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

\+ W.P.(C) 11229/2024 & CM APPL. 46481/2024

MASTER JAI KUMAR THROUGH HIS FATHER MANISH KUMAR .....Petitioner

Through: Mr. Kotla Harshavardhan & Mr. Rishabh Arora, Advocates.

versus

AADHARSHILA VIDYA PEETH & ORS. .....Respondents

Through: Ms. Jyoti Taneja, Adv. for R-1.
Mr. Divyam Nandrajog, PC, GNCTD with Mr. Prakhyat Gargasya, Adv. for R-4 & 5.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 23.08.2024

1. A young citizen appears before this Court to redeem the constitutional promise of Right to Education made to him by Article 21A of the Constitution of India (hereinafter referred to as 'the Constitution'). The petitioner was selected for admission in Class-I in EWS category in a private unaided school in Delhi, and when he went to secure his admission, he was denied the same by the respondent-school. Aggrieved thereby, the petitioner in the instant writ petition has prayed for the following directions:-

> *" a. Issue an appropriate writ in the nature of certiorari under Article 226 of the Constitution of India, 1950 or any other appropriate writ, declaring that the Respondent No.1's action in*

denying admission to the Petitioner is violative of his fundamental rights to equality under Article 14 and to education under Article 21-A of the Constitution of India;

b. Issue an appropriate writ in the nature of mandamus under Article 226 of the Constitution of India, 1950 or any other appropriate writ, order or direction to the Respondent No.1 to forthwith grant admission to Petitioner in Class 1 as per the Circular dated 31.0the Circular dated 31.05.2024 issued by Respondent No. 5 (annexed herewith as Annexure P-9) read with the EWS/DG/CWSN Draw Result 2024-25 (annexed herewith as Annexure P-3);

c. Issue an appropriate writ in the nature of mandamus under Article 226 of the Constitution of India, 1950 or any other appropriate writ, order or direction for all other consequent relief, including but not limited to a direction to the Respondents to provide and/or assist the Petitioner with all the entitlements under the Right of Children to Free and Compulsory Education Act, 2009 read with Right of Children to Free and Compulsory Education Rules, 2009;

d. Issue an appropriate writ in the nature of mandamus under Article 226 of the Constitution of India, 1950 or any other appropriate writ, order or direction for all other consequent relief, including but not limited to a direction to the Respondent Nos 2 and 3 to initiate appropriate action against the Respondent School for denial of admission to the Petitioner;

e. Consequently, impose costs and fine on the Respondent No.1, punitive as well as compensatory in nature, for violation of the Petitioner's fundamental rights enshrined under Articles 14 and 21-A of the Constitution of India;"

2. The facts of the case would show *that* vide circular dated 17.01.2024, respondent No.5-Directorate of Education (hereinafter referred to as 'respondent-DoE') released the tentative list of vacancies in private unaided recognized schools of Delhi for online admission of EWS/DG and Children with Disabilities category students in entry level classes (i.e. Nursery, KG and Class I) for the academic session 2024-2025. As per the case of the

petitioner, respondent No.1-Aadharshila Vidya Peeth (hereinafter 'respondent-school') featured at serial No. 661 of the said list, wherein, 44 EWS/DG category seats were shown at entry level (Class Nursery), 3 EWS/DG seats from Nursery to KG and 16 EWS/DG seats from KG to Class I.

3. According to the petitioner, the concerned schools were also granted liberty in terms of the aforesaid circular to file a written representation in case of any discrepancy or error in the tentative list. The respondent-DoE extended the last date for filing representations/objections regarding the published tentative vacancies for online admission of students falling in EWS/DG category upto 02.02.2024. However, the fact remains that the respondent-DoE did not notify any change in the tentative vacancies available in private unaided recognised schools of Delhi released *vide* circular dated 17.01.2024.

4. The petitioner is studying in a school run by Municipal Corporation of Delhi (MCD) and belongs to EWS category. He was desirous of obtaining admission in Class I for the academic session 2024-25 against the vacancies notified for EWS category children and was found entitled for admission by the respondent-DoE *via* draw of lots on 31.05.2024, and he was also allotted the respondent-school. As per the Guidelines dated 31.05.2024, the last date for the successful applicants to report at the allotted schools for admission was 28.06.2024. The petitioner, therefore, states that on 05/06.06.2024, he visited the respondent-school for the first time with the requisite documents for his admission, however, the respondent-school did not even allow him to enter the school premises and the security staff at the gate informed that the school staff was unavailable due to the commencement of summer

vacations.

5. Mr. Kotla Harshavardhan, learned counsel for the petitioner submits that the petitioner visited the respondent-school for more than six-seven times between the period of 06.06.2024 to 30.06.2024, but he was never allowed to enter the school premises, and was returned by the security staff. The last date for admission, however, came to be extended till 15.07.2024. The petitioner, thereafter, again made an attempt on 01.07.2024, but to no avail. In light of his failed attempts to enter the school premises, the petitioner had also filed a complaint with the respondent-DoE, however, no action was taken. The last date for admission was finally extended up to 07.08.2024, however, despite various subsequent efforts, the petitioner remained unsuccessful in securing the admission. Being left with no other option, on 10.08.2024, the petitioner approached this Court by way of the instant writ petition.

6. The matter was first taken up for consideration on 13.08.2024, wherein, the same was directed to be listed before another Bench and hence, the same was called out for hearing on 22.08.2024. On 22.08.2024, the Court directed for issuance of notice and considering the urgency involved in the matter, the respondents were directed to file their counter affidavit.

7. As the matter was called out for hearing today, learned counsel appearing for the respondent-school presented a copy of the reply and opposed the submissions made in the instant writ petition. Let the said reply presented during the course of hearing be included in the digital record of the case.

8. No counter affidavit has been filed by the respondent-DoE. The said respondent, however, is represented by Mr. Divyam Nandrajog, Advocate.

9. The respondent-school in its counter affidavit states that the writ petition itself is not maintainable as the school is run by a private unaided society. The stand taken by the respondent-school is that it had declared a total number of 126 seats for the academic year 2024-25 for its entry level classes i.e., Nursery/Pre-School, and out of the total 126 seats, 94 were for the general category and 32 were reserved for the EWS/DG category students. Ms. Jyoti Taneja, learned counsel for the respondent-school submits that, as on date, the school has already admitted 88 students in the general category and 27 students in the EWS/DG category in Class Nursery. It is also submitted on behalf of the respondent-school that it had declared a total number of 126 seats for the academic year 2022-23 as well, and the respondent-school was required to admit 94 students in the General category and 32 students in the EWS category. According to learned counsel, as on date, the school has already admitted 94 number of students in the General category and 32 number of students in the EWS category for the academic year 2022-23 (and they have all been promoted to Class I in academic year 2024-25). It is submitted that there are, in fact, no vacant seats either in the General category or in the EWS category for the academic year 2024-25 in Class I.

10. The respondent-school, while placing reliance on a decision of the Division Bench of this Court in W.P. (C) 8434/2021 titled as ***Social Jurist v. Govt. of NCT of Delhi***, takes the position that the admission in a school has to be granted at one level only, either at pre-school, pre-primary or class I, and the school is not entitled to increase the number of seats in any class beyond entry level. It is, therefore, contended by the respondent-school that as of now, considering the pre-school admissions in academic session 2024-

25, and considering the academic session 2022-23 to be the entry level, the school fulfils the necessary requirement of admitting the students and in absence of any vacancy in the school, no writ can be issued to increase the intake capacity. The respondent-school has also presented the background of admissions for the academic years 2022-23, 2023-24 and 2024-25.

11. The respondent-school has also placed reliance on a decision passed by a Co-ordinate Bench of this Court in W.P. (C) 10504/2023 titled as ***Shivam Singla v. The Principal DAV Public School & Anr.*** to submit that the respondent-DOE was directed therein, to strictly ensure that all representations made by the schools for reduction of number of EWS/DG category seats for the coming academic year, when duly made within the prescribed time stipulated by the respondent-DoE, are disposed of, one way or the other, before the computerised draw of lots is held.

12. Learned counsel for the respondent-school, therefore, submits that the seat position which was notified by the respondent-DoE was immediately objected by the said school and the written representation was made on 19.01.2024 with regard to the circular dated 17.01.2024. She, therefore, submits that on account of non-timely disposal of the school's representation by the respondent-DoE or on account of inadvertent allotment of a seat by the respondent-DoE, the respondent-school should not be made to suffer. Learned counsel further indicates various difficulties which may be encountered by the respondent-school if any admission beyond the permissible intake capacity is directed to be granted by this Court.

13. Learned counsel appearing for the respondent-DoE, however, submits that on 24.04.2024, the respondent-DoE had finally uploaded the list of the vacant seats with respect to each of the schools and according to him, if any

school had any grievance, the same should have been opposed or necessary steps ought to have been taken. He further explains that even if the respondent-school had made any representation prior to 24.04.2024, the same stood rejected while uploading the final information on 24.04.2024. To support this contention, he has placed reliance on the decision of this Court in W.P. (C) 6747/2024 titled as ***Apeejay School, Sheikh Sarai v. Directorate of Education.*** The relevant paragraph of the said decision is reproduced herein for reference:-

> *"14. As per direction (c) in Rameshwar Jha, therefore,* ***the right to seek exemption is student-specific. The application for exemption has to be made within a week of the recommendation and notification of admission of a particular student under the "weaker section" quota to that school.*** *The application has to state the reasons why the school is not in a position to admit that particular student. Sub-condition (iv) in condition (c) makes it further clear that no exemption would be granted to the school at the cost of causing prejudice to the admission of the child and that the school would be granted exemption only after the child has been admitted to an alternate school in the closest neighborhood.*
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> *15. The decision in Rameshwar Jha is under challenge in Letter Patents Appeal, but the Division Bench has not deemed it appropriate to interdict the operation of the directions contained in the judgment. They, therefore, continue to operate and are binding on the DoE. This is especially so as Mr. Gupta has not been able to show me any decision, not considered in Rameshwar Jha, which holds to the contrary."*

14. Learned counsel appearing for the respondent-school, however, submits that even after 24.04.2024, the school opposed the finally updated list and also made various representations in that regard. She has also placed reliance on two representations, one of which is dated 03.06.2024 and the other is dated 15.07.2024, both have been marked as *Annexure-R-1/16 (colly).* According to her, even in those representations, the respondent-

school's position was made unambiguously clear to the respondent-DoE that the school did not have any vacant seat in Class I at least.

15. I have heard the learned counsels appearing for the parties and have perused the record.

Scope of Writ Jurisdiction

16. Before embarking upon the merits of the case at hand, it is necessary to fall back on the edifice on which the power of judicial review is exercised by the Constitutional Courts, more particularly in light of the objection raised by the learned counsel for the respondent-school *qua* the maintainability of the instant writ petition. Learned counsel's solitary contention with respect to maintainability is predicated on the ground that since the school in question is a private unaided institution, the same would not fall in the category of State, as understood in the context of Article 12 of the Constitution, and thus, it would not be amenable to writ jurisdiction. Thus, the first and foremost snag which the petitioner needs to overcome is whether he is entitled to seek remedy against the respondent-school under writ jurisdiction and as a natural corollary, whether this Court is clothed with the requisite jurisdiction to issue a writ bearing in mind the nature of relief sought by the petitioner and the character of the respondent-school.

17. The power of judicial review of a Constitutional Court is of a fundamental nature. It necessarily flows from the constitutional scheme which not only guarantees certain fundamental rights to the citizens (and persons), but also makes them enforceable against the State and its instrumentalities. The origin of judicial review is also traceable from the concept of separation of powers, more specifically from the concept of

checks and balances, which is meant to ensure that no organ of the State spreads its wings beyond the limits envisaged by the Constitution and encroaches upon the functions of any other organ. Judicial Review has been held to be a basic feature of the Constitution and therefore, any argument which seeks to deprive a Constitutional Court from its power of judicial review must be scrutinized on strict parameters. Even otherwise, the power of judicial review is meant for the protection of the citizens and therefore, a declaration of non-maintainability must require a high standard.

18. The exposition of law with respect to issuance of writs against private bodies is fairly well-settled in a catena of judgments rendered by the Supreme Court over the passage of time. In the case of ***Binny Ltd. & Anr. v. V. Sadasivan and Ors.***[1], the Supreme Court has enunciated in lucid terms that if a private body is discharging a public function and denial of any right is in respect of a public duty imposed upon such body, the public law remedy can be enforced. The said view can also be traced from the phraseology of Article 226 of the Constitution which takes in its sweep '*any other authority*' and thus, makes the private bodies engaged in discharging public functions, amenable to writ jurisdiction. The relevant paragraphs of the decision in ***Binny Ltd. (supra)*** is reproduced herein for reference:-

> ***"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function.*** *The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also*

[1] (2005) 6 SCC 657

been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. ***At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.....***

*29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is preeminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought****. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action.*** *Sometimes, it is difficult to distinguish between public law and private law remedies."*

19. The aforesaid view has been reiterated in the case of ***Janet Jeyapaul v. SRM University & Ors.***[2], wherein, it has been held that when a private body, even if it is not a State, exercises its public functions, the aggrieved person has a remedy not only under the ordinary law but also by way of a writ petition under Article 226 of the Constitution.

20. Though, the initial understanding of definition of 'State' under Article 12 of the Constitution was relatively parochial, primarily because of the fact that the core public functions were exercised by conventional government bodies or direct arms of the State. However, over the course of time, the demands of efficiency and performance necessitated the taking over of public functions, such as health, education etc., by varied bodies which were bestowed with the responsibility to discharge myriad kinds of duties. As a corollary, the grievances of the citizens for the non-performance of the public functions, and consequently for violation of their rights, were addressed by the Constitutional Courts by identifying such bodies in the ever-evolving category of 'any other authority' in Article 12. Notably, the nature of relief sought by the litigant also became one of the primary determinative factors in ascertaining the maintainability of the writ petition. However, the underlying element of public law, as understood against the concept of private law, became a pre-requisite for invoking the writ jurisdiction. In fact, a note of caution on this aspect was recorded by the Supreme Court in the case of ***K.K. Saksena v. International Commission on Irrigation & Drainage***[3], wherein, it has been succinctly held that the Constitutional Courts, while issuing any writ, particularly of mandamus, must be satisfied that the impugned action against which the challenge is laid in the writ petition, falls in the domain of public law. Thus, the public law dimension in the nature of relief is, to some extent, integral to determining the scope of judicial review under Article 226 of the

[2] 2015 (13) SCALE 622
[3] (2015) 4 SCC 670

Constitution. Paragraph no.43 of the decision in ***K.K. Saksena (supra)*** reads as under:-

> *"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is —State within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts.* ***Therefore, even if writ petition would be maintainable against an authority, which is —State under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."***

21. Therefore, merely because the body against which a writ is sought is a private body, a writ cannot be termed as non-maintainable unless the case is examined on other parameters including, but not limited to, the nature of relief sought by the petitioner, nature of function performed by the private body, duty imposed upon the private body, effect of non-performance on the fundamental rights of a person etc. Although, there could be no straight-jacketing of the parameters to be considered, it needs to be unequivocally noted that a public law element must be involved in the matter and the duty cast upon such body must be a public duty, in the sense that its non-performance affects the larger public interest of the society.

Fundamental Right to Education

22. The Constitution (86th Amendment) Act, 2002, passed by the Parliament, brought in existence Article 21A in Part-III of the Constitution. It provides a fundamental right to education and enjoins the State to provide

"free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine". Consequently, in order to give effect to the fundamental right to education, the Right of Children to Free and Compulsory Education Bill, 2008 was proposed and eventually, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'RTE Act')

23. The RTE Act has been brought in force with a *bonafide* belief that "*the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds."* Section 2(n) of the RTE Act which deals with the definition of 'school' also includes, as per sub-section (iv) therein, an unaided school not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority. Thus, in view of the pious foresight of Article 21A of the Constitution *vis-à-vis* Section 2(n) of the RTE Act, a public duty is cast upon the respondent-school to provide free and compulsory education in terms set out in the aforesaid enactments. Since the petitioner has alleged the infraction of his fundamental rights, which essentially relates to the breach of the aforesaid public duty cast upon the respondent-school, the objection raised by the learned counsel for the respondent-school regarding maintainability stands reduced to a surplusage. The same is, accordingly, overruled and the petition is found to be maintainable against the private school.

Determination of the Controversy

24. Having decided the maintainability of the present writ petition, the Court shall now proceed to examine the relief claimed by the petitioner on merits.

25. It is seen that the Government of NCT of Delhi, with an aim of fulfilling the mandate of Article 21A of the Constitution as well as the RTE Act, has evolved various methods for ensuring admissions of children belonging to weaker sections of the society. In essence, the said endeavour manifests the commitment of the Government in providing an equitable educational opportunity for all, which may be fruitfully cherished by the desired candidates through the 'Right to Education' flowing from the Constitution.

26. If the facts of the instant case are seen in right perspective, the same unequivocally indicate that the petitioner has been found to be entitled for admission in Class I on the basis of his merit and the category. It also remains undisputed that the petitioner's admission was indeed confirmed by the respondent-DoE. As asserted by the petitioner and which is also evident from the record, the petitioner approached the concerned school well within the stipulated time and he was ready and willing to complete all the required formalities.

27. It is necessary to note, with dismay, that the reply furnished by the respondent-school does not reveal any satisfactory ground as to why no entry was given to the petitioner despite several visits at the school. It is rather disheartening to find that the petitioner was made to run from pillar to post seeking his admission in the EWS category despite being found eligible and despite fulfilling all the requirements at his end. It is emblematic of

systemic inefficiencies which lead to the entrenchment of educational inequalities, instead of alleviating them. There is no specific denial with respect to the aforesaid position except the general denial to all the averments made by the petitioner. This, however, requires to be investigated in a greater detail and the Court would pass necessary order with respect to the aforesaid aspect as well. Afterall, as it has been held by this Court in W.P. (C) 4006/2021 titled as ***Master Singham v. Department of Education,*** that a law, however benevolent in its intentions, remains inefficacious unless those entrusted with its execution and implementation judiciously discharge their duties. This assumes even greater relevance in the context of beneficial and welfare legislations, which are meant to attend to the needs of individuals marginalised on the fringes of the society.

28. It was further noted by the Court in the said decision that the efficacious realization of the Constitution's inherent objectives goes beyond mere drafting and perusal. Thus, at the very least, all the stakeholders involved in the admission process of students, especially those who belong to the weaker sections of the society including EWS/DG category, are reasonably expected to ensure that any impression which may allude to any discriminatory treatment, either intentional or systemic, is not created in the minds of students or parents seeking admission. The respondent-school may have been run by a private un-aided society, but the fact remains that if a student is duly allotted a seat and approaches the school to claim his right, the entry of the student should not be outrightly denied therein.

29. Further, as per the stand taken by the learned counsel who appears for the respondent-DoE, there was no objection to the final updated list signifying the vacant position. The said position is, however, controverted

by the learned counsel who appears for the respondent-school. But the underlying fact remains that, by no prudent stretch of imagination, the petitioner could be said to be at fault with respect to the aforesaid aspect. The reason behind the suffering of the petitioner certainly is a communication gap between the respondent-DoE and the respondent-school. However, any contention to the effect that the said allotment has been done purportedly in contravention of any circular or against any other provision or scheme, could not be a determinative factor in ascertaining the right of the petitioner for getting admitted in the school in the EWS category.

30. Thus, the right of the petitioner cannot be curtailed merely on account of a miscommunication or any other procedural irregularity between the respondent-DoE and the respondent-school. Undeniably, the right of the petitioner to be admitted in a private school in the EWS category essentially flows from the Constitution alongwith the statutory mandate envisioned in the RTE Act. A fundamental right, especially when it unequivocally accrues in favour of a citizen, cannot be tossed out on the pretext of procedural grounds or on the grounds of inconvenience. The fact that he is currently enrolled and studying in a school run by the MCD does not have any bearing on determining his entitlement for getting admission in the respondent-school. No express provision has been shown by the respondent-school which may put a bar on the petitioner to seek admission in the respondent-school while studying in a school run by the MCD. Moreover, had the petitioner been intimated about the unavailability of vacant seats in the respondent-school during the allotment process itself, he could have opted/preferred some other school as per his choice and merit. However, the clock now cannot be turned back. The petitioner can no more exercise the

option to choose any other suitable school, though his eligibility/entitlement/credentials remain undisputed. If the Court were to ask him today to continue in the MCD school, the same would be tantamount to an onslaught on his constitutional rights and the Constitutional Court would be failing in its duty to secure the fundamental rights of the young citizen who is before this Court.

31. In the considered opinion of this Court, the RTE Act is a remarkable feat in reinforcing our democracy's commitment to equality of opportunity and the same paves an egalitarian path for all the students to follow, irrespective of their financial dynamics. Therefore, the denial of admission to any child once the allotment has been made, would be in violation of the pious and ambitious objectives which the RTE Act seeks to achieve. Put otherwise, once an impression of legitimate expectation of admission is triggered in the minds of students who successfully find their names post draw of lots, it is for the Constitutional Courts to protect their interests and free them from the shackles of procedural convolutions in order to meet the ends of justice.

32. A Coordinate Bench in a recent judgment in W.P. (C) 9810/2024 titled as ***Gunjan as Guardian of Pihu v. Govt. of NCT of Delhi & Anr.*** has observed that any injury to the dignity of a student belonging to the EWS/DG category, who is made to feel unequal because of insensitive systemic treatment by any of the stakeholders, is a deeply damaging injury. In such events, it is the duty of the Court to resolve any roadblocks for smoother implementation of the RTE Act and the admission procedure therein, resultantly, ensuring a dignified experience for the students as well as the parents. The Court, in the aforesaid case, has further noted that

multiple parents/guardians/students have approached this Court on various occasions citing the indifferent attitude of certain schools towards the students granted admissions under the EWS/DG category. The grievances ventilated by the students and their representatives include not permitting entry into the premises of the institution, direct and indirect show of disrespect and contempt in the admission procedure, only to name a few. To resolve the issues, the Court has also passed certain directions to the respondent-DoE as well as the private schools, which includes appointment of Nodal Officers by the private schools for overseeing admissions under the EWS/DG category.

33. It is pertinent to lend credence on the decision of a Coordinate Bench of this Court in the case of ***Samar Deval v. Directorate of Education***[4], wherein, it has been held that once a student falling in the disadvantaged category is allotted a school by the Department of Education, the said decision cannot be retracted keeping in mind the larger objectives which the RTE Act seeks to achieve. The Court has categorically held that denial of admission to any child after allotment of school in EWS category militates against the express provisions of the RTE Act. The relevant paragraphs of the said decision read as under:-

> ***"8. Denial of admission to any child under DG/EWS category after allotment of school by DOE pursuant to the due procedure followed by it, would be in violation of the object as well as express provisions of The Right of Children To Free and Compulsory Education Act, 2009 (RTE Act, 2009), which provides for free and compulsory education to every child between the ages of 6 to 14 years***. *Pertinently, under Section 3 of the RTE Act, 2009, Right of education of a child between the ages of 6 to 14 years is expressly and unconditionally recognised. It deserves consideration that in addition, it is further*

[4] 2023 SCC OnLine Del 1282

provided that such right shall be ensured to a child between the said age groups uptill the completion of his/her elementary education.

9. *It is no longer res-integra in as much as the Courts have held time and again that the 25% reservation requirement for filling up seats in unaided private schools, in respect of children belonging to economically weaker sections and the disadvantaged groups, has to be mandatorily complied with.*

10. *Section 12 of the RTE Act, 2009 expressly provides for reservation of atleast 25% for the weaker sections and the disadvantaged groups, as defined under the said Act. Thus, once, it is established that the child belongs to economically weaker section of the society or disadvantaged group and after satisfaction on this account, school has been allotted by DOE as per its due procedure, such child is entitled to get admission in the allotted school under the said category.*

11. In the present case, the petitioner child has been duly allotted the respondent school by the DOE under the DG category after following its due procedure. Thus, the petitioner is entitled to be granted admission in the school."

34. In the case of ***Arpit v. Adriel High School***[5], while dealing with almost a similar controversy, this Court reiterated the consistent view adopted by the Court that once the students are shortlisted for admission in various schools based on computerized draw of lots, the same would create a crystallized right in favour of the students and the school cannot deny them admission thereafter. The relevant paragraphs of the said decision read as under:-

"5. The issue in controversy in this writ petition is similar to that which has arisen before this Court in a large number of cases including some of which were taken up even today. This Court has consistently adopted the view that, if a child applies for admission to a school as an EWS candidate, and the DoE circulates the seat matrix of the schools indicating the number of general and EWS category of seats available with them, any school which does not represent against the seat matrix within the time granted in that regard would be bound by the outcome of the draw of lots conducted by the DoE.

[5] 2024 SCC OnLine Del 3152

6. The children who are shortlisted for admission to various schools on the basis of the computerised draw of lots would be entitled as a right to such admission and the schools cannot refuse to admit them."

35. It is also noteworthy that the instant case is not the one which involves professional education. The seat matrix up to the permissible intake and other relevant factors can always be worked out depending upon various circumstances, as may be available. Admittedly, in the present case, the last date for admission expired on 07.08.2024. It is, thus, presumed that the academic session has not substantially progressed. Looking at the overall facts and circumstances of the case, the Court is unable to accept the submissions made by learned counsel appearing on behalf of the respondent-school that in no case the Constitutional Court should cause interference in the admission process of an un-aided private school. Evidently, as already discussed above, imparting of education by an un-aided private institution, evaluated on the touchstone of the Constitutional scheme and statutory mandate under RTE Act, falls within the definition of public duty. Thus, the corresponding breach of such duty has to be redressed while exercising writ jurisdiction.

36. So far as the decision relied upon by the learned counsel in the case of ***Shivam Singla (supra)*** is concerned, the same at best would require the respondent-DoE to *"strictly ensure that all representations made by schools for reduction of number of EWS/DG category seats for the ensuing academic year, if made within the time granted by the DoE in that regard, are disposed of, one way or the other, before the computerised draw of lots is held."*

37. In the instant case, the issue as to whether the said compliance has

been made or otherwise will not have any bearing so far as the right of the petitioner to admission in EWS category is concerned. Even the inquiry in that regard and its result, be taken into consideration by evolving further modalities. However, so far as the right of the petitioner to seek admission in respondent-school is concerned, the same stands crystallized and is fully affirmed. On conspectus of the aforesaid situation, the Court deems it appropriate to pass the following directions with respect to the prayer made by the petitioner in the instant petition:-

(i) The respondent-school is directed to allow the petitioner to complete the admission formalities by 27.08.2024 and any deviance or non-compliance thereto by the respondent-school, shall be dealt with sternly;

(ii) The Secretary, Department of Education, GNCTD is directed to initiate an inquiry to ascertain who is at fault in creating an anomaly, wherein, the seat came to be allotted to the petitioner and to fix accountability in accordance with law before the next date of hearing;

(iii) The Secretary, Department of Education, GNCTD shall place on record the steps, if any, taken by the department to impart suitable sensitization training to the teaching and non-teaching staff of the private un-aided schools for proper implementation of the RTE Act in letter and spirit;

(iv) Since the fact with respect to allowing the petitioner to enter into the school premises is disputed by the learned counsel for the respondent-school, therefore, the same requires an adequate inquiry. Let an inquiry with respect to the aforesaid

aspect be conducted by a competent officer designated by the Commissioner of Police, New Delhi, before the next date of hearing. The respondent-school is directed to preserve the CCTV footage forthwith, to be retrieved from the CCTV so installed at the Gate/premises of the respondent-school, and to make it available for the inquiry directed above.

38. Let a copy of this order be conveyed by the Registry to the Commissioner of Police, New Delhi and Secretary, Department of Education, GNCTD for appropriate action in terms of the aforesaid directions.

39. List on 09.09.2024 for compliance.

40. *Dasti*.

PURUSHAINDRA KUMAR KAURAV, J.

AUGUST 23, 2024/p