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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO...................OF 2013

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 17305 OF 2012

IN THE MATTER OF:

Federation of Public Schools   ...PETITIONER

VERSUS

Government of National Capital Territory of Delhi

and Ors   ...RESPONDENT

AND

IN THE MATTER OF:

iJustice - an initiative by Centre for Civil Society ,
Through it's President – Parth J Shah, resident at
A-69 Hauz Khas,
New Delhi 110 016.

...APPLICANT/ INTERVENER

APPLICATION FOR DIRECTIONS

To,

The Hon'ble Chief Justice of India and His Companion Justices
of the Supreme Court of India .

The humble petition of the
petitioner above named

MOST RESPECTFULLY SHEWETH

1. That the aforementioned Special Leave Petition has been preferred under Article 136 of the Constitution of India against the impugned judgment and final order dated 31.01.2012 passed by Division Bench of High Court of Delhi in WP (C) 636 of 2012, whereby the Division Bench of the High Court of Delhi was pleased to direct as under:

    (i) Admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 Km. of the specific schools;

    (ii) In case the vacancies remain unfilled, students residing within 3 kms. of the schools shall be admitted;

    (iii) If there are still vacancies, then the admission shall be offered to other students residing within 6 kms. of the institutions;

    (iv) Students residing beyond 6 kms. shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 kms. area.

2. That the applicant herein - iJustice is a public interest legal advocacy initiative incubated by Centre for Civil Society and Asia Centre for Enterprise which supports and assists individuals and groups across India to challenge violations of fundamental rights and rule of law. iJustice uses strategic litigation and advocacy on issues which apart from having an impact on the lives of litigants, have the ability to set precedents on the limits of constitutional powers exercised through state action. Centre for Civil Society (CCS) is a public

policy think tank advancing personal, social, economic and political freedoms. It aims to usher in an intellectual revolution that encourages people to look beyond the obvious, think beyond good intentions and act beyond activism. CCS concentrates on bringing affordable, quality k-12 education to all, livelihood freedom to the enterprising poor and good governance through policy reform.

3. It is humbly submitted that Section 12 of the Act does not specify a neighbourhood criterion for the purposes of admission. However, Rule 10(3) of the Delhi RTE Rules state that the neighbourhood criterion adopted for establishing new schools under Rule 6(1) shall apply to admissions made under Section 12.

4. It is submitted that undisputedly the private unaided schools under the Act are obliged to fill up 25% of the seats for children belonging to EWS and disadvantaged groups. It is immaterial to the private unaided schools whether such children are residing within a distance of one kilometer or more. RTE being a child-centric Act, the penultimate objective of the Act is to ensure access to education rather than making distance a barrier to education. The grievance if any should be of the children and/ or their parents for the inability of the Government, in spite of legislation, being unable to provide schools within the neighbourhood as defined.

5. It is submitted that if the obligation on the private unaided schools to admit children belonging to EWS and

disadvantaged groups is limited to those children only, who are residing within a distance of 1 Km. from the school, the same may result in a large number of such children even though willing for the sake of acquiring education to travel more than 1 Km. being deprived thereof for the reason of there being no seats in the school within their neighbourhood. It may also result in several of the private unaided schools who do not have sufficient number of such children within their defined neighbourhood allocating the seats so remaining unfilled to the general category students.

6. It is humbly submitted that neighbourhood criteria restricts choices for children and their parents which is against the spirit of the Act. The said criteria is unreasonable as there cannot be equal distribution of EWS and disadvantaged category children across the city or surrounding private unaided schools. It is natural that there would be non-uniformity and unequal distribution of EWS and disadvantaged category children across the city. Hence, a stringent criteria based on distance that allows private unaided schools to deny admission is against the spirit of the parent Act.

7. It is humbly submitted that poor neighbourhood such as slums or low-income habitations are likely to have fewer unaided schools. Also, the population density of eligible children is not even across all areas leading to a situation where the reserved seats in schools located in high density are over-

subscribed while those that are in schools located in low-density areas remain vacant. Hence, the neighbourhood limit restricts the choice and access of unaided schools for economically weaker sections and disadvantaged groups jeopardising the very objective of Section 12 of RTE Act 2009.

8. It is submitted that the neighbourhood limit has led to the requirement of address proof which families have found difficult to procure. The poor families migrate several times within a city. Moreover, this results in loss of several work days and often involves payment of bribes.

9. It is submitted that the removal of neighbourhood limit would do away with the hassle of securing an address proof. Children residing outside the walk-able distance desirous of applying for admission would secure their own transportation arrangement. This will expand the choice of schools for families living in neighbourhoods lacking good schools.

10. It is submitted that the strict neighbourhood limit puts the burden of proof on children. Due to lack of geo-spatial mapping at every village, town, and city, this leads to disputes between the school and children's family. Even in places where GIS mapping has been done, only aerial distance can be calculated. This has led to a practice in certain states such as Delhi where schools put up a list of colonies that they consider within a walk-able distance of 1 km and often one part of a colony falls inside the limit while the other part

outside. The requirement of address proof to access education is against the spirit of the RTE Act, 2009.

11. It is submitted that apart from the problem of address proof, there are several other concerns arising from neighbourhood condition:

   a. Information Asymmetry: Information is available from schools just before the admission season opens. This makes it difficult for the parents to decide and apply to multiple schools at a time.

   b. Multiple sets of documentary proofs required: Application form and documentary proofs need to be submitted separately at each school. Applications are often rejected due to non-availability of proofs.

   c. High opportunity and transaction costs: Parents apply to a limited number of schools due to high opportunity and transaction costs associated with multiple applications.

   d. High logistical cost: Each school conducts individual lottery and calls parents and designated officers for observation incurring high logistical and transaction costs.

   e. Priority dilemma: If a child is successful in more than one lottery, family takes a call. Decision time on priority is very small. Multiple lottery schedules in schools create priority dilemmas.

   f. Not strategy proof: If a child is unsuccessful in the first lottery, s/he waits for the waiting lists to be declared.

Since only a few schools were applied to, schools farther away may still have vacant seats.

g. Non-transparent: This system is non-transparent and has high monitoring costs.

12. It is submitted that in the aforesaid system, it is very difficult for the government to monitor each and every private school whether the seats are being duly filled or not. Some top private schools have been reported to have sold the seats reserved for EWS children. A true and typed copy of a news report entitled "Top Delhi schools flout norms, sell nursery seats for several lakhs" by Sakshi Khanna published on IBN website dated 11.12.2012 is annexed herewith as **Annexure A-1.**

13. It is submitted that therefore the aforesaid mechanism being unreasonable and arbitrary violates Article 14 and 21-A of the Constitution of India.

14. It is humbly submitted and proposed that the local authority or appropriate government should conduct a centralised lottery instead of individual school-level lotteries. The procedure for such centralized lottery will be as follows:

a. A child selects multiple schools to apply and sets a preference order for each school. The system allots a random preference for all participating schools that are not selected by the child.

b. At the first iteration, the system groups all children having first preference for a particular school and allots

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them a random queue number. Similarly, all children having second preference are grouped and allotted a random queue number and so on.

c. For that particular school, each group of children is placed one below the other in decreasing order of preference. So, the randomised group of children with first preference is at the top followed by the randomised group of children with second preference and so on.

d. In this sorted list, the children are ranked upto the number of available seats in that particular school. Beyond that, the children are allotted waitlist numbers.

e. Similarly, at successive iterations, lotteries are conducted for each school.

f. After all iterations, each child can view the schools where s/he has been ranked or shortlisted. A child can either accept admission at any school where s/he has been ranked or wait for others to reject their admission. If a child accepts admission, s/he is shown as rejected in all other schools. In such school, the waitlist moves by one. This is updated live and all children can view their current rank or waitlist number.

g. There is a fixed window to accept admission to the most-preferred school where you have been ranked. After the first window, the application status of each child is updated. If a child gets allotment at a school of higher preference where he was earlier waitlisted, s/he

is given an option to switch admissions. This is updated live and waitlisted children accept and reject admissions.

h. After two or three windows, the application process is wounded up.

15. It is submitted that Centralised lottery is clearly the best mechanism for it has the following features:

a. Information Symmetry: A centralised lottery website will have all the information required for applying under Section 12. The information will be available at least 2-3 months before the beginning of admission season.

b. Single set of documentary proof required: At the time of application, only the application form will be submitted. The documentary proofs would be verified only at the time of admission. This will provide enough time for parents to secure all the proofs.

c. Low opportunity cost and transaction costs: The centralised system will provide a single window to apply to any number of unaided schools. Preference can be built-in to the system for neighbourhood or income criteria. A child will select from the list of schools and will be able to apply to multiple schools at once. This will eliminate the travel costs and reduce the loss in work-days.

d. No logistical costs: The centralised system will conduct all school lotteries at once. This will eliminate the

logistical costs incurred by schools in a school-level lottery process and the opportunity cost to families observing the lottery process.

e. Efficient: The centralised system will conduct a randomised lottery. This kind of lottery will be pareto-efficient and strategy proof. The decision time is uniform for all children and there are no priority dilemmas.

f. Transparent: The system is transparent and cost-effective. The appropriate government or local authority would facilitate the entire process.

16. In view of the submissions made above, the applicant herein seeks kind indulgence of the Hon'ble Court to pass directions for adoption of centralized lottery system to be conducted by appropriate Government authority.

17. This application is made bona fide and in the interests of justice.

PRAYER

It is therefore prayed that the Hon'ble Court may be pleased to:

I. Direct the appropriate government or authority to conduct centralized lottery for all EWS and disadvantaged category children for the purpose of s.12 of RTE Act 2009;

II. Dismiss the Special Leave Petition filed by the petitioner, i.e. Federation of Private Schools;

III. And pass such other order or orders as it may deem fit and proper

NEW DELHI

FILED ON 5·12·13   DRAWN AND FILED BY

(SAVITA SINGH)
Advocate for the Applicant