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

+ W.P.(C) 4966/2024

JAI KUMAR AND ORS. Petitioners

Through: Mr. N.K. Upadhyay, Mr. A.
Bhaumik and Mr. Udai Bhan Sharma, Advs.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Ms. Prashansa Sharma, Mr.
Utkarsh Singh, Advs. for Mr. Santosh
Kumar Tripathi, SC for DoE
Mr. Kamal Gupta, Mr. Sparsh Aggarwal and
Mr. Karan Chaudhary, Advs. for R-2/School
Mr. R.K.Dhawan, Standing Counsel for
DDA with Ms. Nisha Dhawan, Mr. V.K.
Teng, Ms. Shivani Taneja and Ms. Anwasha
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% **08.04.2024**

CM APPL. 20346/2024

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 4966/2024

3. The petitioners in this writ petition are parents of children who were admitted to the Respondent 2-school under the EWS/Free ship category in terms of the Right of Children to Free and Compulsory



Education Act, 2009 (“the RTE Act”). Their grievance is that, having provided education to them as EWS students till Class VIII, the Respondent 2-school is now not willing to continue to educate them as EWS students and has, instead, called upon the petitioners to continue their education as General category students.

4. Apparently, this is on the ground that free and compulsory education to EWS students, whether under the EWS or free ship category, is guaranteed, by Section 12 of the RTE Act only till the age of 14/Class VIII.

5. Mr. Bhaumik, learned Counsel for the petitioners, submits that this precise issue is *sub judice* before the Division Bench of this Court in WP (C) 4170/2019 (*Social Jurist v. Bharatiya Vidya Bhavan’s Mehta Vidyalaya*). The following interim order was passed in the said case:

“Keeping in view the interim order passed under similar situation on 12.04.2018 in W.P. (C) 3586/2018 and annexed with this petition as Annexure P-7, we direct that till the next date of hearing the respondent No.1 shall be restrained from treating any child, who was earlier granted free education up to Class VIII in DG/EWS category under the Right of Children to Free and Compulsory Education Act, 2009, as falling under the general category and now requiring such child to pay tuition fee or any other charges from Class IX onwards. No child shall be removed from the rolls of the schools for non-payment of any fees or charges demanded upon the said respondent treating such children as falling under the general category”.

Said order, admittedly, continues to remain in force.

6. Mr. Gupta, who represents the school in the present case, is unable to distinguish this order. He submits, however, that the order was passed on a concession, that it was ex-parte, that it is *per*



incuriam and that it cannot bind the respondent, as his client was never a party in those proceedings.

7. While these arguments may be available to the respondent at a final hearing of the writ petition, we are at a stage of issuance of notice and consideration of the prayer for interim relief.

8. In view of the fact that Mr. Gupta is, but for the above arguments, unable to distinguish the decision in *Social Jurist* on facts or in law, the petitioners in this writ petition would, at this preliminary stage be entitled to interim relief in the terms provided by the Division Bench of this Court on 23 April 2019.

9. As such, issue notice to show cause as to why rule *nisi* be not issued.

10. Notice is accepted on behalf of Respondent 1 by Ms. Prashansa Sharma, on behalf of Respondent 2 by Mr. Kamal Gupta and on behalf of Respondent 4 by Mr. R.K. Dhawan, learned Standing Counsel.

11. Issue notice to Respondent 3 by all modes. Counter affidavit, if any, be filed within four weeks with advance copy to learned Counsel for the petitioners who may file rejoinder thereto, if any, within four weeks thereof.

12. Re-notify on 11 July 2024 for final disposal.



CM APPL. 20347/2024

13. Issue notice. Notice is accepted on behalf of Respondent 1 by Ms. Prasansha Sharma, on behalf of Respondent 2 by Mr. Kamal Gupta and on behalf of Respondent 4 by Mr. R.K. Dhawan.

14. Issue notice to Respondent 3 by all modes. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the petitioners who may file rejoinder thereto, if any, within four weeks thereof.

15. Till the next date of hearing, the respondent school shall be restrained from treating any child, who was earlier granted free education up to Class VIII in DG/EWS category under the RTE Act, as falling under the general category and now requiring such child to pay tuition fee or any other charges from Class IX onwards. No such child shall be removed from the rolls of the school for non-payment of any fees or charges demanded upon the said respondent treating such child as falling under the general category.

16. Re-notify 11 July 2024 for final disposal.

17. *Dasti.*

C. HARI SHANKAR, J.

APRIL 8, 2024

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Click here to check corrigendum, if any