

\$~

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

+ W.P.(C) 348/2023 and CM APPL. 1358/2023

AYAN JORWAL (MINOR) THROUGH FATHER DINESH  
KUMAR MEENA ..... Petitioner

Through: Mr. Balram, Advocate with  
petitioner in person  
(Ph.9315595676)

versus

GOVT. OF NCT OF DELHI & ORS. .... Respondents

Through: Mr. Santosh Kumar Tripathi,  
SC (Civil) GNCTD with  
Mr. Utkarsh Singh, Advocate  
for DOE, GNCTD (Ph.  
9129829862, e-mail:  
scgnctd@gmail.com)

Mr. Kamal Gupta, Mr. Sparsh  
Aggarwal, Ms. Paridhi Bist and  
Ms. Ananya Lamba, Advocates  
for respondent- school  
(Ph. 9810988094, e-mail:  
kamalguptaandcompany@gmail.com)

**CORAM:**  
**HON'BLE MS. JUSTICE MINI PUSHKARNA**

%

**J U D G M E N T**

**17.04.2023**

**MINI PUSHKARNA, J.**

1. The present writ petition has been filed with prayer for direction to consider the case of the petitioner child for admission to the respondent No.3 School in Class-I by granting the benefit of marks under the criteria of sibling, without insisting on fee slip of the sibling

of the petitioner as proof of studying in the school.

2. Facts in brief are that the respondent No.3 School issued a notification for admission to entry level classes for academic session 2023-2024. The father of the petitioner herein applied for admission of the petitioner in Class I for academic session 2023-2024 in the 'Open Seats' Category. The petitioner's father submitted admission form online claiming total 70 points as per the criteria laid down by the School, i.e., 40 points for neighbourhood and 30 points for sibling, since the elder brother of the petitioner also studies in the respondent No.3 School.

3. On 20.12.2022, petitioner's father received an email from School wherein it was stated that the application form of the petitioner has been rejected for the reason that latest tuition fee receipt in support of the 'sibling criteria' had not been attached. The email dated 20.12.2022 as issued by the respondent No.3 School reads as under:

*"Dear Parent,*

*We regret that your application form (P1/2023/284)  
has been rejected for the following reason:*

*"Invalid document, kindly attach latest tuition fee  
receipt" "*

4. Pursuant to receipt of the aforesaid email, petitioner's father wrote an email dated 21.12.2022 to the School stating that his elder son was a student of the School, who had been admitted under the Disadvantaged Group (DG) Quota. Therefore, he did not have any tuition fee receipt in support of claim towards points under the 'sibling criteria'. Along with the email, petitioner's father attached a document

dated 10.11.2022 duly signed by the Principal of the respondent No.3 School certifying that the elder brother of the petitioner was a bona fide student of the school in question.

5. Subsequently, the petitioner also wrote an email dated 22.12.2022 to the respondent no.2, i.e., Deputy Director of Education (DoE). The respondent No.2 wrote an email dated 23.12.2022 to the School directing it not to stress upon submission of proof of payment of fee made by elder brother of the petitioner.

6. Thereafter, the petitioner's father requested the respondent No.3 School to consider the admission form of his son. No reply was received from the School. Subsequently, on 06.01.2023, respondent No.3 School uploaded the list/details and points obtained by each applicant who had applied for admission under the 'Open Seats' Category. Name of the petitioner was not reflected in the list uploaded by the respondent No.3 School. Petitioner's father again wrote to the school requesting to consider the application form of the petitioner for admission to Class I. Since the respondent School did not accede to the request of the petitioner's father and did not consider the application of the petitioner, the present writ petition has come to be filed.

7. It may be noted that after filing of the present writ petition, the respondent No.3 School issued letter dated 11.01.2023 to the petitioner's father accepting the application form of the petitioner for admission. However, it was stated in the said letter that the petitioner had got 40 points, meaning thereby that 30 points towards 'sibling criteria' was not awarded in favour of the petitioner. The letter dated

11.01.2023 as issued by the respondent No.3 School is reproduced as below:

*“Dear Parent*

*You have registered for admission of your ward to **Class-I** for the academic session 2023-24 in The Mother’s International School.*

*Against 13 open seats for General Category, 288 have registered their names for admission in the Class-I.*

*Of these 13 seats, 11 candidates have got 50 or more points and as per the admission criteria, have been selected for admission (subject to verification of documents), 38 candidates have got 40 points and remaining 02 seats shall be filled through a draw of lots out of these candidates.*

*Your ward has got 40 points and will be included in the draw of lots scheduled on January 13, 2023 at 10:40 a.m. in the Hall of Grace in our school.*

***Only one parent will be allowed to attend the draw in the school premises and it is mandatory to carry a print out of the acknowledgement slip of the registration form and photo ID CARD, which shall serve as the entry pass.***

*While it is desirable that the parents join the draw, we would like to assure that your ward’s name will be included in the draw, even if you are not able to join the draw.*

*First list for admission will be displayed on our website on January 20, 2023.”*

8. On behalf of the petitioner it is contended that the petitioner is

entitled to get points under the 'sibling criteria', as the only requirement under the said criteria as laid down by the School is that the brother or sister of the applicant should be studying in the School. It is submitted that no distinction is made for the sibling studying under Open/General Category or in Reserved Category viz. Economically Weaker Section (EWS); Disadvantaged Group (DG) and Children With Special Needs (CWSN) Category.

9. It is submitted that there is no dispute that the elder brother of the petitioner is studying in the respondent No.3 School. The only objection raised is with respect to the fact that fee receipt has not been deposited by the petitioner for the purpose of taking advantage of 30 points towards the sibling already studying in the School.

10. Ld. Counsel appearing for the DOE has supported the submissions made on behalf of the petitioner. It is submitted that though the School has the autonomy to devise admission procedure and criteria, the same has to be reasonable and not arbitrary. It is submitted that it is clear that the sibling of the petitioner is studying in the School in question. Thus, there is no question of insistence of a particular document towards the proof of sibling studying in the School. The School ought not to insist on a particular document towards the sibling criteria. It is further submitted that in case the School is directed to accept some other document towards the sibling criteria, the same will not disrupt the autonomy of the School.

11. It is further submitted on behalf of DOE that the State being a welfare body would encourage and promote such people who come forward to fund the education of their child, even though one of them

may be studying under the Reserved Category of EWS/DG. No student can be denied admission in 'Open Category' or not granted benefit of the criteria as laid down by the School, merely because the sibling is studying under the DG Category.

12. It is further submitted on behalf of DOE that there is no intelligible criteria of asking for one document over another. No loss would be caused to the School as the admission is under the General Category. It is submitted that the respondent No.3 School ought to grant admission to the petitioner by giving the benefit of points under the sibling criteria.

13. On the other hand, the present writ petition has been vehemently opposed on behalf of respondent No.3 School. It is submitted that photocopy of latest tuition fee receipt of sibling studying in the School is the requirement for being awarded the points in that respect. It is submitted that the said requirement being part of the same document laying down the admission criteria, has to be read holistically and not in isolation. It is submitted that all parts and clauses of a document have to be read together as a whole, so that none of them is rendered meaningless, otiose or nugatory.

14. It is submitted that it is the intention expressed by the author of the document, i.e., the school management committee, which has laid down the criteria for admission in the present case, that has to be given its due importance in understanding what is meant by the criteria and what it entails. It is submitted that the admission criteria clearly shows that the points for sibling category is mentioned in the criteria for General Category admissions only. They are meant for and

restricted to only those applicants, whose siblings are studying in the General Category in the School. There is no challenge to the admission criteria notified by the School. A person having participated in the admission process and being unsuccessful, cannot turn around to challenge the admission notification/criteria/procedure.

15. It is submitted on behalf of the School that the Right to manage and administer a Private Educational Institution, is recognised as a Fundamental Right under Article 19(1)(g) of the Constitution of India. The plenary legislation, i.e., Delhi School Education Act, 1972 (DSEA) and the Rules framed there under clearly confer the right of regulating the admissions upon the Head of a Private Un-aided School in Delhi in terms of Section 16(3) of the DSEA and Rule 145.

16. It is submitted that the attempts by the Lt. Governor as also by the Directorate of Education by issuing notifications/circulars/office orders for bringing about a homogeneity or a commonality in the criteria notified by all private un-aided schools in Delhi, has been struck down by this Court time and again.

17. It is submitted on behalf of the School that it has, in exercise of its Fundamental Right, defined its criteria and there is nothing in any of the said criteria, which can be termed as whimsical, fanciful or absurd. Any interference with such reasonable and rational criteria is neither permissible nor warranted, in terms of the law laid down in a catena of judgments. It is further submitted that there are several other schools that have the same categorisation of 'sibling criteria' as is done by the school in the present case.

18. It is vehemently contended on behalf of the School that the

present case, wherein a candidate is seeking admission under the Open General Category by relying upon and seeking to derive benefit of an admission made under EWS/DG Category, is impermissible. The law creates two categories viz. General and EWS/DG. Whereas on the one hand, there is no role of a private un-aided school in the EWS/DG Category admissions done online. On the other hand, the General Category admissions are within the exclusive domain of the School. The two categories created by law are sought to be protected, preserved and kept distinct by the School.

19. It is further submitted that the classification/differentiation done by the School, is clearly intelligible and has a clear nexus to the object sought to be achieved by such classification. The object being that the two categories viz. General and Reserved, are kept separate. The seats meant for General Category are kept limited to General Category and are not open to the candidates deriving benefits from an admission under the Reserved Category. The reasonable nexus, with the object sought to be achieved, is that the General Category seats are sought to be confined to purely General Category Candidates, who are drawing sustenance from General Category only, so as to preserve the classification of and number of seats in the two categories viz. General and EWS/DG, as made by law. Keeping the two categories separate cannot by any stretch of imagination be discriminatory, arbitrary or unreasonable.

20. By referring to the circular dated 24.11.2007 issued by the GNCTD, it is submitted on behalf of the school that the said circular does not strictly or exhaustively lay down the criteria, giving freedom



to schools to lay down additional parameters. It is submitted that schools define their alumni criteria, sibling criteria, the neighbourhood criteria and may or may not have any one or more of the said criteria at all, in their admission process.

21. It is further submitted that in the present case the child studying in the EWS/DG category is not being discriminated against in any manner. He is enjoying all his rights and entitlements, as are guaranteed to him under the Right to Education Act, 2009 (RTE). The RTE does not recognise any right of a sibling and therefore, the petitioner is not entitled to such a right. In fact, Section 13 of the RTE Act, bars, prohibits and proscribes any criteria such as the 'sibling criteria'. There can, therefore, be no discrimination alleged by the petitioner for denial of a right, which is not even envisaged by the RTE Act. The child studying under the RTE does not give right to any criteria of points, including sibling points, as no such criteria points are envisaged by the RTE Act as a claim or entitlement.

22. It is submitted that the General Category admissions continue to be a part of the Fundamental Right of the schools and the schools have maximum autonomy in the manner of selection of students under Article 19(1)(g) of the Constitution of India. No inroad can be made into the Fundamental Right of a private unaided institution so as to be more than what is postulated by the legislature under the RTE Act, made under Article 21(A) of the Constitution of India.

23. It is further submitted on behalf of the school that the two sources of entry viz. General Category admissions and Reserved Category admissions, being absolutely different and distinct, are

sought to be mixed up by the petitioner by seeking benefit of both the sources of entry together.

24. It is submitted that merely because the petitioner has come to the court, does not mean that law should be interpreted in his favour and against the other child more deserving of the admission. It is submitted that there are other applicants who are in the waiting list, waiting to get the admission against the very same seat as claimed by the petitioner.

25. Ld. Counsel for the respondent No.3 School has further submitted that the email dated 23.12.2023 issued by the DOE is absolutely illegal. The DOE cannot interfere with the right of the school to define its criteria which is absolutely reasonable and rational. It is further submitted that the submissions made on behalf of DOE during the course of hearing are absolutely unauthorised, being contrary to the affidavit filed on behalf of DOE.

26. Ld. Counsel appearing for the School has relied upon the following judgments:

- i) ***Agmatel India Pvt. Ltd. Vs. ResourSYS Telecom, (2022) 5 SCC 362***
- ii) ***State of U.P. Vs. Karunesh Kumar, 2022 SCC OnLine SC 1706***
- iii) ***TMA Pai Foundation Vs. St. of Karnataka, (2002) 8 SCC 481***
- iv) ***Forum for Promotion of Quality Education for All Vs. Lt. Governor of Delhi & Ors., 2014 SCC OnLine Del 6650***
- v) ***Action Committee Vs. DoE, 2016 SCC OnLine Del 672***

- vi) *Union of India and Another Vs. G. Ganayutham, (1997) 7 SCC 463*
- vii) *Ajay Kumar Shukla and Others Vs. Arvind Rai & Ors., 2021 SCC OnLine SC 1195*
- viii) *Shree Bhagwati Steel Rolling Mills Vs. CCE, (2016) 3 SCC 643*
- ix) *J. Chandrasekaran & others Vs V.D. Kesavan, 2012 5 L.W. 523*
- x) *State of Bihar and Others Vs Madhu Kant Ranjan and Another, 2021 SCC OnLine SC 1262*

27. I have heard Id. Counsels for the parties and have perused the record.

28. The Government of NCT of Delhi (Education Department) by its order No. F/DE/15/1031/ACT/2007/7002 dated 24.11.2017 made an order in respect of admission procedure for pre-primary classes in the recognised schools in Delhi. Para – 14 of the said order reads as under:

“ ... ..

*14. The school shall develop and adopt criteria for admission which shall be clear, well defined, equitable, non - discriminatory and unambiguous. The school shall adopt those parameters which are in the best interests of children and are in line with its own philosophy, and these shall include the following: -*

*(i) Neighbourhood - It is in the interest of children that they are provided admission in a school nearest to their residence. The schools shall, therefore, give preference to children living in nearby areas. If the school is satisfied that a good and safe transport is available for a child, then, it may consider giving admission to such a child even if he/she lives at a place*

*quite far off from the school. This is also important as distribution of schools is not uniform in the city.*

*(ii) **Background of the Child** - Children from all social and economic backgrounds shall be equally considered for admission. The school shall make a conscious effort to admit children with special needs or from vulnerable backgrounds.*

*(iii) **Sibling** - Generally, parent(s) or guardian(s) prefer that their children study in the same school. Therefore, the school may give preference to a child who has a sibling studying in that school.*

*(iv) **Transfer Case:** - Many parents or guardian are working in transferable jobs, in the government and other private sectors.*

*The school may give preference to the child of such parent (s) or guardian(s).*

*(v) **Single Parent** **i.e.** divorced/widow/widower/unmarried: - The School may give preference to admit child of such single parent.*

*(vi) **Management Quota** – School may have a management quota which shall not exceed twenty percent of the total seats available for admission in the class.*

*Schools can also fix additional parameters but are required to stipulate a point system for each criteria/parameter*

*... ..*

*(emphasis supplied)”*

29. Perusal of the aforesaid clearly shows that schools have been given the authority to develop and adopt criteria for admission. Certain parameters have been detailed in the said order, with liberty to the schools to fix additional parameters for the purposes of admission to the respective schools. However, it is categorically stipulated that

the criteria for admission has to be equitable, non-discriminatory and unambiguous.

30. There is no doubt that a school has the autonomy in matters of admission under the general quota and can devise its own criteria for the purposes of admission to the said school. However, any admission criteria devised by the school has to be reasonable, rational and non-discriminatory. Such criteria cannot be whimsical or arbitrary, but has to be fair and equitable.

31. Thus, by virtue of its autonomy in devising its own admission criteria, the school in question has laid down various criteria for admission, wherein, various points have been stipulated to be awarded on criteria of neighbourhood, girl child, sibling and alumni. Under the head Sibling, which is one of the criteria for admission, the notification as issued by the School reads as under:

“... ..

**3. Sibling (30 Points)**

*The points will be awarded to the applicant only if his/her own brother/sister is studying in The Mother's International School.*

**Required Document:** *Photocopy of latest Tuition Fee receipt of sibling studying in The Mother's International School.*

... ..”

32. Perusal of the aforesaid criteria shows that 30 points will be awarded by the School to the applicant if his/her own brother/sister is studying in the school. Under the ‘sibling criteria’, the document as

required by the School is photocopy of the latest tuition fee receipt of sibling studying in the same school. Since the petitioner's brother is studying in the school under the DG Category, the petitioner is unable to submit the latest tuition fee receipt of his brother in support of his claim for 30 points under the 'sibling criteria'. Thus, the respondent No.3 School by virtue of its letter dated 11.01.2023, as reproduced hereinabove, has not given the benefit of 30 points under the 'sibling criteria' to the petitioner. The petitioner has been awarded only 40 points under the head 'Neighbourhood'.

33. The letter dated 11.01.2023 issued by the school also states that applicants who had got 50 or more points as per the admission criteria have already been selected for admission. 38 candidates have got 40 points and remaining 2 seats shall be filled through draw of lots out of these candidates. Hence, it is clear that had the petitioner been awarded 30 points under the 'sibling criteria', the petitioner would have secured 70 points and would have been selected for admission along with other candidates who have been selected on the basis of obtaining 50 or more points as per the admission criteria.

34. The contention on behalf of the respondent School that the benefit of 30 points under the head 'Sibling' will not be available to candidates whose sibling is studying under the DG/EWS Category and would be granted to only those candidates whose sibling is studying under the General Category, cannot be accepted. Such classification made on behalf of the School is not only unfair, but also arbitrary and discriminatory. The autonomy given to the School for devising its criteria cannot be misconstrued to shut admission to applicants under

General Category students whose sibling is studying under the DG/EWS Category, by not awarding the requisite points under the criteria as devised by the School.

35. The autonomy of the school is to devise various criteria for admission. In furtherance thereof, the School in question has laid down several criteria and has awarded different points to each criteria. However, when there is no dispute about the fact that elder brother of the petitioner is already studying in the School in question, insistence by the school only on a particular document viz. photocopy of latest tuition fee receipt of sibling studying in the School, cannot be countenanced. If directions are given to the School to accept any other document under the 'sibling criteria', then the same would not impinge upon the autonomy of the school. Thus, there are other documents like Report Card or Identity Card of the sibling which could be relevant documents for considering the case under the 'sibling criteria'. Insistence only on a particular document cannot be said to be within the domain of the autonomy of the school, when such insistence actually translates into a discriminatory practice vis-a-vis the candidates whose siblings are studying under some reserved category.

36. Merely because the elder brother of the petitioner is studying under DG Category, would be no ground to deny the points under the criteria of sibling to the petitioner. If sibling points for admission under the General Category are available to an applicant whose sibling is studying under the General Category, then such points would be also available to an applicant whose sibling is studying under the

DG/EWS Category. The categorisation sought to be made on behalf of the school cannot be held to be valid. Such categorisation/classification is totally unreasonable, whimsical, baseless and indefensible. There is no justification for the same. There is no intelligible criteria for asking one document over another for proof of sibling studying in the school, when there is no dispute about the said fact.

37. Granting sibling points to an applicant seeking admission in the General Category, in respect of a sibling studying under the DG/EWS category, would not convert the Open General seat into a seat under DG/EWS Category. The autonomy of the School for granting admission to 75% of students under the Open General category would not be infringed or violated, if points are awarded under the 'sibling criteria' to an applicant seeking admission under the Open General category, qua his/her sibling studying in the same school under DG/EWS category.

38. Further, if sibling of an applicant is studying under DG/EWS Category, there is no bar to such applicant seeking admission under the Open General Category. Denial of points for sibling studying in the same school under DG/EWS Category, would be totally discriminatory and unjustified.

39. Right to admit students of their choice by the Private Educational Institutions is subject to an objective and rational procedure of selection. The same has to be on the basis of criteria which is transparent, identifiable and reasonable.

40. Discriminating the petitioner in not awarding the 30 points of



sibling as per the criteria of the School, while awarding such points to other applicants whose brother/sister study under the General Category, violates the fundamental right of the petitioner to equality and to be given equal treatment. Such discrimination cannot be allowed to perpetrate especially in the field of education. Thus, action of the school cannot be upheld.

41. Supreme Court in the case of ***Chandan Banerjee and Others Vs Krishna Prosad Ghosh and Others, 2021 SCC OnLine SC 773***, while holding that classification between persons must not produce artificial inequalities, has held as follows:-

*“27. The principles which emerge from the above line of precedents can be summarised as follows:*

*(i) Classification between persons must not produce artificial inequalities. The classification must be founded on a reasonable basis and must bear nexus to the object and purpose sought to be achieved to pass the muster of Articles 14 and 16;*

*... ..”*

42. Similarly, in the case of ***Andhra Pradesh Dairy Development Corporation Federation Vs B. Narasimha Reddy and Others, (2011) 9 SCC 286***, Supreme Court has held as follows:-

*“29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to the legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone.”*

43. Imparting elementary and basic education has been held to be a constitutional obligation on the States as well as the societies running educational institutions. Thus, Supreme Court in the case of ***Major Saurabh Charan and Others Vs. Lieutenant Governor, NCT of Delhi and Others, 2014 SCC OnLine SC 436*** has held as follows:

*“16. Indisputably, imparting elementary and basic education is a constitutional obligation on the States as well as societies running educational institutions. This Court held that children are not only future citizens but also the future of the Earth. Elders in general and parents and teachers in particular owe a responsibility for taking care of the well-being and welfare of the children. In Brown v. Board of Education of Topeka [98 L Ed 873 : 347 US 483 (1954)] , Earl Warren, C.J., speaking for the US Supreme Court, emphasised the right to education in the following terms: (L Ed p. 880)*

*“Today, education is perhaps the most important function of State and local governments. ... It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.””*

44. This Court by its order dated 13.01.2023 had passed an interim direction that respondent No.3 School will reserve one seat for the petitioner during the pendency of the present writ petition.

45. Considering the detailed discussion hereinabove, this Court

holds that the action of the respondent No.3 School in not awarding 30 points of sibling to the petitioner as per its admission criteria, on the ground that the brother of the petitioner is studying under the DG Category, is arbitrary and discriminatory. When the fact remains undisputed that the sibling of the petitioner is studying in the respondent No.3 School, insistence on submission of only photocopy of latest school fee receipt of sibling studying in the school, is totally unreasonable and inadmissible.

46. In view thereof, the respondent School is directed to award the sibling points to the petitioner in terms of its admission criteria and grant admission to the petitioner in accordance with the procedure followed by the School.

47. The present writ petition is allowed in the aforesaid terms and the same is disposed of along with pending application.

APRIL 17<sup>th</sup>, 2023/*AV*

MINI PUSHKARNA, J