GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF EDUCATION
DIRECTORATE OF EDUCATION: ACT BRANCH
OLD SECRETARIAT, DELHI-54

No. F.15/DE(ACT)/WPC-6439/2011/ 6214-20 Dated: 27/12/12

CIRCULAR

Subject: High Court Order dated 04.12.2012 regarding EWS admission in respect of concerned recognized unaided schools (including minority schools) which have been allotted land by Govt. agencies.

Please find enclosed order dated 04.12.2012 of Hon'ble High Court in WPC No. 6439/2011 in the matter of Mahipal Sawaria Vs GNCT of Delhi & WPC No. 3715/2011 in the matter of Ashok Kumar Thakur Vs GNCT of Delhi & Ors on the above said subject, which is self explanatory for **immediate necessary action** by the concerned unaided recognized schools including minority schools.

The obligation for admission at entry level by the above said court order shall be adhered to by the concerned school as per the admission schedule issued vide order dated 13.12.2012.

Detailed notification in this regard will follow soon.

The counter affidavit filed by the Directorate of Education in these cases can be seen on the department website at www.edudel.nic.in.

27.12.12

DR. MADHU RANI TEOTIA, IAS
ADDL. DIRECTOR OF EDUCATION (ACT-I)

Management of all Recognized Un-aided Schools

No. F.15/DE(ACT)/WPC-6439/2011/ 6214-20 Dated: 27/12/12

Copy to:-

1. P.S. to Secretary(Education), Dte. of Education, Old Secretariat, Delhi
2. P.S. to Director(Education), Dte. of Education, Old Secretariat, Delhi
3. All RDEs/DDEs, Dte. of Education
4. Addl. D.E.(Act-I), Dte. of Education, Old Secretariat
5. O.S.(IT), with the request to up load on the department's website
6. Guard File.

27.12.12

(P LATA TARA)
ASSTT. DIRECTOR OF EDUCATION (ACT-I)

224/C

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

WP (C) Nos.3715/2011 and 6439/2011 Page 1 of 2

O R D E R

04.12.2012

Learned counsel for the petitioner states that he is satisfied with the stand of the Government of NCT of Delhi reflected in its affidavit affirmed on 3.12.2012. He further submits that once para 18 of the affidavit is complied with the individual grievances would be raised before the relevant schools/authorities keeping in mind the modification to the notification issued. In view of the satisfaction of his grievance learned counsel does not press the writ petition.

Dismissed as withdrawn.

SANJAY KISHAN KAUL, J.

DECEMBER 04, 2012 VIPIN SANGHI, J.

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3715/2011

ASHOK KUMAR THAKUR ..... Petitioner

Through: Mr. Ashok Agarwal, Mr. Khagesh Jha,

Ms. Kushum Sharma and Ms. Nisha Tomar,
Advs.

versus

BALBHARATI PUBLIC SCHOOL and ORS. ..... Respondents

Through: Ms. Shawana Bari, Adv. for

Mr. Rajiv Nanda, Additional Standing
Counsel, GNCTD.

Dr. Subrat Deb, Adv. for the DDA.

W.P.(C) 6439/2011

MAHIPAL SANWARIA ..... Petitioner

Through: Mr. K. Venkatraman, Adv.

versus

DIRECTORATE OF EDUCATION and ANR. ..... Respondent

Through: Ms. Shobhana Takiar, Adv. for GNCTD.

Mr. Maninder Singh, Sr. Adv. with

Mr. Sushil Dutt Salwan, Mr. Akhil Sibal and
Mr. Kamal Gupta, Advs. for Federation
of Public Schools.

(1)

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 6439/2011

In the matter of:

Mahipal Sanwaria — Petitioner

Vs.

Directorate of Education & others — Respondents

AFFIDAVIT ON BEHALF OF THE RESPONDENTS IN COMPLIANCE WITH ORDER DATED 24TH SEPTEMBER 2012.

Affidavit of Shri Udit Prakash, aged about 29 years, Directorate of Education, Govt. Of NCT of Delhi, Old Secretariat, Delhi 110054.

I, the above named deponent, do hereby on the basis of information derived from official records solemnly affirm and declare as under:

1. That at present I am working as Additional Director with the Respondent. As such I am conversant with the facts of the case on the basis of information derived from official records, and I am competent and authorised to depose the present affidavit.

2. That in the present petition the petitioner has challenged the Notification dated 07.01.2011 regarding Delhi School Education (Free seats for students belonging to Economically Weaker Sections and Disadvantaged Group) Order issued by the Directorate of Education in supersession of its earlier Notification dated 25.01.2007.

3. That during the pendency of the present petition, the Hon'ble Supreme Court in judgment reported in 2012 (6) SCC 1 titled 'Society for Unaided Private Schools of Rajasthan vs. Union of India' upheld the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter to be referred to as "the said Act") consequently repealed the challenge to the provisions of the said Act.

4. That after disposal of the petition before the Hon'ble Supreme Court, now the surviving issue for adjudication by this Hon'ble Court has already been observed by this Hon'ble Court in its order dated 24th September 2012 as follows:

> "The *principal question thus being posed is that the terms and conditions of the lease which are in the nature of a grant by the Government cannot be washed away and even if there is no obligation or lesser obligation under the said Act, the obligations of the lease must be met.*
>
> *It appears that the aforesaid has not received the attention of the respondents and provision has been made to ensure that the terms of the lease are adhered to. The result is that some schools are stated to be under a misconception that if they are outside the scope of the said Act, they are absolved even of their obligations under the terms of the lease. Further some of the schools who are covered by the said Act may again have a misapprehension that to the extent that the lease provides for a higher obligation, the same is waived. It is common ground that this cannot be so."*

5. That the brief facts for proper, just and objective appreciation of the issues involved in the present case are as follows:

(a) **Background for issuance of Notification dated 25th January 2007**

(i) A Public interest Litigation No.3156/02 titled "Social Jurists Vs Govt. of NCT of Delhi & Others" was filed by one NGO in the year 2002, contending that the matter regarding non fulfilment of social obligation of unaided recognized private schools in Delhi to whom land had been allotted on concessional rates, was not being fulfilled and monitored.

In pursuance to the order passed in the said petition the Hon'ble Court directed the Director of Education to frame rules. The respondent after deliberations at different levels, decided to provide a minimum of 20% free ship for

children of economically weaker sections, and the respondent issued office order dated 27.4.2004 for all schools, irrespective of whether land was allotted by land owning agencies or was privately owned. Copy of the same is annexed as **Annexure-R-1**.

The said notification was challenged.

(ii) Further, in another petition, WPC 19925-31/04 titled "DPS & Ors. Vs. Govt. of NCT of Delhi filed by DPS Society and others", to whom also the land was allotted by land owning agencies, but did not have this condition of free-ship mentioned in their lease-deeds, the Hon'ble High Court stayed the operation of the order itself.

b) In the meanwhile during pendency of the petitions the higher authorities of the Respondent on 25.9.2006 took decision as follows:

(i) Free ship quota shall be applicable to all recognized unaided schools which have been allotted land by government agencies in Delhi irrespective of the fact whether there is any mention of stipulation in the allotment letter or in the lease deed and the quantum of free ship specified or not. In the interest of inclusive education as brought out in the committee's report the children admitted in the free ship quota will study in the regular school hours/shift and not in a separate exclusive arrangement.

(ii) Free ship quota would not be enforced in respect of those schools who have not been allotted land by any government agency. However, students already admitted in these schools under free ship quota in terms of the earlier order of directorate dated 27.4.04 shall continue to be given free ship, in public interest, to avoid disruption in their studies.

(iii) There shall be a total 20% free ship quota in all fresh admissions from the academic year 2007-08. These fresh

admissions shall include admissions at entry level (Pre-Primary or primary, whichever is the entry level in that school) and in all other admissions in other classes, free ship shall be granted to every 5th student to be admitted.

(iv) Children admitted under free ship quota in these schools shall get financial assistance from the year 2007-08 only for uniform and books, at par with what is given to students studying in the government schools under the Directorate. The financial assistance shall be disbursed as reimbursement to these children in cash, through the Heads of these schools, who shall ensure that it is actually disbursed to the concerned children.

(v) Free ship would include tuition fee as well as any other specific charges/fee/fund which are not earmarked levies.

(vi) The students already admitted under free ship quota in terms of order dated 27.4.04 will also be entitled for financial assistance from the year 2007-08.

(vii) The criteria for eligibility of students shall be that the annual parental income from all sources should not exceed one lakh.

(viii) A fresh detailed order to this effect shall be issued, by the Directorate of Education, after obtaining clearance from the Hon'ble Court.

Copy of affidavit filed in this Hon'ble Court in respect of aforesaid decisions is annexed herewith as **Annexure- R-2.**

6. That the Hon'ble Court vide order dated 30.11.2006 in the said petition observed that it was for the Government to implement the policy decisions. Accordingly, the Notification dated 25.01.2007 was issued.

7. That relevant clause of the said Notification dated 25.01.2007 read as under:

"Clause 3 (I): Notwithstanding anything contained in the terms and conditions of the lease-deed pertaining to the land allotted to it for

such school, the management shall provide free seats, not less than twenty per cent of total seats in each class to the child belonging to economically weaker section."

8. That the said Notification dated 25.1.2007 was also challenged before the Hon'ble Court and vide interim order dated 30.5.2007 the Hon'ble Court issued directions for admission of students from weaker sections of the society as defined in Notification dated 25.1.2007 to the extent of minimum 10 % + 5% for wards of teaching and non-teaching staff employed in the school for the academic session 2008-09.

9. That the Hon'ble Court had also made it clear that the said order was only interim arrangement and left all issues raised in the writ petitions including those relating to the validity of two notifications dated 27.4.2004 and 25.1.2007 open for examination at the final hearing of writ petitions.

10. That in another petition W.P.(C) 3061/2007 titled Carmel Convent School Vs DoE & Ors., the Hon'ble Court in its order dated 06.12.2007, annexed as **Annexure – R-3** passed an order as under :-

> "We *make it clear that 15% freeship to weaker sections of the society including 5% for wards of teaching and non-teaching staff is applicable to the appellant, but the appellant is at liberty to give admission to economically backward students belonging to minority community without any restriction. The writ petition shall be listed on 13th February, 2007, when all other connected matters are coming up for hearing."*

11. That consequent upon coming into force of Right to Free and Compulsory Education Act, 2009, in consonance with the said Act, the Notification dated 07.01.2011 was issued in supersession of earlier notification in view of the provisions of section 12(c) thereof.

12. That clause 3(a) of Notification dated 7.01.2011 reads as under:-

"All schools should admit children in class one to the extent of at least twenty five per cent of the strength of that class, children belonging to weaker section and disadvantaged groups in neighbourhood and provide free and compulsory elementary education till its completion; provided that where such school imparts pre-school education, the provisions shall apply for admission to such pre-school education."

13. That the said notification has been challenged in the instant petition to the extent it supersedes the notification dated 25.01.2007, as mentioned above.

14. That now following points emerge from the foregoing:-

(i) Obligation of the private un-aided recognized schools to provide for admission of EWS children under the lease deed/land allotment letters as notified in the Notification dated 25.01.2007 in terms of the policy decisions taken in the meeting chaired by the Hon'ble Chief Minister, is distinct from the obligations of such private schools of free admission of EWS under Section 12 of the Right to Education Act 2009.

(ii) While under the earlier notification dated 25.1.2007 the private schools who have been allotted land by Govt. Agencies are under obligation to provide for 20% admissions of such children in each of the class i.e. from class-I (including Pre-School, Pre-Primary wherever it is applicable) to class 8^{th}, 10^{th} or 12^{th} as the case may be, the obligation of 25% admissions under EWS and Disadvantaged Group Category in terms of the provisions of RTE Act 2009 is restricted only to the entry class i.e. class- I, Pre-School and Pre-Primary as the case may be. It has already been held by the Hon'ble High Court in a separate order that wherever the schools are running from Pre-School and/or Pre-Primary in addition to class I, admissions under EWS and Disadvantaged Group Category are to be provided at all these levels.

(iii) Second proviso to sub-sec. 2 of Section 12 of RTE Act 2009provides for that no re-imbursement in respect of children

admitted in a school under EWS and Disadvantaged Group Category would be there to the extent it has obligation in terms of land deed/land allotment. The same is reproduced below verbatim:

" Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation."

15. That this shows that the obligations of the private schools whether they have been allotted land by Government agency or not are clubbed under the RTE Act 2009 and the only distinction is that in case they have been allotted land to the extent of such obligation they will not receive re-imbursement. As such a class/section, for example the entry class, in which 25 % of the total children admitted belong to EWS and Disadvantaged Group category as per the provisions of the RTE Act, there need not be further admissions in terms of provisions of the notification dated 25.1.2007 based on the obligations under the lease-deed/land allotment letter. The class/section in which no such students are admitted, the schools which have been allotted land by the government agencies shall have to offer 20% of the admissions to the children belonging to EWS. This obligation of 20% admissions of EWS in terms of Notification dated 25.1.2007 will be applicable to all the schools who have been allotted land and were covered under the said Notification dated 25.1.2007.

16. Since the said Notification dated 25.01.2007 is also under challenge in Hon'ble Court, in terms of Order dated 30.5.2007 admissions to the extent of 15 % viz. 10% as per the EWS norms and 5% for the staff of the school, will be applicable till the disposal of the said writ petitions or till modification of these interim orders by the Hon'ble High Court.

17. This obligation shall be applicable to all schools even if they are a school run by minority community as the obligation flows from the provisions of the lease-deed/land allotment letter.

18. That to ensure the implementation of the above policy decision, modification of the Notification dated 07.01.2011 is under proces-

It is submitted accordingly.

DEPONENT

VERIFICATION:

I, the above named deponent, do hereby verify that the contents of my aforesaid affidavit are true and correct to my knowledge on the basis of information derived from official records, no part thereof and nothing material has been concealed there from.

Verified at New Delhi on this day of 03rd December 2012.

DEPONENT