16. There is, therefore, no question of the petitioner-school having been entitled to prefer the representation dated 25 April 2024 seeking exemption. The representation is in the teeth of direction (c) in para 123 of the decision in *Rameshwar Jha*. Any representation which the school would be allowed to prefer would have to be within one week of notification of admission of the student in question whom the school was finding difficult to admit.

17. There is every probability that the period of one week envisaged by direction (c)(i) in para 123 of the *Rameshwar Jha* may have expired by now. If that is the case, the petitioner has allowed its right to seek exemption to go abegging. If it has not expired, the petitioner would be at liberty to move an appropriate representation for exemption *qua* any particular student or students, if it so chooses, strictly in accordance with para 123(c) of the judgment in *Rameshwar Jha*.

18. In the wake of direction (c) in para 123 of *Rameshwar Jha*, which remains undisturbed till date, there can be no question of any direction to the DoE to decide the representation dated 25 April 2024.

19. At this juncture, Mr. Kamal Gupta intercedes to submit that the



exemption that he has sought is a general exemption, which he is permitted to make as per the judgment of this Court in *The Sovereign School v. DoE*³.

20. The judgment in *Sovereign School* has also been taken into account by the coordinate Bench in *Rameshwar Jha* before passing the directions contained in para 123 of the judgment.

21. As of today, the protocol which applies is that which is contained in para 123 of the judgment in *Rameshwar Jha*.

22. Prayer (A) in the writ petition cannot accordingly be granted.

Re. Prayer (B)

23. Prayer (B) indirectly seeks, from the Court, the very same exemption which was being sought from the DoE by the representation 25 April 2024. It is obvious that the Court cannot pass any such order. The jurisdiction to grant exemption to the school vests with the DoE and has to be exercised in accordance with the scheme contained in *Rameshwar Jha*.

24. If the court were to grant prayer (B) in this petition, it would amount to the court usurping the power of the DoE to decide the right of the petitioner to exemption, which specifically vests in the DoE. No doubt, if the school is aggrieved by the decision of the DoE on its

³ 2013 SCC OnLine Del 3928
WP(C) 6747/2024



prayer for exemption, the right of the school to seek judicial redress would always be available to it.

Re. Prayer (C)

25. Prayer (C) seeks deletion of carry-forward vacancies in KG and Class I, notified by the DoE in its tentative vacancies list *vide* Circular dated 17 January 2024.

26. As I have already noted, the representation dated 23 January 2024 preferred by the petitioner against the circular dated 17 January 2024 already stands decided by the DoE, and there is some reduction in the seat matrix as uploaded under the circular dated 17 January 2024. The petitioner has its right to challenge the said decision of the DoE, should it so choose, in accordance with law.

27. In view thereof, and in order to not prejudice the said right of the petitioner, I am not expressing any opinion on the aspect of carry-forward vacancies in KG and Class I as notified *vide* the circular dated 17 January 2024. I may only observe, however, that the principle of carry-forward of vacancies stands affirmed by this Court in a number of decisions including the judgment of the Division Bench in *Siddharth International Public School v. Motor Accident Claim Tribunal*⁴.

Conclusion



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28. In view of the aforesaid, the only relief that can be granted in this petition is to permit the petitioner, should it so choose, to

- (i) seek exemption *qua* individual students in accordance with direction (c) in para 123 of the judgment in ***Rameshwar Jha***, and
- (ii) challenge the decision of the DoE on the petitioner's representation dated 23 January 2024, in accordance with law.

29. The writ petition stands disposed of in the aforesaid terms, with no orders as to costs.

C. HARI SHANKAR, J.

MAY 10, 2024

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Click here to check corrigendum, if any