

**GOVERNMENT OF N.C.T. OF DELHI
DIRECTORATE OF EDUCATION (ACT-I BRANCH)
OLD SECRETARIATE, DELHI - 110 054**

No. DE-15/Act-I/WPC No.3168/13/2013/11734-11738

Dated: 14/11/13

CIRCULAR

Attention of all recognized unaided private schools is invited to this Directorate's notification No. 15(172)/DE/Act/2013/69 dated 07/01/2011 issued in exercise of powers conferred by section 3 (1) of the Delhi School Education Act 1973 (18 of 1973) read with rule 43 of Delhi School Education Rules 1973 and under the provisions of the Right of Children to Free and Compulsory Education Act, 2009. In this regard Hon'ble High Court of Delhi in its judgement dated 07.10.2013 in WP (C) No. 3168/2013, titled Himangi Vs Govt. of NCT of Delhi has restricted the meaning of Clause 2 (c) of said notification, defining - "Child belonging to Weaker Section" only to mean a child whose parents have total annual income of less than one lakh rupees from all sources. The minimum residency period of 3 years in Delhi for applying to admission under EWS/DG categories has been quashed.

The above directions of Hon'ble High court of Delhi are to be strictly complied with by all private unaided schools.

This issues with the prior approval of Competent Authority.

The detailed judgement dated 07.10.2013 in the above said case is available under the given link.


ADDL. DIRECTOR OF EDUCATION (ACT 1)

To

The Management of all unaided recognized private schools.

No. DE-15/Act-I/WPC No.3168/13/2013/11734-38

Dated: 14/11/13

Copy to :

1. P.S. to Principal Secretary (Education), Directorate of Education.
2. P.S. to Director (Education), Directorate of Education.
3. All RDEs/DDEs, Directorate of Education.
4. O.S. (I.T.) with the request to up-load on the department's website in Public Circulars.
5. Guard file.


(P.LATA TARA)

ASSTT. DIRECTOR OF EDUCATION (ACT 1)

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

% Date of Decision: 07.10.2013

+ W.P.(C) 3168/2013 and CM No. 6022/2013 (stay)

HIMANGI Petitioner

Through: Mr Khagesh B. Jha, Adv.

versus

GNCT OF DELHI Respondent

Through: Ms Zubeda Begum and Ms Sana
Ansari, Advs.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

Section 12(1)(c) of the Right to Education Act mandates a school specified in sub-clause (iii) and (iv) of clause (n) of Section 2 to admit in class I, to the extent of at least 25% of the strength of that class, 'children belonging to weaker section and disadvantaged group' in the neighbourhood and provide free and compulsory elementary education till its completion. Where a school specified in clause (n) of Section 2 imparts pre-school education, the aforesaid provision also applies for admission to such pre-school education.



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2. Section 2(n) of the RTE Act, to the extent it is relevant, reads as under:-

“School” means any recognised school imparting elementary education and includes—

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority”

The expression “specified category” has been defined in Section 2(p) of the Act and comprises Kendriya Vidyalaya, Navodaya Vidyalaya and Sainik School or any other school having a distinct character as may be specified by notification, by the appropriate Government.

3. It would thus be seen that all the unaided school in Delhi which do not receive any aid or grant from the Government or a local authority as well as the schools belonging to “specified category” are mandated by law



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to admit the children belonging to weaker sections and disadvantaged group in the neighbourhood to the extent of at least 25% of the strength of class I and in case they impart pre-school education, the said provision applies to such education.

4. The expression "children belonging to disadvantaged group" has been defined in Section 2(d) of the Act, whereas the expression 'children belonging to weaker sections' has been defined in Section 2(e) of the Act, which read as under:-

"2 (d) "child belonging to disadvantaged group" means (a child with disability) or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

2 (e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification"

5. Vide notification dated 07.01.2011, purporting to be issued in exercise of the powers conferred by sub-section (1) of Section 3 of Delhi



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School Education Act, 1973, read with Rule 43 of Delhi School Education Rules, 1973 and the provisions of RTE Act, 2009, the Lieutenant Governor of Delhi passed an order called Delhi School Education (Free seats for Students belonging to Economically Weaker Section and Disadvantage Group) Order, 2011. Clause 2(c) and (d) of the aforesaid order read as under:-

“c) “Child belonging to weaker Section” means a child whose parents have total annual income of less than one lakh rupees from all sources and who have been staying in Delhi for the last three years.

d) “Child belonging to disadvantage Group” means a child belonging to the scheduled castes, the schedule tribes, the other backward classes not falling in the creamy layer, child with special needs and suffering from disability as defined in the persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996.”

Clause 3 of the aforesaid order reads as under:-

a) “ All schools shall admit children in children in class one to the extent of at least twenty-five per cent of the strength of the class, children belonging to weaker section and disadvantage group in neighbourhood and



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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-preschool education.

b) No separate or exclusive class or shift shall be arranged for imparting education to the students admitting against the seats mentioned in sub-paragraph (a).

c) No tuition fee or any other charges or fee or fund shall be charged from student admitted against the free seat.”

6. The grievance of the petitioner is that by defining the expression “child belonging to weaker sections” in a manner which gives it a meaning narrower than the meaning given in Section 2(e) of the RTE Act, the respondents have excluded the children who despite their parents having less than the prescribed income, are not residing in Delhi for last at least three years, from being considered for admission against 25% of the strength of the class in terms of Section 12(1)(c) of the RTE Act. This is also the contention of the petitioner that the respondents have no legal competence to further sub-classify the expression “child belonging to weaker sections” and the condition of residence in Delhi for last three years prescribed by way of the impugned notification is contrary to the statutory mandate under the Right to Education Act.



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7. A careful perusal of Section 2(e) of the Act would show that every child whose parent or guardian has annual income lower than the minimum limit specified by the appropriate Government by notification, is entitled to be considered for admission in terms of Section 12(1) (c) of the Act. The only power given to the appropriate Government is to prescribe by notification, the annual income of the parent or guardian whose children are to be considered for admission in terms of Section 12(1) (c) of the Act. The Government of NCT of Delhi accordingly prescribed the annual income of less than Rs 1,00,000/- and, therefore, the children whose parents have total annual income of less than Rs 1,00,000/- are entitled to be considered for such admissions. The Act does not give any power to the appropriate Government to further sub-classify the children belonging to weaker sections by excluding from its purview, the children who are not staying in Delhi for a particular time period. In other words, if the parent or guardian of a child does not have income of Rs 1,00,000/- and above, he, in view of the definition given in section 2(e) of the RTE Act, becomes eligible to be considered for admission against the seats stipulated in Section 12(1)(c) and the condition requiring residence in Delhi for three years would certainly have the effect of modifying and restricting the definition of the expression "child belonging to weaker sections" as given in Section 2(e) of the RTE Act. The respondent lacks competence to



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restrict admission in the category of children belonging weaker sections only to those who have been staying in Delhi for a particular period. As a result of the restrictive definition of the expression "children belonging to weaker sections given in clause 2(c) of the impugned notification dated 07.01.2011, a whole category of children belonging to weaker sections have been excluded from the benefit which the Statute accorded to them, merely because they have not been staying in Delhi for last three years or more.

8. Section 3(1) of Delhi School Education Act empowers the Administrator to regulate education in the schools in Delhi in accordance with the provisions of the Act and the rules made thereunder. Rule 43 of Delhi School Education Rules, provides that the Administrator may, if he is of opinion that in the interest of school education in Delhi it is necessary so to do so, issue such instructions in relation to any matters, not covered by the rules, as he may deem fit. The Administrator, in my view, cannot issue such instructions, in exercise of the powers conferred upon by him Section 3 of Delhi School Education Act and Rule 43 of Delhi School Education Rules 1973, as would be contrary to the specific statutory provision contained in Section 12(1)(c) read with Section 2(a) of Right to Education Act and which would have the effect of taking away a benefit which every child belonging to a weaker section, irrespective of the period



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of his stay in Delhi, gets by virtue of the said statutory enactment. The notification issued by the respondents being contrary to the express provisions of the Right to Education Act, 2009, would be clearly illegal and beyond the statutory competence of the respondents.

9. The learned counsel for the respondent states that this is not a case of sub-classification and they are only regulating admission in the 25% quota so as to have optimal utilization of such seats. I, however, find no merit in this contention, since by requiring residence in Delhi for at least three years, the respondents are certainly sub-classifying the children falling in the category "child belonging to weaker sections" by creating two sub-classes of such children, one belonging to those who have been staying in Delhi for more than three years and one of those who have been staying in Delhi for less than three years. Such a restriction cannot be considered to be a matter regulating admission to such seats since the Statute itself gives benefit of being considered for admission against such seats to all the children who belong to weaker sections i.e. those whose parents or guardians have income below the limit specified by the State Government in this regard.

10. For the reasons stated hereinabove, the impugned notification dated 07.01.2011, to the extent it defines the expression "child belonging to



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weaker sections” by restricting it to those who have been staying in Delhi for at least last three years, is hereby quashed, meaning thereby that a child whose parents have total income of Rs 1,00,000/- from all sources, irrespective of the period of his stay in Delhi shall be deemed to be a child belonging to weaker sections for the purpose of notification dated 07.01.2011 and shall be entitled to be considered for admission in the category of “children belonging to weaker sections”.

The writ petitions stands disposed of.

CM No. 6022/2013 also stands disposed of.

No order as to cost.

V.K. JAIN, J

OCTOBER 07, 2013
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