

SUPREME COURT OF INDIA

Major Saurabh Charan

Vs.

Lt. Governor, NCT of Delhi

C.A.No.5379-5380 of 2014

(H.L.Dattu, M.Y.Eqbal and S.A.Bobde JJ.)

07.05.2014

JUDGMENT

M.Y. EQBAL, J.:

1. Leave granted.
2. Appellants have preferred these appeals by special leave against the interim order dated 3.4.2014 passed by the High Court of Delhi in LPA No.238 of 2014 and LPA No. 237 of 2014 whereby the Division Bench of the High Court while adjourning the said appeals directed that the admission process shall be allowed to be completed for the other categories of students except the candidates of the appellants who have been transferred to Delhi from different States of India.
3. The present appellants were transferred to Delhi from different States of India. As a result of which many parents have to give up the admission of their children in previous places and have to shift to Delhi in the mid of the session. Because of that, their children did not get admission in any of the schools in Delhi and lost one academic year.
4. On 18.12.2013, Lt. Governor of NCT of Delhi made order to amend Recognised Schools (Admission Procedure for Pre-Primary Class) Order, 2007, according to which admission to open seats in the schools shall be made only on the basis of

following fixed parameters and points and further clarifying that vacant/unfilled seat(s), if any, shall be filled by draw of lots.

S.No.	Parameters/Criteria	Points
1.	Neighbourhood up to 6 km	70
2.	Sibling studying in school	20
3.	Parent Alumni of School	05
4.	Inter-State transfer case	05
	Total	100

Notification also specified separate guidelines for Minority Schools, Schools setup for specific government services like Armed Forces/Paramilitary Forces/Central Services/All India Services. But we shall constrain ourselves to the admission procedure in private unaided recognized schools in Delhi.

5. On 14.2.2014, guidelines were issued by the Directorate of Education to eliminate any possible malpractices under interstate transfer category cases. The Department instructed schools to be extra vigilant about possible manipulations under interstate transfer category and make due diligence to verify the genuineness of transfer certificates, including verification from the source of issue of such a certificate. The Directorate of Education also instructed schools to prepare data of applications received under interstate transfer with particulars like number of applications, place from where transfer took place, and number of applications the schools have specifically received from NCR that shares its border with Delhi. The Department also hinted at constituting a special team to conduct random inspections of schools for verification of claims and Schools shall produce such certificates for the inspection of the team specially constituted for this purpose by the Directorate of Education.

6. To address the grievances of the parents in connection with the entry level admission in private unaided recognized schools of Delhi, the Directorate of Education on 17.2.2014 constituted Inspection Team at each district of Delhi with a direction to conduct random checking for verification of certificates/documents submitted to ensure their genuineness and acceptability in term of fixed admission criteria.

7. While hearing matter, the High Court on 26.2.2014 directed the State Government to take a decision with regard to interstate transfer category and to issue a fresh schedule for draw of lots by 27.2.2014. After taking cognizance of complaints/representations and on perusal of sample data collected by the Inspecting

Team and in compliance of aforesaid order of the High Court, the Directorate of Education on 27.2.2014 issued a Notification and decided to do away with the Inter-State Transfer Case criterion and deleted points of interstate transfer cases.

8. Pursuant to aforesaid Notification dated 27.2.2014, following directions have been issued to Recognized Unaided Private Schools of Delhi for strict compliance:

1. With the deletion of points of inter State Transfer Cases, the points shall be determined only as per Neighborhood Sibling studying in schools and Parent Alumni of Schools criteria.

2. The list(s) already declared by the school till date will now get modified to the extent that those seats assigned earlier to inter-state transfer case category applicants shall stand vacated.

3. 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 Transfer Case Category.

9. Aggrieved by this notification, appellants moved the High Court by filing Writ Petition No.1497/2014, upon which, the High Court while issuing notice on 6.3.2014 granted interim stay of only direction no.3 and directed that all candidates having equal marks shall be considered equally by conducting a fresh draw of lots, wherever necessary.

10. Aggrieved by the aforesaid order of the High Court, writ petitioners preferred LPA No.238/2014 before the Division Bench of the High Court. This order was also challenged in LPA No.237/2014 by some of the 70 points holder parents, who were selected in draw of lots but their admission stand cancelled.

11. After hearing learned senior counsel on either side and after noting that the learned Single Judge himself was prima facie of the view that the inter-state transfer case category was validly done away with by virtue of the Notification dated 27.2.2014 as also the fact that the appellant therein and those similarly situated were not parties

before the learned Single Judge, the High Court on 3.4.2014 while adjourning the matter, opined that the selection granted to the appellants and similarly situated persons ought to be confirmed. The High Court directed that the first part of Condition no.3 of the Notification dated 27.2.2014 would operate with full vigour. High Court, however, deferred its decision till next date of hearing so far as second part of this Condition no.3 is concerned. High Court also directed that till next date of hearing no fresh draw of lots shall take place.

12. We have heard Mr. Nidhesh Gupta, learned senior counsel appearing for the appellants and Mr. Raju Ramachandran, learned senior counsel appearing for the respondents.

13. Admittedly under the Notification dated 18th December, 2013, the children of the appellants had become eligible for admission inter alia on the basis of being children of parents who have been transferred inter State - by being allotted 5 points. The appellants had participated in the draw of lots and secured 75% points i.e. 70 points for Neighborhood and 5 points for Inter State Transfer, and were successful. Acting on some information, and not on the basis of a case by case enquiry, the Administration came to the conclusion that approximately 50% seats were being taken by those who had taken the Inter State Transfer points and therefore the Administration issued Notification dated 27th February, 2014, changing the very basis of the admission granted to the appellants children, by deleting the points for Inter State Transfer cases and decided to determine eligibility on the basis of Neighborhood Sibling.

14. It has been contended by learned counsel for the appellants that the very basis of the Notification dated 27th February, 2014, that approximately 50% of the seats were being claimed by the appellants children under the Inter State Transfer category is incorrect since data provided by the Director of Education before the High Court on 24.03.2014 shows that the number of seats allocated to Inter State Transfer category is 2925, which is not more than 9% of the total seats available for that category. Therefore, the basis of the Notification that approximately 50% of the Open Seats were claimed by the claimants under the Inter State Transfer category is baseless. However, according to learned counsel for the appellants the genuine cases had already been separated from the fake cases at an earlier stage and there were no reason to delete the points for Inter State Transfer category on this count.

15. These matters were heard on several dates in order to find out the solution. Mr. Raju Ramachandran, learned senior counsel appearing for the respondents, has not given satisfactory answer to the question posed by us as to whether after the admission process started on the basis of Notification dated 18.12.2013, can it be changed by putting a fresh condition.

16. In spite of several opportunities given to the Delhi Administration, it has not been able to sort out the problems of accommodating the children of the appellants to the entry level, whose admission has been cancelled due to deletion of Inter-State Transfer points vide Notification dated 27th February, 2014.

17. Indisputably, imparting elementary and basic education is a constitutional obligation on the States as well as societies running educational institutions. This Court held that children are not only future citizens but also the future of the Earth. Elders in general and parents and teachers in particular owe a responsibility for taking care of the well-being and welfare of the children. In *Brown v. Board of Education of Topeka (No.1)*, 347 US 483, Earl Warren C.J., speaking for the US Supreme Court, emphasised the right to education in the following terms:-

Today, education is perhaps the most important function of State and local Governments. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

18. In the facts and circumstances of the case, would it be proper for the children whose parents have been transferred to Delhi from different States of India can be denied admission in the schools much less the non-aided schools because of the instructions issued by the Government through its Education Department.

19. Having considered the matter, we deem it appropriate to relieve the appellants from the hardship of having the admission being granted earlier under Notification dated 18th December, 2013 from being taken away by the subsequent Notification

dated 27th February, 2014, issued in the mid-stream. In our considered opinion, it was not permissible for the Administration to alter the basis of admission after the admission process had started and further having participated in the selection process the criteria for selection could not have been questioned by unsuccessful participants.

20. In the circumstances, we direct that the admissions already granted to the appellants children shall not be disturbed on the basis of impugned Notification dated 27th February, 2014 deleting points for Inter State Transfer. These children shall continue their study in those schools where they got admitted or selected for admission.

21. In course of argument, Mr. Gupta, learned senior counsel appearing for the appellants, furnished a list of 22 parents having 24 candidates belonging to Inter-State Transfer category, who are successful under Notification dated 18th December, 2013. Learned senior counsel submitted that these candidates are also entitled to get admission and continue study in those schools. Mr. Raju Ramachandran, learned senior counsel appearing for Delhi Administration, fairly submitted that these 24 candidates shall also be accommodated in the schools. Therefore, we direct that these 24 candidates shall get admission, if not at all admitted, being the successful candidates under the Inter-State Transfer category under Notification dated 18th December, 2013. It goes without saying that the Administration shall take steps to accommodate these students in various schools within its jurisdiction by increasing the number of seats in such schools. However, it is made clear that this order would only enure to the benefit of those who had approached the Court. It would certainly not extend the benefit to those who had not approached the Court or might have gone in slumber.

22. With the aforesaid directions and observations, these civil appeals are disposed of. Consequently, the writ petitions and the appeals pending in Delhi High Court also stand disposed of.