

Via video conferencing

\$~64

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

+ W.P.(C) 1811/2022

AMBIENCE PUBLIC SCHOOL

..... Petitioner

Through Mr. Pramod Gupta with Mr. Manveen Sachdeva, Advs.

versus

DIRECTORATE OF EDUCATION

..... Respondent

Through Mr.S.K.Tripathi, S.C. with Mr. Arun Panwar, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

%

31.01.2022

CM APPL.5229/2022

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 1811/2022

3. The petitioner, a private unaided and recognised school, has approached this Court seeking to assail the order dated 17.01.2022 passed by the respondent vide which the petitioner's request for grant of exemption from admitting 25 students in the EWS category based on the permissible intake to the schools has been rejected.
4. Learned counsel for the petitioner has urged that the impugned order is wholly perverse as it overlooks the fact that despite its best effort, the petitioner/school was able to admit only 52 students in the General

category and, therefore, the petitioner had correctly agreed to admit 18 students in EWS category.

5. Issue notice. Mr. Tripathi, accepts notice for the respondent. He, prays for, and is, granted three weeks' time to file counter affidavit. Rejoinder thereto, if any, be filed within two weeks thereafter.
6. List on 06.04.2022.

CM APPL.5228/2022(interim direction)

7. This is an application filed by the petitioner seeking stay of the operation of the impugned order dated 17.01.2022 as also the directions emanating therefrom, during the pendency of the present writ petition.
8. Learned counsel for the petitioner submits, that even though the school received 905 applications for admission, despite its best efforts including phone calls made by the teachers to the parents, only 52 students came forward to take admission in the general category. The petitioner school did not deny admission to any student in the general category and therefore it cannot be faulted for the remaining seats being unfilled.
9. By relying on the decisions of this Court in *Sovereign School v. Directorate of Education 2013 SCC OnLine Del 3928* and *Birla Vidya Niketan School &Anr. Vs. GNCTD & Another 2013 SCC OnLine Del 3171*, he contends that the petitioner/school is obliged to admit only 25% EWS candidates under the Right to Education Act, 2009, vis-à-vis the number of students actually admitted in the general category, and not on the basis of the permissible number of students

which the petitioner school could have admitted. He therefore, prays that the impugned order, which is compelling the petitioner to admit students beyond 25% of the class strength, on the basis of an erroneous presumption that the petitioner deliberately did not fill up the seats of the general category, be stayed.

10. Mr. Tripathi, on the other hand, vehemently opposes the grant of any interim relief at this stage and submits, that once it is evident that the petitioner had the sufficient infrastructure, there is no explanation as to why the school did not admit the requisite number of students and in March, 2021 itself, decided to reduce the number of seats offered from 152 in the past to 120 seats this year, out of which only 52 seats have been filled. By referring to the impugned order, he submits that there is no reason as to why a school such as the petitioner, which earlier able to fill all the seats allocated, has only been able to fill 52 seats in the general category this year. He, submits that, any interim stay would seriously affect the interests of the EWS students and therefore, the present application be dismissed.

11. Having considered the submissions of the parties and perused the record, even though I am inclined to agree with the petitioner school that it is obligated to admit only 25% students *vis-à-vis* the number of number of students admitted in the general category, the issue in the present matter is whether the action of the petitioner to fill only 52 seats in the general category as against the much higher number of available seats is *bona fide* or not. While it is the respondents stand that the petitioner deliberately did not take adequate steps to fill up all the general category seats, the petitioner contends otherwise. The

petitioner's grievance in this regard can be appropriately considered only after completion of pleadings.

12. At this stage, it may be also apposite to refer to the observations made by this Court in its order dated 24.09.2021 in *Action Committee Unaided Recognized Private Schools v. Directorate of Education, GNCTD*, wherein this Court observed that the ratio of EWS students may be adjusted only if it is proven that the school has *bona fide* made all attempts to fill the seats in the general category. Paragraph 5 thereof, reads as under:

“5. It appears from the aforesaid judgment that the Court took the view that a school which makes a bona fide attempt to admit students in the general category in accordance with the sanctioned strength, but is unable to do so, would be justified in admitting EWS category candidates only to the extent corresponding with the number of general category candidates admitted. However, if a school did not make the effort to admit the sanctioned number of general category candidates, it could not deny admission to the EWS category candidates as forwarded by the DOE. Thus, while maintaining the ratio of a minimum of 25%, as laid down in the Act, the Court clarified that the schools would be required to make their best efforts to fill the seats in the general category and grant admission correspondingly to the number of EWS category candidates recommended by the DOE.”

13. In my considered opinion, what must be kept in mind while considering the present application, is that the purpose of admitting the students to such schools under the EWS category is to ensure that students of the under-privileged strata of society get access to quality education as envisaged under Article 21A of the Constitution of India,

especially from the schools which have the requisite infrastructure. It is thus, incumbent upon this Court to ensure that no prejudice is caused to the students from the EWS category.

14. I am, therefore, of the view that the balance of convenience does not lie in favour of the petitioner and irreparable harm would be caused to the students of the EWS category if a stay is granted against the operation of the impugned order at this interim stage.

15. The application is accordingly dismissed.

16. It is, however, made clear that in case the petitioner were to succeed, this Court would consider passing appropriate orders so that the ratio of candidates to be admitted under the EWS category is suitably adjusted in the subsequent years to offset any burden caused to the petitioner.

REKHA PALLI, J

JANUARY 31, 2022

sr