

2015 SCC OnLine Del 11976

(BEFORE RAJIV SAHAI ENDLAW, J.)

Master Neelansh Sharma (Minor) through his Next
Friend and Fatehr Petitioner
Mr. Ashok Agarwal, Adv.

v.

Ramjas School and Ors. Respondents
Mr. Atul Jain and Mr. Abhishek Kumar, Advs. for R-1 to 3.
Mr. Satyamak, Adv. for R-4/GNCTD.

W.P. (C) No. 4164/2015

Decided on August 17, 2015

RAJIV SAHAI ENDLAW, J.:— The petition seeks a mandamus for admission of the petitioner to the respondent No. 1 Ramjas School at Pusa Road, New Delhi (Pusa Road School).

2. The petition was entertained. Counter affidavits have been filed by the respondents No. 1 Pusa Road School and by the respondent No. 4 Directorate of Education (DoE), Govt. of NCT of Delhi (GNCTD). No rejoinders thereto have been filed by the petitioner inspite of opportunity. The counsels have been heard.

3. It is the case of the petitioner:

- (i) that he has passed Class V from the respondent No. 2 Ramjas Primary School, Darya Ganj, Delhi (Darya Gang School) in the academic year 2014-2015 and was eligible for admission in Class VI in the respondent No. 1 Pusa Road School in the academic year 2015-2016;
- (ii) that the respondent No. 2 Darya Ganj School vide Circular dated 7th March, 2015 informed the parents of all the children who had passed Class V to report to the respondent No. 1 Pusa Road School for interview on 25th March, 2015;
- (iii) that though the petitioner approached the respondent No. 1 Pusa Road School on 25th March, 2015 along with the requisite fee but was denied admission, for the reason of his father having actively protested against the School Management on various issues;

That when the representations made to the respondent No. 1 Pusa Road School and the respondent No. 3 Ramjas Foundation met with no success, this petition with the relief aforesaid was filed.

4. The respondent No. 1 Pusa Road School in its counter affidavit has pleaded:

- (I) that the petition has been filed under an erroneous assumption that the petitioner has a right to be automatically admitted in the respondent No. 1 Pusa Road School in Class VI;
- (II) that the respondent No. 1 Pusa Road School, as also the respondent No. 2 Darya Ganj School, are private Schools, with the respondent No. 2 Darya Ganj School being from Nursery to Class V and the respondent No. 1 Pusa Road School being from Class VI to XII with the total number of intake seats of 168 which is divided into four sections of 42 students each;
- (III) that the respondent No. 1 Pusa Road School's total intake of students in Class VI is from two sources, (i) i.e. outside students who have passed Class V from neighbouring schools; and, (ii) students who have passed Class V from, (a) respondent No. 2 Darya Ganj School, (b) Ramjas Primary School, Ballimaran, and (c) Babu Ram Happy School, Sita Ram Bazar;
- (IV) that the respondent No. 2 Darya Ganj School and the Ramjas Primary School, Ballimaran are run under the aegis of the respondent No. 3 Ramjas Foundation;
- (V) that the respondent No. 1 Pusa Road School admits students, first from the neighbouring schools and thereafter from (a) the respondent No. 2 Darya Ganj School, (b) Ramjas Primary School, Ballimaran, and (c) Babu Ram Happy School, Sita Ram Bazar;
- (VI) that of the 48 students who passed out Class V from the respondent No. 2 Darya Ganj School, only 37 students were selected to be admitted to the respondent No. 1 Pusa Road School; similarly of the 32 students who passed out Class V from Ramjas Primary School, Ballimaran, only 19 were selected for admission to the respondent No. 1 Pusa Road School and of the 43 students who passed out Class V from Babu Ram Happy School, Sita Ram Bazar, only 33 were selected for admission to the respondent No. 1 Pusa Road School;
- (VII) that the selection of students is not made arbitrarily but by following a reasonable classification founded on an intelligible differentia; the respondent No. 1 Pusa Road School fixed a cut-off of 50% marks in Class V for admission in Class VI; that of the 48 students who had passed out Class V from the respondent No. 2 Darya Ganj School, only 40 had 50% or more marks and qualified for admission and of which 3 did not opt for admission;
- (VIII) that the petitioner had 49.1% marks in Class V and was thus not eligible for admission; no student placed below the petitioner in the merit list, has been admitted;

(IX) that though both the respondent No. 1 Pusa Road School and the respondent No. 2 Darya Ganj School are running under the aegis of respondent No. 3 Ramjas Foundation but both Schools have separate recognition, with the respondent No. 1 Pusa Road School being recognised by the respondent No. 4 DoE and the respondent No. 2 Darya Ganj School being recognised by the Municipal Corporation of Delhi (MCD) and separate managements and separate accounts;

(X) that at the time of admission to the respondent No. 2 Darya Ganj School, no assurance of sure shot admission to the respondent No. 1 Pusa Road School in Class VI is given;

(XI) that the petitioner has no right to get admission in the respondent No. 1 Pusa Road School; the respondent No. 2 Darya Ganj School is not the feeder school for the respondent No. 1 Pusa Road School;

(XII) denied that the petitioner has been victimized.

5. The respondent No. 4 DoE in its counter affidavit has pleaded, (I) that according to the guidelines regarding distance of residence at the entry level admission issued by the respondent No. 4 DoE, a recognised school may admit students residing within 8 Km. distance from the school; however unaided schools have been granted liberty to relax or modify or develop their own admission criteria regarding distance of residence of the students; (II) that the Right of Children to Free and Compulsory Education (RTE) Act, 2009 under Section 3 confers a right to free and compulsory education in a neighbourhood school till completion of elementary education; the said Act does not provide for admission of a general student in a school of his/her choice; (III) that the respondent No. 1 Pusa Road School, in which the petitioner is seeking admission, is farther from the residence of the petitioner at Chandani Chowk, Delhi-110006; (IV) that no declaration of the respondent No. 2 Darya Ganj School being a feeder school to the respondent No. 1 Pusa Road School exists.

6. The counsel for the petitioner drew attention to the Minutes of the 20th Meeting held on 27th July, 2013 of the Ramjas Primary School Parent Teacher Association, Daryaganj, resolving that all students of Standard V will be admitted by the respondent No. 1 Pusa Road School without making any discrimination in Grades of the students and contended that the respondent No. 1 Pusa Road School is thus bound to grant admission to the petitioner. Attention was next invited to the copy of the letter dated 18th March, 2015 of parents of some children including the father of the petitioner to the respondent No. 3 Ramjas Foundation requesting for discount on books and it was contended that the petitioner has been victimised on account thereof. It is further

argued that the respondent No. 1 Pusa Road School, in the matter of admission to Class VI, is indulging in a screening of students as per their grades and which is not permissible. It is argued that even if it were to be held that the respondent No. 2 Darya Ganj School is not a feeder school for the respondent No. 1 Pusa Road School and all students passing out Class V from the respondent No. 2 Darya Ganj School do not have a right of admission in Class VI in respondent No. 1 Pusa Road School, admission should be by lottery and not by screening.

7. Per contra, the counsel for the respondent No. 1 Pusa Road School contended that the petitioner had been sympathetically considered for admission and was, in fact given option of admission to other schools under the respondent No. 3 Ramjas Foundation but instead of opting therefor, is insisting on admission to the respondent No. 1 Pusa Road School and for which he has no right. Attention was invited to Section 5 of the RTE Act, sub-section (1) whereof provides that where in a school, there is no provision for completion of elementary education (from I Class to VIII Class), a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education. It was contended that the respondent No. 1 Pusa Road School is a school within the meaning of sub-clause (iv) of clause (n) of Section 2, being an unaided school, not receiving any kind of aid or grants to meet its expenses from the appropriate Government of the Local Authority. It is argued that thus, under the RTE Act also, the petitioner has no right to admission to the respondent No. 1 Pusa Road School. It is contended that the petitioner, under the RTE Act, has a right to admission in Class VI only in a neighbourhood school. With respect to the Minutes aforesaid of the meeting of Parent Teacher Association of the respondent No. 2 Darya Ganj School, it was contended that the same are not even the minutes of the Managing Committee of the respondent No. 2 Darya Ganj School which also could not have bound the Managing Committee of the respondent No. 1 Pusa Road School, lest of the Managing Committee of the respondent No. 1 Pusa Road School and do not confer any right on the petitioner. It was contended that the respondent No. 1 Pusa Road School, in the matter of selection for admission to Class VI, from amongst all the students passing out from Class V from the respondent No. 2 Darya Ganj School, followed a rational criteria within the meaning of paras 36, 53, 55 and 61 of *T.M.A. Pai Foundation v. State of Karnataka* AIR 2003 SC 355. It was contended that the same does not amount to a screening procedure within the meaning of the RTE Act.

8. The counsel for the respondent No. 4 DoE drew attention to Rule 145 of Delhi School Education Rules, 1973 made in exercise of powers under Section 16(3) of the Delhi School Education Act, 1973 and

empowering the head of every recognised unaided school to regulate admissions to any class thereof, either on the basis of admission test or on the basis of result in a particular class or school and on the basis thereof contended that the claim of the petitioner is unsustainable.

9. The counsel for the petitioner in rejoinder, contended that the reliance by the counsel for the respondent No. 4 DoE on Rule 145 supra is misconceived, the same having stood superseded by the RTE Act. With respect to the reliance by the counsel for the respondent No. 1 Pusa Road School on *T.M.A. Pai Foundation* supra, it was contended that the same is with respect to the higher education and is not applicable for admissions to the school.

10. As would be obvious from a recording of the respective contentions above, the only question requiring adjudication is whether the procedure followed by the respondent No. 1 Pusa Road School for admission in Class VI from amongst those who have passed out Class V from the respondent No. 2 Darya Ganj School, is amounting to of screening procedure and violative of RTE Act and if so, to what effect. Else, the petitioner has been unable to establish that he has any right or claim for admission to the respondent No. 1 Pusa Road School. The two schools have been shown to have, recognition from different authorities and different Managing Committees and it is not even the case of the petitioner that he joined the respondent No. 2 Darya Ganj School having only till Class V with any assurance of admission in Class VI in respondent No. 1 Pusa Road School. The reliance placed on the minutes of the meeting of the Parent Teacher Association is totally misconceived in this regard. The resolution, even if any of the Parent Teacher Association of the respondent No. 2 Darya Ganj School would not bind the respondent No. 1 Pusa Road School. Moreover, Section 5 (1) supra of the RTE Act makes the position very clear.

11. Section 13 of the RTE Act in sub-section (1) thereof provides that "no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure". Sub-section (2) of Section 13 makes the violation, of subjecting a child to screening procedure, punishable with fine extending to Rs. 25,000/- for the first contravention and Rs. 50,000/- for each subsequent contravention. 'Screening procedure' is defined in Section 2(o) of the RTE Act, as meaning "the method of selection for admission of a child, in preference over another, other than a random method".

12. The question for consideration is, whether laying down of minimum marks to be scored in the examination of Class V, below which a student would not be admitted, amounts to a screening procedure and whether the prohibition in RTE Act against the screening procedure, is applicable to the subject facts.

13. I had during the hearing invited attention of the counsels to the judgment of the Division Bench of this Court in *Social Jurist, A Civil Rights Group v. Govt. of NCT of Delhi* 198 (2013) DLT 384 and to *Forum for Promotion of Quality Education for All v. Lt. Governor of Delhi* 216 (2015) DLT 80 and enquired whether in the light thereof, the prohibition against the screening procedure contained in the RTE Act, would be applicable to the present controversy. The Division Bench in *Social Jurist, A Civil Rights Group* supra held as under:

“30. Considering the provisions contained in Article 21-A of the Constitution and the scheme of the Right of Children to Free and Compulsory Education Act, 2009, as discussed earlier by us, there is no escape from the conclusion that as far as the private unaided schools referred in Section 2(n)(iv) of the said Act are concerned, the provisions of the Act, except the admission to the extent of 25% of the strength of the class, to the children belonging to the weaker sections and disadvantaged group, do not apply to the admissions made to the pre-elementary (pre-school and pre-primary) classes of such schools. Consequently, Section 13 of the Act which prohibits collection of capitation fee and adoption of any screening procedure also does not apply to the admissions made to the remaining 75% of the pre-elementary classes of unaided private schools.”

14. Relying thereon, in *Forum for Promotion of Quality Education for All* also, it was held that private unaided recognised schools have a fundamental right under Article 19(1)(g) of the Constitution of India to maximum autonomy in the day to day administration, including the rights to admit student, except to the extent of admission to 25% of the seats, which is governed by the RTE Act.

15. The only response which the counsel for the petitioner could give was by referring to the judgment dated 19th October, 2013 of the Division Bench of the High Court at Bombay in W.P. No. 4986/2013 titled *Jnana Prabodhini v. Education Officer (Secondary)* holding the procedure adopted in that case, of holding an entrance test comprising of intelligence test and interview for admission to Class V, to be a screening procedure within the meaning of Section 2(o) of the RTE Act. The same however does not address the issue with which we are concerned and is thus of no avail.

16. I may in this regard notice that another Division Bench of this Court in *Pramod Arora v. Hon'ble Lt. Governor of Delhi* has held that enforcement of rights under Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 against unaided schools is limited to 25% of the seats under the RTE Act and to no more.

17. It follows from the aforesaid judgments that the prohibition against subjecting a child to screening procedure in the matter of admission to a school is applicable only qua the admission to 25% of the seats under the RTE Act and does not apply to admission to the balance 75% of the seats. The petitioner is not claiming admission under the RTE Act or to be a child belonging to a disadvantaged group.

18. Mention may also be made of dicta of another Division Bench of this Court in *Social Jurist, a Civil Rights Group v. Govt. of NCT of Delhi* against which no SLP is found to have been preferred. It was held that the prohibition of in Section 13 of subjecting child to screening procedure during admission is applicable only to admission at the entry level i.e. Nursery or Class-I.

19. No fault can thus be bound in the procedure for admission adopted by the respondent No. 1 Pusa Road School.

20. There is thus no merit in the petition, dismissed.

21. No costs.

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