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

No.DE.15/Act-I/IIInd.Shift/2014/

23847-49

Dated : 23/5/14

ORDER

WHEREAS, the Directorate of Education is in receipt of various complaints/representations from parents of children studying in The Indian School, Josip Broz Tito Marg, New Delhi-110049 wherein it has been alleged that their wards who were admitted in The Indian School during the academic session 2011-12 are being forced to shift to The Foundation school in the same class. It has been alleged that the shifting is being done without the consent of the parents

AND WHEREAS, the comments of the concerned school were sought by the district authorities vide letter dated 07.04.2014.

AND WHEREAS, the school vide letter dated 15.04.2014 submitted its reply stating that based on the High Court order WPC No. 233/2011 and CM No. 426/2011 dated 22.03.2011 Gyan Mandir Society was permitted to admit 68 students to the second shift. Further, as per judgement dated 26/07/2011 of Supreme Court of India in WP No. 233/2011 and order passed by the High Court in LPA No. 723/2011, the 68 students admitted to the second shift were allowed to continue their education in the second shift. The school vide its reply has contended that a provisional recognition was granted to it upto primary level vide DoE letter no. DE.15/Act I/GMS/II Shift/2013/20380-20381 dated 08.01.2014 in view of the directions of the Hon'ble Supreme Court dated 01/11/2013. It has been further submitted that the parents of the students studying in the second shift opted for the second shift voluntarily and the representation have been made by a few parents with the malafide intention of getting their children transferred to the morning session of the The Indian School.

AND WHEREAS, the records of the case and the reply of the school has been examined and it is observed that The Indian School had applied for permission to run a second shift in their school vide letter dated 13.07.2010 which was turned down by the Directorate. Subsequently, the school filed a writ petition bearing number 233/2011 before the Hon'ble High Court.

AND WHEREAS, the Hon'ble High Court vide interim order dated 31.01.2011 directed as under: -

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"The senior counsel for the petitioners seeks permission to process the applications for admission to the proposed second shift in the School. It has been enquired from the senior counsel for the petitioners as to what would be the fate of the students who in hope of admission in the said second shift, if ultimately this writ petition fails. **The senior counsel for the petitioners states that all concerned shall be duly notified that there is no assurance of admission and they should keep alternative arrangement also for the eventuality of this writ petition not succeeding.** On the said terms and without creating any equities in favour of the petitioner and subject to the final outcome of this writ petition, the petitioners are permitted to process the applications for admission to the proposed second shift."

AND WHEREAS, vide interim order dated 22.03.2011 the Hon'ble High Court directed as under: -

"10. Subject to the final outcome of the writ petition and without creating any rights or equities in favour of the petitioner school and on the terms and conditions hereinabove discussed, the petitioner school is permitted to admit 68 students as aforesaid in the second shift."

AND WHEREAS, it is observed that one of the conditions agreed while passing the above order was that in the event of the second shift being held not permissible the petitioner school would absorb the 68 students sought to be admitted in the present writ petition in the first shift as the petitioner school had the requisite capacity and the vacant seats in the first shift.

AND WHEREAS, the above writ petition was disposed by the Hon'ble High Court vide order dated 26.07.2012 with the direction to the petitioner school to file a representation with regard to its case for running a second shift in its school which was to be placed before the Delhi School Advisory Board. Further, the Advisory Board was required to take a decision within two months of the receipt of the representation and submit a reasoned advice to the Administrator for further action.

AND WHEREAS, the petitioner school subsequently filed a Special Leave to Appeal (Civil) bearing No. 27787-27788/2012 before the Hon'ble Supreme Court which vide order dated 01.11.2013 disposed of the matter with the following directions: -

"2. In light of the above Notification, the grievance of the petitioners raised in the Writ Petition for commencement of the second/afternoon shift in their existing school is redressed. Obviously, for commencing/running the second/afternoon shift in the existing school, the petitioners shall have to

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comply with the terms of the policy which is notified in the above Notification. We observe that on petitioners' making an application for commencement of second/afternoon shift in their existing school, the authority shall take decision thereon as expeditiously as may be possible and positively within two months of the receipt of such application.

3. We may also notice that by virtue of the order of the High Court dated 22.03.2011, the petitioners were permitted to admit 68 students in the second/afternoon shift. We are informed that the petitioners did admit 68 students in 2011 and these students continue in view of the interim order passed by this court on 05.10.2012. We clarify that with regard to the students who have been admitted pursuant to the above orders, if the intake capacity of the school run by the petitioner No. 1 is not affected, then on compliance of the Notification dated 25.10.2013 by the petitioner No. 1, those 68 students may be allowed to continue their education in the second/afternoon shift. We order accordingly."

AND WHEREAS, it is observed that the Directorate of Education vide Notification No. DE.15(19)/Act-I/2013/11419-11422 dated 25.10.2013 had issued the policy directives for running second shift in unaided public schools with approval of the Lt. Governor/Administrator. As per the condition number 1 of the aforesaid notification any governing body/society/management running first shift school only and desirous of opening the second shift school was required to apply for recognition of its second shift school before the Directorate after taking the PTA in confidence. Further, as per the condition number 3 of the notification any such school was required to get fresh recognition and affiliation and further conform to the provisions of RTE Act, 2009 & DSEAR, 1973. Further, as per condition number 5 of the notification such school shall not shift/transfer students from one shift to the other.

AND WHEREAS, it is observed that the society of the school i.e. Gyan Mandir Society instead of applying for recognition, as laid down in the notification dated 25.10.2013 and the direction of the Hon'ble Supreme Court dated 01.11.2013, merely submitted an application for running a second shift school for enrollment of students from pre-school to class V stating that on the website of the Directorate of Education, the AERU Module was seeking details for recognition whereas the society was not seeking the same. Therefore, the application for grant of recognition to the second shift could not be processed as the Society did not apply for the same as directed by the Hon'ble Supreme Court.

AND WHEREAS, regarding the contention of the school that a provisional recognition was granted to it upto primary level vide DoE letter

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AND WHEREAS, it is observed that the society of the school i.e. Gyan Mandir Society instead of applying for recognition, as laid down in the notification dated 25.10.2013 and the direction of the Hon'ble Supreme Court dated 01.11.2013, merely submitted an application for running a second shift school for enrollment of students from pre-school to class V stating that on the website of the Directorate of Education, the AERU Module was seeking details for recognition whereas the society was not seeking the same. Therefore, the application for grant of recognition to the second shift could not be processed as the Society did not apply for the same as directed by the Hon'ble Supreme Court.

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no. DE.15/Act I/GMS/II Shift/2013/20380-20381 dated 08.01.2014 in view of the directions of the Hon'ble Supreme Court dated 01/11/2013 it is seen that aforesaid letter is merely a direction from the Directorate of Education to the school to file the online application in Form-1C for grant of provisional recognition up to primary level under RTE Act, 2009 in case the second shift school was in existence prior to 01.04.2010. The same can in no way be construed as a grant of recognition which the school is claiming. Therefore, the contention of school is entirely wrong and misfounded.

AND WHEREAS, an examination of the various documents submitted by the school before the Directorate of Education and the various orders passed by the Hon'ble Courts reveal that the second shift school was not in existence as on 01.04.2010 and therefore the school is not eligible to be granted recognition in Form-2A under the RTE Act, 2009.

AND WHEREAS, a perusal of the documents mentioned in the preceding paras also reveal the following point: -

1. The Hon'ble High Court had allowed the Society to admit 68 students in the second shift vide interim order dated 22.03.2011 in WPC No. 233/2011. However, from the documents and fee receipts submitted by the parents, it is observed that most of these children, if not all, were admitted in the school in February, 2011 itself i.e. before the directions of the Hon'ble High Court.
2. While admitting the children in the second shift the school has nowhere mentioned in the admission form or brochure or fee receipt that the admission is being made in the second shift nor were the parents informed about the various court cases and the implications therein as was directed by the Hon'ble High Court while passing order dated 31.01.2011.
3. As per the directions of the Hon'ble Supreme Court dated 01.11.2013, the 68 children admitted in the second/afternoon shift can be allowed to continue in the second/afternoon shift only on the compliance of the notification dated 25.10.2013 which has not been made till date due to the reasons mentioned in the preceding paras.
4. The records produced by the parents like fees receipts, school diaries, progress report etc reveal that the children were always treated as part of the morning shift only and there is no mention of The Indian School- Second Shift anywhere.

Now, therefore, in view of the facts and circumstances discussed above, it is seen that the forcible shifting of children to the second shift is not correct. The shifting can only be done for those children who were admitted subsequent to the direction of the Hon'ble High Court dated

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22.03.2011 and that too subsequent to the grant of recognition to the second shift school on compliance of the notification dated 25.10.2013 as directed by the Hon'ble Supreme Court vide order dated 01.11.2013. It is therefore directed that these children shall be allowed to continue studying in the "The Indian School" and not the "The Foundation School" which has not come into existence or recognized by the Directorate of Education as on date.

This issues with the prior approval of Competent Authority.

Madhu
23.05.14

**(DR. MADHU RANI TEOTIA) IAS
ADDL. DIRECTOR OF EDN. (ACT-I)**

To,

The Manager/HOS,
The Indian School,
Josip Broz Tito Marg,
New Delhi-110049.

No.DE.15/Act-I/IIInd.Shift/2014/

Dated :

Copy to:

1. DDE (South), Directorate of Education, Delhi with the direction to serve the copy of the order on the school/society as well as the concerned applicant parents.
2. PS to Director (Education).

P.Lata Tara
23.05.14

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