

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION (ACT-1 BRANCH)
OLD SECRETARIAT, DELHI-110 054.

No. DE.15/1031/Act-I/Part-I/2014/21920-21931

Dated: 7/3/14

ORDER

The Hon'ble High Court of Delhi vide Order dated 06.03.2014 in WP (C) 1497/2014 titled Major Saurbh Charan & Ors Vs Lt. Governor Delhi & Ors, has Ordered as follows :-

*"Only direction No. 3 of the impugned Order dated 27th February, 2014 is stayed and it is directed that all candidates having equal marks shall be considered equally by conducting a fresh draw of lots, **wherever necessary.***

If required, the respondents are directed to issue a fresh schedule to give effect to this order."

Pursuant to the above said Order and in continuation of this Directorate's Order No. F.DE.15/1031/Act-I/Part-I/2014/21645-56 dated 27.02.2014, following directions are hereby issued to the Recognized unaided private Schools of Delhi for strict compliance:-

1. To comply with the directions/Order of the Hon'ble Delhi High Court in WP (c) 1497/2014 titled Major Saurbh Charan & Ors Vs Lt. Governor Delhi & Ors.
2. The schools, which are affected by the above said Order of the Hon'ble High Court and required to conduct fresh draw of lots, shall display the list of selected candidates by 7th April 2014; second list by 15th April 2014; subsequent list(s), if any, by 16th April 2014 to 21st April 2014 and complete the admission process, by 25th April 2014.

This issues with the prior approval of the Competent Authority.


07.03.14

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

To,

**The Management/HOS of the all Recognized unaided private
Schools of Delhi**

No. DE.15/1031/Act-I/Part-I/2014/ 21920 - 21931 Dated: 7/3/2014

Copy to:

1. Pr. Secretary to Lieutenant Governor, GNCT of Delhi.
2. OSD to Chief Secretary, GNCT of Delhi.
3. Pr. Secretary (Education), GNCT of Delhi.
4. Director (Education), GNCT of Delhi.
5. Director (Education), North/South/East MCD.
6. Director (Education), New Delhi Municipal Council.
7. Chief Executive Officer, Delhi Cantonment Board.
8. All Addl. Directors/RDEs/JDEs/DDEs/ADEs/EOs, Dte. of Education, GNCT of Delhi.
9. All Branch In-charges, Directorate of Education, Govt. of Delhi.
10. OS (IT) with the request to upload it on the Departmental Website.
11. Guard file.

P. Lata Tara
07.3.14

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

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1497/2014 & CM APPL. 3124/2014

MAJOR SAURBH CHARAN & ORS. Petitioners
Through: Mr. Nidhesh Gupta, Senior Advocate
with Mr. Bharat Singh, Mr. M.K. Ghosh
and Mr. Praveen Kumar, Advocates.

versus

LT. GOVERNOR DELHI & ORS. Respondents
Through: Mr. Raju Ramachandran, Senior
Advocate with Mr. V.K. Tandon,
and Mr. Yogesh Saini, Advocates for
respondents.
Mr. Ashok Agarwal, Advocate for
Intervener/ Social Jurist.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER

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06.03.2014

Present writ petition has been filed challenging the Order dated 27th February, 2014 issued by the Lieutenant Government, NCT of Delhi whereby 05 points for Inter State Transfer have been abolished. The said Order dated 27th February, 2014 further *inter alia* directs "*If the school has conducted draw of lots for those applicants securing 70 points, that draw shall remain valid for the selected/confirmed candidates only. Fresh draw of lots shall be held for remaining applicants having 70 points, including wait listed applicants and those applicants who were earlier securing 75 points because of 'Inter State*

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High Court of Delhi
New Delhi

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Transfer Case' category."

On the oral prayer of Mr. Ashok Agarwal, Advocate, Social Jurist, a Civil Rights Group, is impleaded as respondent No.4 in the present proceedings. The amended memo of parties be filed within one week. Let a complete set of paper book be supplied to Mr. Agarwal.

Issue notice.

Mr. V.K. Tandon, learned counsel accepts notice on behalf of respondents No.1 to 3. Mr. Ashok Agarwal, learned counsel accepts notice on behalf of respondent No.4. They pray for and are granted four weeks to file their counter affidavits. Rejoinder affidavit, if any, be filed before the next date of hearing.

Mr. Nidhesh Gupta, learned senior counsel for petitioners submits that no cogent or justified reason has been given in the impugned Order for deleting 05 points for Inter State Transfer. He further submits that the impugned Order is totally unjustified as the petitioners' children had already been successful in the draw of lots held by the concerned schools.

Mr. Gupta contends that as the petitioners' wards had been selected on the basis of the inter-state transfer points, they did not get an opportunity to participate in the main draw at a lower level with all the other candidates who had equal points. To illustrate his submission, Mr. Gupta, learned senior counsel for petitioners states that if there were 1000 applicants for 100 seats and 10 applicants were selected on the transfer points and the rest of the 90 seats were filled up with candidates having 70 points, then the wards of the petitioners did not get an opportunity to compete with all other 70 pointers for the 90 seats. Mr. Gupta states that while previously the wards of the petitioners had a success chance of 1:10 even without transfer points, today they have a success chance of 1:91.

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On the other hand, Mr. Raju Ramachandran, learned senior counsel for respondents points out that as a large number of draws have already been held, legitimate expectation has arisen in favour of the parents of the successful candidates. He also states that any interim order at this stage would cause a lot of inconvenience to the successful candidates as they would have to go through the selection process once again. Mr. Ramachandran, learned senior counsel points out that after 27th February, 2014 a large number of schools have already conducted a second draw. Consequently, according to him, any change at this stage would result in a third draw.

Mr. Ramachandran, lastly submits that if a small price has to be paid by unsuccessful candidates, then also this Court in the larger public interest should not interfere.

Mr. Ashok Agarwal, learned counsel appearing for Social Jurist, supports the case of the petitioners.

This Court may mention that at this stage it is not inclined to stay the impugned Order in its entirety as this Court has been informed that upon a random survey of 58 leading schools it was found that approximately 46.80% of open seats had been claimed under the Inter State Transfer Case and that 844 out of 1520 applications were not genuine.

Keeping in view such a large percentage of fictitious and fraudulent applications and the fact that it is difficult to check all the applications within the prescribed time frame, this Court is prima facie of the view that respondents authorities were within their jurisdiction to delete the 05 points on account of Inter State Transfer.

However, this Court is of the view that all equals have to be treated alike and all children who have secured equal points should participate in a single draw of lots. Article 14 of the Constitution reads as under:-

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

This Court is of the opinion that if a draw of lots is not held amongst candidates who had secured equal marks, it would result in discrimination and a disadvantage to a few candidates. This Court is further of the view that inconvenience and delay cannot be grounds for denying equality before law.

This Court is in agreement with the illustration given by Mr. Gupta, learned senior counsel for petitioners that if a draw of lots is now held for remaining seats vacated by the transfer candidates amongst candidates who were initially unsuccessful in the draw of lots and candidates whose points have now been reduced, then the candidates who had initially secured 05 points on account of transfer would be in a disadvantageous position and their chance of admission would stand reduced.

Consequently, only direction No. 3 of the impugned Order dated 27th February, 2014 is stayed and it is directed that all candidates having equal marks shall be considered equally by conducting a fresh draw of lots, wherever necessary.

If required, the respondents are directed to issue a fresh schedule to give effect to this order.

List the matter on 25th July, 2014.

Order dasti under the signature of Court Master.

scf —
MANMOHAN, J

MARCH 06, 2014

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Attested O.C.
6/3/14
Court Master
High Court of Delhi
New Delhi