



2024 : DHC : 587



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

Reserved on: 18 January 2024
Pronounced on: 29 January 2024

+ W.P.(C) 5194/2023

ANJALI PANDEY Petitioner

Through: Mr. Aayush Agarwala and Mr.
Siddham Nahata, Advocates

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Namit Suri, Mr.
Rameezuddin Raja, Ms. Purnima Singh and
Ms. Tanya Sharma, Advocates for R-2

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

J U D G M E N T

% **29.01.2024**

1. It is a matter of considerable regret that, almost on a daily basis, this Court is encountering cases in which schools, and the Directorate of Education (DOE) are at odds on the aspect of admission of students belonging to the Economically Weaker Section (EWS) of society. In most such cases, the school is unwilling to admit EWS students against “carry forward vacancies” of previous years, which remained unfilled. A Division Bench of this Court has already ruled on the issue in *Siddharth International Public School v. Motor Accident Claim Tribunal*¹, and it is a matter of surprise to me, therefore, that the issue is still being debated before the Single Bench of this Court as if it is *res integra*. In the process, the fact that it is the academic future

¹ 2016 SCC OnLine Del 5272



of the hapless school child which hangs in the balance, seems to have been forgotten.

2. Amitanjali Tiwari, the school child whose future is in dispute, is all of five years of age. She is too young, mercifully, to be enmeshed in legalese and, therefore, is represented by her mother, Anjali Pandey, the petitioner before this Court.

The RTE Act

3. Amitanjali belongs to the EWS category and, owing to her financial constraints, is guaranteed education at State expense by Section 3(1)² of the Right of Children to Free and Compulsory Education Act, 2009 (“the RTE Act”), till the completion of her elementary education. Section 13(2) exempts every child from the requirement of paying any fee of charges or expenses which may prevent her from pursuing and completing her elementary education. “Child” is defined, in Section 2(c) as a male or female child of the age six to fourteen and “elementary education” is defined, in Section 2(f), as education from the I to the VIII class. Section 4 requires every child, above the age of six years, who is not admitted in any school or has not been able to complete his elementary education though admitted, to be admitted in an age-appropriate class.

4. Section 7 of the RTE Act deals with the sharing of financial responsibilities, for education of the child, by the Central and State

² **3. Right of child to free and compulsory education.** —[(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.]



Governments. Section 7(1) requires the Central and State Government to share concurrent responsibility for providing funds for carrying out the purposes of the RTE Act. For this purpose, sub-Sections (2) and (3) of Section 7 require the Central Government to prepare estimates of capital and recurring expenditure required for carrying out the purposes of the RTE Act and to provide, to the State Governments, as grants-in-aid, a percentage thereof, to be fixed by consultation between the Central and State governments. Notwithstanding this, the State Government is made responsible, by Section 7(4), to provide funds for implementation of the provisions of the RTE Act, taking into consideration the grants-in-aid provided by the Central Government and other resources.

5. Section 2(a)(ii)(A) of the RTE Act defines “appropriate Government”, in relation to a school, not owned or controlled by the Central Government or by the Lieutenant Governor, as the State Government – in the case of Delhi, the Government of the National Capital Territory of Delhi (GNCTD), through the DOE. Section 8(a) requires the GNCTD to provide free and compulsory elementary education to every child. The Explanation to the clause defines “compulsory education” as encompassing the obligation of the GNCTD to (i) provide free elementary education to every child of the age of 6 to 14 and (ii) *ensure compulsory admission*, attendants and completion of elementary education by every child of the age of 6 to 14. Section 8(c) requires the GNCTD, through the DOE, to ensure that a child who belongs to the weaker section or to the disadvantaged group – normally abbreviated as “the EWS/DG”, to which category



Amitanjali belongs – is not discriminated against or prevented from pursuing and completing elementary education *on any grounds*.

6. Chapter IV of the RTE Act sets out the responsibilities of schools and teachers thereunder. Section 12 demarcates the “extent of schools responsibility for free and compulsory education”. For this purpose, schools have been divided into different categories, by the various clauses of Section 2(n), which applies to every recognised school imparting elementary education. Schools established, owned or controlled by the appropriate Government – in the case of Delhi, the GNCTD – or a local authority are covered by sub- clause (i), aided schools (with which we are not concerned) are covered by sub- clause (ii), Kendriya Vidyalaya, Navodaya Vidyalayas, and other such schools (with which, too, we are not concerned) are covered by sub- clause (iii) and unaided schools, not proceeding any kind of aid or grant to meet its expenses from the appropriate Government or any local authority – in which category the Sovereign School (Respondent 2) falls – are covered by sub- clause (iv). Section 12(1)(c) requires every school under Section 2(n)(iii) and (iv) to admit, in Class I, to the extent of at least 25% of the strength of the class, EWS/DG children in the neighbourhood, and to provide free and compulsory elementary education till completion. The constitutional validity of Section 12(1)(c), except to the extent it applies to minority schools, stands upheld by the Supreme Court in *Pramati Educational & Cultural Trust v. U.O.I.*³

³ (2014) 8 SCC 1



7. A school which falls under Section 2(n)(iv) is entitled, however, to reimbursement of the expenditure incurred in imparting education to EWS/DG children by the State, to the extent of per-child-expenditure incurred by the State or the actual amount charged from the child, *whichever is less*, by operation of Section 12(2). Said reimbursement cannot, however, per the first proviso to Section 12(2), exceed the per-child-expenditure incurred by a school which falls under Section 2(n)(i), meaning a school owned or controlled by the appropriate Government (commonly referred to as “Government school”). Section 15 requires every child to be admitted in a school at the commencement of the academic year; the first proviso to the Section, however, proscribes denial, to any child, of admission, even if admission is sought beyond that period.

The Facts

The writ petition

8. Amitanjali, as I said, is an EWS student. Her EWS credentials are, mercifully, not in dispute. She applied, to the DOE, for admission to a school as an EWS candidate, in 2021-2022. In a computerised draw of lots, she was found eligible for admission to Nursery/Pre-School in the Respondent 2- School (hereinafter “the respondent-School”/“School”) on 15 June 2021. The School denied her admission. Amitanjali again applied, and was found eligible for admission to the KG/Pre-Primary class in the School for the academic session 2022-2023, but was again denied admission by the School.



Undeterred, Amitanjali again applied, in 2023-2024, and was once again found eligible for admission to the School, this time in Class I, consequent to the computerised draw of lots conducted by the DOE.

9. On her being denied admission a third time by the School, with no reasons provided whatsoever, Amitanjali, through her mother, has finally petitioned this Court. She relies on the following Circular dated 9 July 2021 issued by the DOE:

“CIRCULAR

Subject: Direction to all concerned private schools to ensure EWS/DG & CWSN⁴ admission at Entry Level Classes for the session 2021-2022 selected through computerised draw of lots

A large number of complaints had been received in this Directorate regarding denial of admission of successful candidates under the EWS/DG & CWSN category by the school concerned on the pretext of lesser number of general category admissions against the available/declared strength of the classes at the entry level in the school for the session 2021-22.

In this connection, all the concerned Private Unaided Recognised Schools are hereby directed to grant admissions to all the eligible candidates allotted to them as per declared strength of the entry level classes by school through computerised draw of lots.

If any school requires exception from granting admission to all eligible candidates allotted to them specifically on the ground of lesser general admission, the school shall seek specific permission from concerned DDE/District, after following all steps/due process in pursuant to the order of Hon’ble Delhi High Court in W.P (C) No. 3358 of 2013 and WP (C) 5172 of 2013 in letter and spirit.

Non-compliance will invite strict actions against the defaulter schools as per provisions of the RTE Act 2009 & DSEAR 1973⁵.

⁴ Children With Special Needs

⁵ A compendious acronym often used for combining the Delhi School Education Act, 1973 ("the DSE Act") and the Delhi School Education Rules, 1973 ("the DSE Rules").



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This issues with the approval of the Competent Authority.

HoS/Managers
All the Private Unaided Recognised Schools of Delhi
No. DE.15(22)/PSB/2021-2022/2318-2323

Dated:- 09/07/2021”

The petition also cites the judgment, dated 24 September 2021, of a coordinate Bench of this Court in *Action Committee Unaided Recognised Private Schools v. Directorate of Education*⁶ to contend that compliance with the provisions of the RTE Act, as also with the afore noted Circular dated 9 July 2021 of the DOE, is mandatory, and that any school that seeks exemption from such compliance has to apply, in that regard, to the DOE, in accordance with the DSE Act and the DSE Rules.

10. Another Coordinate Bench of this Court, in a more recent decision in *Rameshwar Jha v. The Principal Richmond Global School*⁷, reiterated the need of compliance, by all schools, with the mandate of the RTE Act and the Circulars issued in that regard by the DOE, thus, in para-123 of the judgment, by issuing the following directions:

“a. All the schools within the meaning of Section 2(n) of the RTE Act shall ensure that the provisions of the Act as interpreted herein shall be given effect in letter as well as in spirit;

b. All such schools as aforementioned shall also 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 of them on any pretext whatsoever including that of suspicion of credentials;

⁶ WP (C) 10839/2021

⁷ 298 (2023) DLT 328



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 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.

d. The DoE shall exercise its powers under the Act and Rules to ensure that the provisions are duly complied with;

e. The DoE shall ensure that all the students shortlisted and notified to be admitted in a neighborhood school shall be admitted at the earliest within one month or within the period prescribed by the appropriate authority subject to the provisions of the Act;

f. In case of erring schools, the DoE shall issue strict directions as may be necessary to ensure the implementation of the RTE Act in a time-bound manner;

g. The DoE shall not hesitate in initiating the process of de-recognition of the schools which have been found to be indulging in any acts/omissions in contravention of the RTE Act and the Delhi RTE Rules.”



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11. Following the decision in *Rameshwar Jha*, the DOE issued yet another Order on 26 December 2022, mandating strict compliance with the directives contained in *Rameshwar Jha*. Though somewhat lengthy, given the nature of the present dispute, the Order deserves to be reproduced in its entirety:

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI
DIRECTORATE OF EDUCATION
(PRIVATE SCHOOL BRANCH)
OLD SECRETARIAT, DELHI-110054

F. No.DE.15(1085)/PSB/2022/10297-10303

Dated: 26/12/22

ORDER

Sub:- Regarding EWS/DG admissions at entry level classes in Private Un-aided Recognized Schools in Delhi in compliance of Hon'ble High Court of Delhi order dated 16.12.2022 (No. 2022/DHC/00590).

And whereas, vide circular no.DE. 15/(255)/PSB/2021/1246-1252 Dated 11.03.2022 issued by DoE it was emphasized that as per section 12(1) (C) of RTE Act, 2009, all Private Unaided Recognized schools are under obligation to admit, at the entry level classes, at least 25% of the strength of that class, children belonging to weaker sections and disadvantaged groups in the neighborhood and provide free and compulsory education till its completion.

And whereas, accordingly the DoE, after getting the declared strength of each Private Unaided Recognized school, allot the candidates through computerized draw who applied online under EWS/DG/CWSN category to all such schools with the direction to admit these candidates in their allotted schools.

And whereas, during the academic session 2022-23 a large number of candidates have been kept under In-waiting category or rejected by the respective allotted school citing the reason that they



have lesser general admission and also referring clause-16 of the circular dated 15/06/2021 regarding guidelines for admission of EWS/DG & CWSN category students in Private Unaided Recognized Schools of Delhi at entry level classes for the academic session 2021-22 selected through computerized draw of lots. This was in violation of spirit of RTE Act, 2009 admission.

And whereas, after considering the grievances of non-admitted candidates/parents, directions vide circular dated 09.07.2021 were issued to all private unaided recognized schools to *grant admissions to all the eligible candidates allotted to them as per declared strength of the entry level classes by school through computerized draw of lots. Further, if any school requires exemption from granting admission to all eligible candidates allotted to them specifically on the ground of lesser general admission, the school shall seek specific permission from concerned DDE/District, after following all steps/due process in pursuant to the order of Hon'ble Delhi High Court in W.P. (C) No.3358 of 2013 and W.P.(C) No. 5172 of 2013 Sovereign School Case in letter and spirit.*

And whereas, instead of admitting the allotted candidates several schools used this circular dated 09.07.2021 as a shield for not admitting or delaying the admission of EWS/DG/CWSN Category candidates and filed representations before district DDEs for exemption from granting admission to all the EWS/DG/CWSN Category candidates on ground of lesser General Category admission. All the aforesaid requests were examined and rejected by the respective District DDEs with proper orders directing the school concerned to admit all the allotted candidates. But the concerned Private un-aided recognized schools did not comply the orders and kept on denying the admission on flimsy grounds.

And whereas, subsequently in LPA 5/2022 & CM APPLs. 474-477/2022, 481/2022 titled Justice for All Vs Venkateshwar Global School & others, Division Bench of Hon'ble High Court of Delhi has passed an order dated 26/05/2022 directing that (Para-4) *in the circumstances, every endeavor shall be made by the State to ensure that the backlog of unfilled seats in private schools, both on private and government lands, is filled-up in the next five years in a phased manner; i.e. 20% of the vacancies each year, in addition to the mandated annual 25% intake.*

(Para-5)- *The State shall ensure that the 25% seats in the EWS category students shall be filled up on the basis of declared sanctioned strength at the entry level (Pre-school/Nursery Pre- primary KG and Class-1), irrespective of the actual number of students admitted in the General category. Vide para-5 it has*



been ordered that the state shall ensure that the 25% seats in the EWS category students shall be filled up on the basis of declared sanctioned strength at the entry level (Pre-school/Nursery/Pre-primary/KG and Class-1), irrespective of the actual number of students admitted in the General category.

And whereas, accordingly, the circulars dated 02/06/2022 and 24/06/2022 were issued by DoE to all DDEs District to ensure the admissions of all pending/remaining selected/allotted eligible EWS/DG & CWSN candidates in the respective private schools within 10 days positively in compliance to the order dated 26.05.2022 of Hon'ble High Court, Delhi.

And whereas, in compliance to the above circulars, several schools have admitted the eligible/allotted candidates however a few others schools are still not admitting the candidates and defying the order of Hon'ble High Court, Delhi as well as directions issued by the DoE.

And whereas, SLPs were filed before the Hon'ble Supreme Court SLP (C) No:- 11264/2022, SLP (C) No:- 13592/2022 & SLP (C) No:- 13629/2022 titled *Venkateshwar Global School Vs Justice For All & Ors.* against order dated 26/05/2022 passed by the Hon'ble High Court, Delhi,

And whereas, Hon'ble Supreme Court of India while disposing of all the SLPs/Appeals passed order dated 01/09/2022 as under: -

"We are thus of the view that the final call will have to be taken in the main matter and it cannot be a subject matter of the nature of interim relief as granted."

"The result of the aforesaid is we set aside the impugned order qua directions contained in paragraphs 4 and 5, leaving the parties to bear their own costs.

"The Court is free to take appropriate view in the main matter."

And whereas, now various petitions have been filled before Hon'ble High Court, Delhi by different students against number of schools and clubbing all such petitions, the Hon'ble High Court vide neutral citation number 2022/DHC/005590 pronounced an order in this regard on 16.12.2022 reiterated as under: -

(Para-123)"In view of the aforesaid analysis as well as to alleviate and ameliorate the miserable state of affairs as prevalent in the NCT of Delhi qua implementation of the RTE Act at



elementary education level, it is pertinent to exercise the powers of this Court under Article 226 of the Constitution to issue directions to the DoE for ensuring admission to the poor children belonging to weaker sections. It is accordingly directed as under:

a. All the schools within the meaning of Section 2(n) of the RTE Act shall ensure that the provisions of the Act as interpreted herein shall be given effect in letter as well as in spirit.;

b. All such schools as aforementioned shall also 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 of them on any pretext whatsoever including that of suspicion of credentials:

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 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.

d. The DoE shall exercise its powers under the Act and Rules to ensure that the provisions are duly complied with;



e. *The DoE shall ensure that all the students shortlisted and notified to be admitted in a neighborhood school shall be admitted at the earliest within one month or within the period prescribed by the appropriate authority subject to the provisions of the Act;*

f. *In case of erring schools, the DoE shall issue strict directions as may be necessary to ensure the implementation of the RTE Act in a time-bound manner;*

g. *The DoE shall not hesitate in initiating the process of de-recognition of the schools which have been found to be indulging in any acts/omissions in contravention of the RTE Act and the Delhi RTE Rules.*

(Para-124). The schools have inter alia raised a contention regarding frauds being committed by the parents of the students seeking admission, misrepresenting themselves as belonging to weaker section by forging documents and adopting other scrupulous means. In that regard, having considered the entire scheme of Act as well as the Rules and the various rulings passed by the Courts, this Court deems it fit, under the provisions/scheme as notified under the RTE Act/Delhi RTE Rules, to direct the DoE to carry out necessary screening as well as to mandate the submission of necessary documents to authenticate the credentials of the child and his/her parents and to verify the facts regarding eligibility while shortlisting, allotting and notifying the candidates who are found fit for admission to respective neighborhood schools under the said quota.

(Para-125). However, it is made clear that the admission of a student shortlisted and allotted under the said category by the DoE for being admitted shall not be denied for want of satisfaction of bona fides of the candidate by the school. Mere suspicion or doubt on the credentials of the candidate on the basis of fact-finding exercise carried out by the school cannot be a ground to deny admission, otherwise it will render a death knell to the spirit of the RTE Act. The schools as such, in the matters of admission under the Act/Rules, cannot bestow upon themselves the roles of the complainant, advocate as well as the adjudicator in such cases. Rather, if despite the due process adopted by the DoE for screening, in case the school, after admitting the child, suspects fraud being committed by the ward or their parents, they can seek recourse to legal remedies as available”

And whereas, several Private Un-aided Recognized school have represented to re-adjust the declared seats under EWS/DG/CWSN Category which the DoE has considered on the



basis of admission-data of last 05 years of such schools.

And whereas, in compliance to the aforesaid order dated 16/12/2022 of the Hon'ble High Court, Delhi regarding the contention raised by some of the school regarding frauds being committed by the parents of the students seeking admissions, representing themselves as belonging to weaker section by forging documents, the matter has been referred to the Revenue Department, GNCT of Delhi to issue necessary direction to the authorities issuing certificates pertaining to Income/EWS/DG, to issue certificate with due verification and diligence.

In pursuance of the above, I, Bhupesh Chowdhary, Director of Education, Delhi in exercise of the powers so conferred upon me under Sub-section (1) of section 3 of the Delhi School Education Act, 1973 read with Rule 43 and Rule 50 (xviii) of Delhi School Education Rules, 1973 and Rule 26 and Rule 27 of Delhi Right of Children to free and Compulsory Education Rules, 2011, with objective to safeguard and ensure that the mandate of Section 12 (1) (C) of RTE Act, 2009 is implemented in private unaided recognized schools in Delhi in letter and spirit, order with immediate effect that:

1. The Managing Committee of all the Private Unaided Recognized School (Except Minority Schools) must ensure that the directions passed by the Hon'ble High Court of Delhi in sub paras a, b & c of para 123 & para 125 vide order dated 16.12.2022, regarding admission of EWS/DG/CWSN category candidates under Section 12 (1) (c) of RTE Act, 2009 have to be complied with strictly, failing which an appropriate action under relevant provisions of section 24 (4) of DSEA, 1973 read with Rule 56 of DSER, 1973, shall be taken against the defaulter schools.
2. To admit all the allotted/ eligible EWS/DG/CWSN category candidates without any further delay latest by 31.12.2022 positively.
3. All the allotted EWS/DG/CWSN candidates must be contacted immediately and the management of the school should facilitate their admission by deploying proper well oriented staff at the Reception & Entrance gate of the schools for such students/parents of EWS/DG/CWSN category.
4. A compliance report of admission of all such EWS/DG/CWSN category candidates must be sent to the concerned DDE (Zone) latest by 31 December, 2022 (3.00 P.M.).

Sd/-



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(Bhupesh Chaudhary)
Director of Education”

12. The petitioner therefore prays for issuance of a mandamus to the School to admit Amitanjali, as an EWS student, for the academic year 2023-2024, or to direct the DOE to secure admission, to her, in a neighbouring school at the earliest.

Interim order dated 13 September 2023

13. By order dated 13 September 2023, this Court directed the School to provisionally admit Amitanjali in Class I in the 2023-2024 academic session as an EWS student, subject to the final outcome of the present writ petition. Amitanjali has, since, been granted provisional admission to the School in Class I.

Counter-affidavit of the DOE

14. The DOE does not dispute any of the averments in the writ petition and, in fact, supports the petitioner’s case. It is pointed out that, on 11 March 2022, the DoE issued the following Circular:

GOVERNMENT OF NCT OF DELHI
DIRECTORATE OF EDUCATION
(PRIVATE SCHOOL BRANCH)
OLD SECTT: DELHI-110054

No.DE. 15/(255)/PSB/2021/1246-1252

Dated:- 11/03/22

CIRCULAR

Subject: Online Admission Process under EWS/DG and



Children with Disabilities Category at Entry Level of the Private Unaided Recognized Schools of Delhi for the Ensuing Academic Session 2022-23.

As per Section 12(1)(c) of RTE Act, 2009, all Private Unaided Recognized Schools are under obligation to admit, at the entry level classes, to the extent of at least 25% of the strength of that class, children belonging to Weaker Section and Disadvantaged Group in the neighborhood and provide free and compulsory elementary education till its completion.

However, to maintain the uniformity in EWS/DG category admission process at entry level class(es) in respect of all Private Unaided Recognized Schools of Delhi (except the minorities schools), it was decided by the Competent Authority to conduct the online admission process in respect of all the Private Unaided Recognized Schools of Delhi from the academic session 2016-17. The same process of admission will be followed for the academic session 2022- 23 also

In this regard, all district DDE's were directed to take following actions in r/o their respective Private Unaided Recognized Schools vide circular dated 28/10/2021.

- To provide the updated list of all Private Unaided Recognized Schools situated on private land of Delhi (as per the Proforma enclosed).
- To provide the information regarding Entry level-EWS/DG category seats (Pre-school/Nursery, Pre-primary/KG & class-1 as the case may be) and GPS Coordinates etc. in respect of all Private Unaided Recognized Schools situated on private land of Delhi.

Further, in respect of the schools situated on land allotted by DDA or any other Govt. agencies, the vacancies and data is also required duly checked & verified by each district.

Accordingly, vacancy position along with other relevant information submitted by all DDEs has been compiled and the same is annexed herewith as Annexure-1 to re-verify and comment, if any discrepancy is noticed. **The school-wise tentative vacancies (Annexure-1) will be available on 12/03/2022 at 03:00 P.M onwards.**

All District DDEs are also requested to check the details of GPS Coordinates of each school and to provide the correct GPS Coordinates. All District DDEs to note that if they require any



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corrections regarding name of participating schools, Entry levels, Vacancies, GPS Coordinates etc. a consolidated proposal through a single file may be submitted to PSB (HQ) through a responsible official by hand for the respective corrections.

All the concerned Private Unaided Recognized Schools and DDEs are hereby given time till 16/03/2022 to check the entry level-EWS/DG & CWSN vacancies, GPS Coordinate etc. in respect of their schools (enclosed as Annexure 1) and in case of any discrepancy, to submit a written representation to the Private School Branch (earlier Act Branch), DoE, Old Secretariat, Delhi-110005, duly recommended and forwarded by concerned District DDE within stipulated time period from 12/03/2022 (Saturday), 03:00 P.M. to 16/03/2022 (Wednesday) upto 03:00 P.M..

Further, it is for the information to the all desirous parents and other community stake holders, that they can also submit their representations in respect of above vacancies, entry levels and GPS Coordinates etc, with supportive documents to concerned DDE District immediately in case of discrepancy.

If no representation received from the concerned school or any other stake-holder, it will be presumed that the data as per Annexure-1 in respect of the school is correct and accordingly candidates will be allotted through computerized draw of lots. Thereafter, school shall not deny the admission to the successful candidates of the draw of lots on the ground of "No Vacancy/more than prescribed minimum limit of 25%" other reasons like lesser number of general category admissions etc. If any school denies the admission on this ground, then the necessary action will be taken against the school as per the relevant provisions of DSEAR, 1973 and RTE Act, 2009,

Encl:- As above

(Yogesh Pal Singh)
Deputy Director of Education"

Thus, points out the DOE, all private recognised unaided schools were given time to examine whether the number of EWS/DG vacancies, at all levels in their respective institutions were correctly computed by the DOE and, in the event of any error, to represent to the DOE between 12 and 16 March 2022. The Circular further provided that, if no representation was received from any school, it would be presumed



that the data was correct, and admission to the school would be worked out on the basis of a computerised draw of lots. Once this was done, all schools were proscribed from denying admission to successful candidates on the ground that EWS vacancies were not available or that, if the student was admitted, admissions would exceed 25% of the class strength. Insofar as the respondent-School was concerned, the position was computed thus:

(i) The number of pre-primary/KG level EWS/DG category vacancies which were available for the academic session 2022-2023 was 3. To this, 23 existing unfilled Nursery level EWS seats from the previous year were added, working out of the total number of EWS/DG category seats available in the year 2022-2023 in the respondent-School as 26.

(ii) Similarly, at the Class I level, 1 EWS/DG category vacancy was worked out for the 2022-2023 academic year. There were, however, 19 KG level EWS vacancies of 2021-2022 which had remained unfilled. These unfilled EWS vacancies of the KG level of 2021-2022 were carried forward to the vacancies available in Class I in 2022-2023, working out the total number of EWS/DG vacancies at the Class I level as 20.

Thus, for the academic session 2022-2023, the DOE had worked out the number of EWS/DG vacancies available in the respondent-School in nursery as 35, pre-primary/KG as 26 and Class I as 19. Of the 26 seats reserved for EWS/DG in KG/pre-primary, 23 seats were unfilled nursery level seats from the previous year which had been carried



forward. Similarly, of the 20 EWS/DG seats in Class I, 19 seats were unfilled KG/pre-primary level seats of the previous year which had been carried forward.

14. This was followed by Circular dated 26 April 2022 of the DOE, which notified the fact that the computerised draw of lots, for allotting EWS/DG seats in schools, had been conducted on 26 April 2022, and the successful candidates had been intimated the schools to which they had been allotted. The candidates were, therefore, directed to approach the school on or before 30 May 2022, with the requisite documents, to obtain admission. Failure to do so would result in *ipso facto* cancellation of the admission of the student. The very first General Instruction contained in the said Circular read thus:

“1. The school once allotted to the applicant through the computerised draw of lots shall not be changed under any circumstances.”

The last date for successful applicants to report for admission to the schools allotted to them was, thereafter, extended till 24 June 2022, vide DOE Circular dated 14 June 2022.

15. The DOE has also placed reliance on its Circular dated 9 July 2021, the order dated 24 September 2021 in *Action Committee Unaided Recognised Private Schools*, and the decision in *Rameshwar Jha*. It is further pointed out that, though the judgment of the learned Single Judge in *Rameshwar Jha* has been carried in appeal by way of LPA, no interlocutory orders interfering with the judgment of the learned Single Judge have been passed.



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16. On 13 January 2023, the DOE issued a Circular, annexing the EWS/DG vacancy position in various schools for admission to the academic session 2023-2024. All private unaided recognised schools were given time till 18 January 2023 to verify the entry level EWS/DG vacancies and to represent any discrepancy, with supporting documents, to the DOE between 13 January 2023 and 18 January 2023. In respect of the respondent-School, for Class I, 25 EWS/DG vacancies were found to exist, of which one pertained to that year and 24 were carried forward unfilled vacancies of the previous year in the lower classes.

17. This was followed by a further Circular dated 14 March 2023 of the DOE, informing that the computerised draw of lots for admission to EWS/DG students for the academic year 2023-2024 had been conducted on 14 March 2023, and successful students intimated of the schools allotted to them. The successful applicants were directed to present themselves of the concerned schools on or before 31 March 2023.

18. The respondent-School challenged the aforesaid Circulars dated 13 January 2023 and 14 March 2023 before this Court by way of WP (C) 3987/2023. By order dated 28 March 2023, this Court directed the writ petition to be treated as a representation and decided by the DOE within a stipulated time frame.

19. In compliance with the said direction, the DOE, after hearing the School, issued Order dated 17 April 2023, waiving the



requirement of filling the backlog of 10 seats allotted to KG and 24 seats allotted to Class I for the year 2023-2024, by accepting the School's contention that, in previous years, it had not been able to admit sufficient General category students. The operative portion of the decision reads thus:

“Backlog seats of EWS/DG/CWSN allotted in KG (10 seats) and Class Ist (24 seats) are waved (*sic* waived) off for the season 2023-24. Further, School is directed that it will take any fresh general category admission with the prior information to the Directorate of Education and requisite number of EWS/DG/CWSN seats will be allotted to the school.”

20. The DOE avers, in its counter-affidavit, that, consequent on the above decision, a second computerised draw of lots was conducted to adjust students who had been allotted to the respondent-School but could not secure admission consequent on the waiver of backlog seats. Efforts were made, in the second computerised draw of lots, to allot such students to other schools, in accordance with the choice of schools provided by the parents at the time of applying for admission against the EWS/DG category. Amitanjali, unfortunately, was a student who could not be allotted any alternate school, from the choices provided by her at the time of application. In these circumstances, the DOE submits that, given the guarantee of education provided under the RTE Act, the respondent-School should be bound to continue to provide education to the petitioner.

Counter-affidavit of the respondent-School

21. The respondent-School has, in its counter-affidavit, commenced its recital by asserting that the petitioner is predicating



her claim on the basis of the following interim order passed by the Division Bench of this Court on 26 May 2022 in *Justice For All v. Venkateshwar Global School*⁸:

“1. The learned Standing Counsel for GNCTD states that 132 private schools are prima facie found to be violating the government’s direction apropos admission of students in the EWS category and notices in this regard have been issued to them. It is the government’s stand that seats in the EWS category are to be filled up to the fullest at the “entry level” but some of the schools have not been admitting EWS students for the last decade or so.

2. Under the EWS category: (i) the private schools on private land have to admit 25% students in the EWS category for which the repayment of fees, etc. is done on the basis of expenses incurred for a student of a government school; (ii) private schools on government land too have to admit 25% EWS category students at the entry level. However, reimbursement by the GNCTD is to be done for only 5% students of this category expenses of education of the remaining 20% EWS candidates is the obligation of the private schools themselves because of the condition for allotment of government land.

3. In instances where schools have not complied with the strict requirements of admission of EWS category students, the State has to step-in to the aid of the latter and exercise its duty as a Welfare State. No beneficiary of government land can overlook or avoid its obligation under the allotment.

4. In the circumstances, every endeavour shall be made by the State to ensure that the backlog of unfilled seats in private schools, both on private and government lands, is filled-up in the next five years in a phased manner; i.e., 20% of the vacancies each year, in addition to the mandated annual 25% intake.

5. The State shall ensure that the 25% seats in the EWS category students shall be filled up on the basis of declared sanctioned strength at the entry level (Pre-school/Nursery/ Pre-primary/KG and Class-I), irrespective of the actual number of students admitted in the General category.

6. Compliance affidavit be filed before the next date.”

Said decision was, however, set aside by the Supreme Court in appeal,

⁸ LPA 5/2022



by the following order dated 1 September 2022 in Civil Appeal 5911/2022 (*Venkateshwar Global School v. Justice For All*):

“Leave granted.

We have heard learned counsel for the parties.

We are unable to appreciate how clause 4 of the impugned order dated 26.05.2022 can be worked out even if the schools are in default for the earlier period of years is the same cannot be compensated in this manner by an interim order.

Similarly, the issue which has been examined by the Court is whether the 25% of seats in the EWS category is being filled up on the basis of the declared sanctioned strength of actual admissions and we do believe that this cannot form the subject matter of an interim order.

We are thus of the view that the final call will have to be taken as a matter and that cannot be subject matter of the nature of interim relief is granted.

The result of the aforesaid is to be set aside the impugned order for directions contained in paras 4 and 5, leaving the parties to bear their own costs.

The Court is free to take appropriate view in the main matter.”

22. The respondent-School contends that it has always been in compliance with the mandate of the RTE Act, in so far as the admissions of students in the EWS/DG category are concerned. It has provided a tabular statement for the years 2015-2016 till 2022-2023, to establish that, in each year, the number of EWS/DG students admitted by it is in the region of 24 to 30% of the number of students admitted under the General category. The DOE, therefore, had erred in, in the first instance, assuming that there was any backlog from the previous years. For the year 2023-2024, the approved sanctioned strength of the respondent-School in Class I was 4 students, of which



3 were in the General category and one in the EWS category. Section 12(1)(c) of the RTE Act required the respondent-School only to fill up the number of EWS vacancies as per the stipulated percentage of the sanctioned strength, which was 1, and which had been filled up. In view of the judgment of the Supreme Court in *Venkateshwar Global School*, the petitioner could not seek to enforce the direction passed by this Court in its order dated 13 September 2023 to grant admission to Amitanjali.

23. As such, it is submitted that the claim of the petitioner has no merit.

24. Written submissions have also been filed by the respondent-School in which it is further averred that, in *Ashok v. GNCTD*⁹ and *Ravinder Kumar v. GNCTD*¹⁰, this Court has, after taking into consideration the order dated 30 November 2023 passed by the Division Bench in LPA 760/2023, held that no provisional admission to the respondent-School could be granted. Subsequently, the DOE was directed to make sincere efforts to allot the concerned students in an alternative school. Reliance has also been placed, by the respondent-School, on an earlier judgment of a learned Single Judge of this Court in *The Sovereign School v. Directorate of Education*¹¹ (“*Sovereign School-I*” hereinafter). The decisions in *Siddhartha International Public School* and *Rameshwar Jha*, it is submitted, are

⁹ Order dated 20 December 2023 in WP (C) 9026/2023

¹⁰ Order dated 20 December 2023 in WP (C) 8955/2023

¹¹ **206 (2014) DLT 29**



per incuriam as they do not consider the judgment in ***Sovereign School-I***.

25. In conclusion, it is submitted that admission cannot be directed solely on the basis of sympathy.

Rival Contentions at the Bar

Rival Contentions at the Bar

26. Mr. Aayush Agarwala, learned Counsel appeared on behalf of the petitioner. The GNCTD and the respondent-School were represented by Mr. Utkarsh Singh and Mr. Namit Suri respectively.

27. Most of the contentions advanced by learned Counsel already stand captured in the discussion *supra*.

28. Additionally, Mr. Suri, appearing for the respondent-School, places reliance on an order dated 30 November 2023 passed by the Division Bench of this Court in LPA 760/2023 (***Sovereign School v. Directorate of Education; “Sovereign School-II”*** hereinafter) in which, too, the respondent-School was the appellant. LPA 760/2023 was an appeal preferred by the respondent-School against orders dated 20 October 2023 and 7 November 2023 passed by a learned Single Judge of this Court in WP (C) 13988 of 2023 (***Mst. Priyank Nagarwal v. Sovereign School***). By the order dated 20 October 2023, the learned Single Judge directed the respondent-School to grant



provisional admission to the three petitioners in the writ petition – Priyank Nagarwal, Shruti and Garvita. The respondent-School moved CM 57865/2023, seeking vacation of the order dated 20 October 2023. The learned Single Judge, in his subsequent order dated 7 November 2023, refused to modify the order dated 20 October 2023, but clarified that the admissions of the petitioners before him would be provisional and subject to the final outcome of the writ petition.

29. These orders, dated 20 October 2023 and 7 November 2023, passed by the learned Single Judge were carried, in appeal, by the respondent-School to the Division Bench in LPA 760/2023. The order dated 30 November 2023, on which Mr. Suri relies, came to be passed in the said LPA.

30. Before the Division Bench, the respondent-students (through their legal guardians) relied upon the order of provisional admission dated 13 September 2023 passed by the learned Single Judge in the present proceedings. The division Bench noted, apropos the said reliance, in para 9 of its order dated 30 November 2023, thus:

“9. This Court also notes that the order dated 13th September 2023 passed in case of *Anjali Pandey (supra)* directing the appellant school to grant admission to the petitioner therein, clearly mentions that the said order is being passed in the unusual circumstances obtaining in the matter and that the said order will not form a precedent in any other case. Therefore, reliance by respondent no. 1 on the said order, is clearly misplaced.”

Thereafter, the Division Bench proceeded to stay the operation of the orders dated 20 October 2023 and 7 November 2023 passed by the learned Single Judge, while reserving liberty with the DOE to grant admission to the respondent-students in some other school.



31. *Mutatis mutandis*, Mr. Suri would seek to submit, there can be no question of directing the respondent-School to admit Amitanjali as an EWS candidate.

Analysis

I. The orders of the Division Bench and of the Supreme Court in *Venkateshwar Global School*

32. The reliance on the order of the Division Bench and of the Supreme Court in *Venkateshwar Global School* is obviously totally misplaced. The Supreme Court, in its order, merely held that, given the nature of the controversy, admissions could not have been directed to be made *by way of an interim order*. On merits, the Supreme Court granted complete liberty to the High Court to take a view. There is no expression of opinion, even tentative, by the Supreme Court, on the issue of whether unfilled EWS/DG vacancies of a particular year can be carried forward to the next class in the next year. The orders passed by this Court in the Supreme Court in *Venkateshwar Global School* cannot, therefore, be of any assistance in finally determining the issue in controversy.

II. The decision in *Siddharth International Public School*

33. On the aspect of whether backlog unfilled EWS/DG vacancies of a particular class in a particular year in a school can be carried forward to the next class in the next year, the judgment of the Division



Bench in *Siddharth International Public School* concludes the issue. I have not come across any decision of a Division Bench or of the Supreme Court, which rules to the contrary.

34. A brief glance at the decision in *Siddharth International Public School* is, therefore, in order.

35. Priyanshu, a 7-year-old boy, was injured in a motor accident. His left leg had to be amputated below the knee. The financial position of his family was poor. Priyanshu's mother, therefore, applied for admission of her son under the EWS category in a school. The Motor Accidents Claim Tribunal (MACT), before whom the case of compensation for the injuries suffered by Priyanshu was pending, directed the Siddharth International Public School ("SIPS" hereinafter) to admit Priyanshu as an EWS student in Class I. SIPS challenged the decision on three grounds; firstly, that Priyanshu was overage for admission to Class I, secondly, that the MACT did not have the jurisdiction to direct admission of Priyanshu and, thirdly, that there were no vacant EWS seats in the school.

36. A learned Single Judge of this Court, *vide* judgment dated 26 August 2016, agreed with the contention that the MACT did not have the jurisdiction to direct admission of Priyanshu in the SIPS. The learned Single Judge, however, maintained the direction, exercising his jurisdiction under Article 226 of the Constitution of India and invoking, for the purpose, Section 12(c) of the RTE Act. SIPS appealed to the Division Bench.



37. The Division Bench endorsed the opinion of the learned Single Judge that the contention of SIPS, that there were only 7 EWS vacancies in Class I for the academic year 2015-2016 (with which the case was concerned), which had been filled up, merited rejection. In upholding the view of the learned Single Judge, the Division Bench held thus, in paras 9 and 10 of the judgement:

“9. The contention that there were only seven seats under EWS Category was considered and negated by the learned Single Judge in the light of Clauses 3 and 4 of the order of the Government of NCT of Delhi dated 07.01.2011 and Clause 2(d) of the Guidelines for Admission to Entry Level Classes in Private Unaided Recognized Schools of Delhi. It is relevant to note that the Deputy Education Officer, Zone-VI, Directorate of Education, GNCTD filed an affidavit dated 05.04.2016 in the writ petition stating that -

“In case of the Petitioner Siddharth International Public School, the said Petitioner School had a total of thirty-eight (38) seats for the academic year 2015-16 in the pre-primary class. Thus, as per the statutory mandate, a total of nine (9) seats had to be reserved for EWS category students. However, as per records submitted by the Petitioner School itself for the academic year 2015-16, in pre-school, only seven (7) students were admitted for EWS category. *Thus, at least two (2) EWS Category seats were vacant in pre-primary category for the year 2015-16. As the students of Pre-primary Grade for 2015-16 will get promoted to Class I for the academic year 2016-17, there are at least two vacancies in EWS Category in Class I for the year 2016-17.* A True Copy of the Chart Showing the Total Class-wise and Category-wise enrolment of students in the Petitioner School for 2015-16 is annexed herewith as **Annexure A-5 at page 13.**”

10. *In the light of the said affidavit, we do not find any substance in the contention of the appellant that there are no vacancies under the EWS Category and that the appellant school had already satisfied the 25% requirement mandated under RTE Act.*”

(Emphasis supplied)



38. *The Division Bench has, therefore, accorded its imprimatur to the proposition that unfilled EWS/DG category vacancies of a particular year can be carried forward to the next class in that school for the next year, and would be required to be filled accordingly.*

39. *So long as this position remains undisturbed, it would not be open to any school to contend, at least before a Single Judge of this Court, that unfilled EWS/DG backlog vacancies of a particular year cannot be directed to be filled in the next year in the next class. In other words, for example, unfilled KG/pre-primary EWS/DG vacancies in a particular year would have to be filled by the concerned school by admitting a corresponding number of EWS/DG students in Class I in the next year. Any school, refusing to do so, would expose itself to appropriate action in accordance with the DSE Act and the DSE Rules.*

III. The decision in *Sovereign School-I*

40. Much reliance was placed by Mr. Suri on the judgment of the learned Single Judge of this Court in *Sovereign School-I* of which, somewhat surprisingly, it was sought to be contended that the judgment in *Siddharth International Public School* was *per incuriam*.

41. In the first place, *Siddharth International Public School*, having been rendered by a bench of two learned Judges of this Court,



could never be *per incuriam* the judgment of a learned Single Judge in *Sovereign School-I*.

42. Secondly, in fact, it is the judgment of the learned Single Judge in *Sovereign School-I* which is *per incuriam*. In *Subhash Chandra v. Delhi Subordinate Services Selection Board*¹², the Supreme Court approved the understanding of the expression “*per incuriam*”, in the article “First Appellate Courts Overruling Their Own ‘Wrong’ Precedents: The Ongoing Search For Principle” by B.V. Harris¹³ which read: “A decision may be held to be *per incuriam* where relevant statutory provisions or binding case law authority have been overlooked or misinterpreted in arriving at the holding in the precedent”. It is apparent, with greatest respect to the learned author of *Sovereign School-I*, that the decision is *per incuriam*, as the very question that the judgment frames, in para 6 as arising for consideration, reveals:

“The main question, which arises for consideration in this case is as to what is the true import of the words “*to the extent of 25%* of the strength of that class” appearing in Section 12(1)(c) of the Act.”

In so observing, the learned Single Judge omitted to note the words “at least” between “to the extent of” and “25%” in Section 12(1)(c), which actually uses the expression “*to the extent of at least 25%*”. Proceeding on the premise that 25% of the General category admissions was the upper limit of the number of EWS/DG students that a school could be compelled to make under Section 12(1)(c), the learned Single Judge, in *Sovereign School-I*, held that the respondent-

¹² (2009) 15 SCC 458

¹³ Published in (2002) 112 LQR 408-27



School could not be asked to admit more than 25% of its General category admissions.

43. *Sovereign School-I* cannot, therefore, be regarded as enunciating the correct legal position.

44. In any event, in the face of the judgment of the Division Bench in *Siddharth International Public School*, the respondent-School cannot be heard to contend that unfilled EWS/DG vacancies of a previous year could not have been carried forward and directed to be filled in the next higher class in the next year.

IV. In the facts of the present case

45. The resultant position is that, if there had in fact been any unfilled EWS/DG pre-primary/KG vacancies of 2021-2022 in the respondent-School, the DOE could indeed legitimately have required the respondent-School to fill up the said vacancies in Class I as carry forward vacancies, in addition to the EWS/DG vacancies which fell to its lot in Class I in the year 2022-2023.

46. But, contends the respondent-School, there were, in fact, none. The respondent-School has placed, on record, the following tabular statement, to demonstrate the number of EWS/DG admissions made by it from 2015-2016 to 2022-2023, and it is seen, from the table, that the respondent-School never fell short of 25% of the general category admissions made by it in any year:



**THE TABLE DEPICTING ADMISSIONS MADE BY THE
RESPONDENT NO. 2 SCHOOL DURING THE PAST
SEVEN YEARS IS AS FOLLOWS:**

| S. No. | Academic Session | No. of students admitted under General Category | No. with percentage of EWS category students admitted against total class strength of students | Total admitted students in both categories |
|--------|------------------|---|--|--|
| 1. | 2015-16 | 69 | 27 (28.12%) | 96 |
| 2. | 2016-17 | 57 | 24 (29.62%) | 81 |
| 3. | 2017-18 | 67 | 26 (27.95%) | 93 |
| 4. | 2018-19 | 69 | 26 (27.36%) | 95 |
| 5. | 2019-20 | 71 | 23 (24.46%) | 94 |
| 6. | 2020-21 | 54 | 18 (25%) | 72 |
| 7. | 2021-22 | 34 | 12 (26%) | 46 |
| 8. | 2022-23 | 66 | 25 (27.5%) | 91 |

47. Mr. Agarwala has not attempted to question the correctness of the above tabular statement.

48. Section 12(1)(c) of the RTE Act requires a school, falling under Section 2(n)(iv), to admit, in Class I, at least 25% of the strength of that class. The proviso to the clause extends its operation to pre-school classes, where the school provides pre-school education. Though the expression “strength” is not defined in the clause, or indeed elsewhere in the RTE Act, it has necessarily to mean the number of students actually admitted. Else, it would lead to an incongruous situation in which, if a school has place for 100 students in Class I, but is able to admit only 20 General category students, it would be compelled to admit at least 25 EWS/DG students. To avoid such an anomalous situation, the word “strength”, as used in Section



12(1)(c) has necessarily to be read as meaning the total number which the School *is in a position to admit in that year*. Reckoned thus, it is apparent from the above tabular statement that, in each year from 2015-16 to 2022-23, the School actually admit EWS/DG students numbering over 25% (except in 2019-20 when they admitted 24.46%) of the strength of its class.

49. Indeed, based on the said tabular statement, the DOE issued the order dated 17 April 2023, granting waiver, to the respondent-School, from the requirement of filling up carry forward backlog seats in Class I during the year 2023-2024. This Order is also not in challenge.

50. Unaided schools function on fees, and the Court cannot, in its zeal to protect the interests of the student, compromise on the fees which the unaided school can legitimately earn, as such fees would be its sole source of sustenance. It is for this reason that the RTE Act envisages 25% as the minimum quota of EWS/DG students which an unaided school would have to admit in a year, reckoned as a percentage of the number of general category students that it admits for that year. Undoubtedly, this is a statutory mandatory imperative, and if a School falls short of fulfilling this imperative in a particular area, it can legitimately be directed to fill up the backlog in the next year in the next higher class. Where, however, there is in fact no shortage in the number of EWS/DG candidates which the school was required to admit, to fulfil the 25% limit, in a particular year, it would be not only unfair but also illegal to regard the school as having unfilled vacancies, which can be carried forward to the next year. The



carry forward principle can apply, therefore, only where there is a shortage in feeling of EWS/DG vacancies in earlier years, reckoned as a percentage of the number of general category students that the school has admitted.

51. There is, however, another side to the proverbial coin. The DOE, each year, invites data from schools and works out the number of EWS/DG students which the school would have to admit to remain in compliance with the mandate of the RTE Act. The schools are given time to verify the data and report any errors to the DOE. If any school desires exemption, it can also apply to the DOE in that regard as per the procedure envisaged, setting out the reasons for its request. If, however, a school has neither chosen to seek exemption, nor reported any error to the DOE in respect of the computation of EWS/DG vacancies in a particular year within the time provided by the DOE in that regard, it would be bound to admit the student(s) who, as per the computerized draw of lot that follows, are allocated to its rolls. It cannot, then, turn round and question the computation, by the DOE, of the number of EWS students that it would have to admit that year.

52. In the present case, however, the School did not acquiesce to the directives of the DOE regarding the number of EWS students that it had to admit for 2023-2024, but, instead, challenged the communications dated 13 January 2023 and 14 March 2023 of the DOE by way of WP (C) 3987/2023. By order dated 28 March 2023, this Court directed the DOE to treat the writ petition as a



representation and pass orders thereon. The DOE reversed its earlier decisions *vide* its Order dated 17 April 2023 and granted waiver, to the petitioner, from the requirement of admitting any EWS student against the backlog unfilled vacancies of previous years, in view of the fact that the School had not been able to admit its full strength of General category students in previous years, and had, in fact, admitted, each year, EWS/DG students to the extent of 25% of the General category students whom it admitted.

53. The School cannot, quite obviously, be denied the benefit of the DOE Order dated 28 April 2023.

54. The issue of whether the magic figure of 25% represents the maximum number of EWS/DG students that the school has to admit, or does not, is, therefore, really foreign to the issue in controversy. The petitioner does not seek to contend that, in 2022-2023, the respondent-School failed to admit EWS/DG students to the extent of 25% which it admitted in KG/pre-primary. That being so, it cannot be said that there was any KG/pre-primary backlog to be carried forward to Class I in 2023-2024.

55. The petitioner managed to secure admission to Class I in 2023-2024 only because of the erroneous view, held by the DOE, that there were unfilled backlog KG/pre-primary EWS/DG vacancies of 2022-2023 in the respondent-School. Had there been no such backlog vacancies, the petitioner would not have been able to secure admission to the respondent-School; indeed, the name of the respondent-School



would not have figured in the draw of lots as available for the petitioner to seek admission to Class I in 2023-2024.

56. The School, too, did not silently acquiesce to the directives of the DOE regarding the number of EWS/DG students whom it had to admit for 2023-2024, as contained in its Circular dated 13 January 2023 and letter dated 14 March 2023. It launched a legal challenge to these directives, resulting in ultimate success, by way of issuance of the waiver Order dated 28 April 2023 of the DOE.

57. It is true that the petitioner has also sought to point out that Amitanjali was denied admission by the respondent-School in 2021-2022 and 2022-2023 to the nursery/pre-school and KG/pre-primary grades, but she has not chosen to approach this Court at that stage. The Court can, therefore, only examine the petitioner's entitlement to have her daughter admitted to Class I in the respondent-School as an EWS candidate in 2023-2024.

58. The Court cannot foist, on the respondent-School, a liability that the law does not cast on it, merely on sympathetic considerations. It is not possible, therefore, for the Court to grant the mandamus that the petitioner seeks, by directing the respondent-School to continue to educate the petitioner as an EWS candidate.

59. That said, it would also be completely opposed to the interests of Amitanjali to uproot her, mid-session, from the class in which she is presently studying. In such cases, the Court has necessarily to



modulate the relief that it grants, keeping in mind all competing interests even while remaining within the bounds of the law and the statutory imperatives.

60. At the end of the day, one factor that the Court cannot afford to ignore is that Amitanjali is innocent, and is not to blame for anything that transpired. In the chiaroscuro of light and shade, of directives, judicial orders and reversals that have taken place, she stands out alone, in sharp relief. Her interests have, therefore, to be secured.

Conclusion

61. In the peculiar facts of the present case, this writ petition is disposed of in the following terms:

(i) Amitanjali shall continue to study as an EWS student in Class I in the respondent-School till the end of the present academic year.

(ii) The DOE shall ensure that Amitanjali is admitted to Class II in one of the neighbourhood schools in 2024-2025 as an EWS/DG candidate, and continues to receive education in the said school till the age of 14, as per the provisions of the RTE Act. The DOE shall bear the fees for education of Amitanjali in accordance with the RTE Act.

(iii) In the event that no school in the immediate neighbourhood has any vacancy in which Amitanjali can be



admitted to Class II, the DOE shall ensure that she is admitted to Class II in a school as close to her residence as possible, subject, of course, to concurrence of the petitioner.

62. While this is all that the Court can do for Amitanjali in the present case, the Court holds that the principle of carry-forward of unfilled EWS/DG category vacancies in a particular class in one year, to the next class in the next year in the same school, is legal and valid, as has already been held by the Division Bench in *Siddharth International Public School*. It does not appear, to me, that the carrying forward of unfilled EWS/DG vacancies to the next class in the subsequent year infracts the RTE Act or any other legal provision. Admitting of EWS/DG students to the extent of at least 25% of the strength of its entry level class is the statutory obligation of every school which falls within Section 2(n)(iv) of the RTE Act. If a School defaults, there is nothing illegal in directing it to make up the deficit in the next higher class in the next year.

63. Where, however, as in the present case, there is actually no unfilled EWS/DG category vacancy in the previous year, reckoned as 25% of the General Category admissions made by the School, the principle of carry forward would not apply.

64. If, despite this, the DOE adds, to the number of EWS admissions to be made by a school in a coming year, carried forward backlog vacancies of earlier years despite there being no such backlog, it is the responsibility of the school concerned to bring the error to the notice of the DOE on release of the first intimation by the



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DOE and within the time provided therein. If the school does not do so, and allows a computerized draw of lots to take place, it cannot, thereafter, refuse to admit EWS/DG students who, as per the draw of lots, are to be admitted by it.

63. Needless to say, the DOE is also duty bound to consider any such representation, if made, and correct the position, if the representation is found to have merit.

64. Subject to the above clarification, the writ petition stands allowed to the extent indicated in para 61 *supra*, with no orders as to costs.

C. HARI SHANKAR, J.

JANUARY 29, 2024

dsn