

\$~
*
40.
+

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 962/2016

SUMAN MISHRA Petitioner
Through Mr. Ashok Agarwal with
Mr. Khagesh Jha and Ms. Kusum
Sharma, Advocates

versus

GOVERNMENT OF NCT OF DELHI Respondent
Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates

WITH

41.
+

W.P.(C) 1014/2016

NAGHMA SAHAR & ORS Petitioners
Through Mr. Ashok Agarwal with
Mr. Khagesh Jha and Ms. Kusum
Sharma, Advocates

versus

GOVERNMENT OF NCT OF DELHI
THROUGH DIRECTOR OF EDUCATION Respondent
Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates

AND

42.
+ W.P.(C) 1015/2016

MASTER JAI SINGH THROUGH LEGAL
GUARDIAN

..... Petitioner

Through Mr. Akhil Sachar with Mr. Raghu
Vashist, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.

Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

AND

43.
+ W.P.(C) 1016/2016

MASTER EHIMAY SINGH RATHI Petitioner

Through Mr. Akhil Sachar with Mr. Raghu
Vashist, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.

Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

AND

44.
+ W.P.(C) 1017/2016

MASTER UDDHAV PRATAP SANWERIA
THROUGH LEGAL GUARDIAN Petitioner

Through Mr. Akhil Sachar with Mr. Raghu
Vashist, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.

Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

AND

45.
+ W.P.(C) 1018/2016

MASTER KIAAN JAIN Petitioner

Through Mr. Akhil Sachar with Mr. Raghu
Vashist, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.

Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

AND

46.
+ W.P.(C) 1023/2016

ASTUTI THROUGH FATHER DIPAK KUMAR Petitioner
Through Mr. Ashok Agarwal with
Mr. Khagesh Jha and Ms. Kusum
Sharma, Advocates

versus

GOVT OF NCT OF DELHI Respondent
Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates.

AND

47.
+ W.P.(C) 1024/2016

MASTER SURAAJ SINGH LAMBA AND ANR. Petitioners
Through Mr. Akhil Sachar with Mr. Raghu
Vashist, Advocates

versus

GOVERNMENT OF NCT OF DELHI AND ORS. Respondent
Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.
Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

AND

48.

+ W.P.(C) 1025/2016

MASTER KUBER JOURA Petitioner
Through Mr. Sundeep Srivastava with
Mr. Shokan Ali and Mr. Sunil K. Jha,
Advocates
versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.
Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

AND

49.

+ W.P.(C) 1035/2016

NYRA KAPOOR Petitioner
Through Mr. Rishi Manchanda with Mr. Kunal
Kher, Advocates
versus

GOVERNMENT OF NCT OF DELHI AND ORS. Respondents
Through Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.
Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

AND

50.

+ W.P.(C) 1036/2016

NATALIA KAPOOR

Through

..... Petitioner

Mr. Rishi Manchanda with Mr. Kunal
Kher, Advocates

versus

GOVERNMENT OF NCT OF DELHI AND ORS. Respondents

Through

Mr. Gurukrishna Kumar, Senior
Advocate with Mr. Rahul Mehra,
Sr. Standing Counsel, Mr. Peeyoosh
Kalra, ASC and Mr. Q. Tripathi and
Ms. Sneha Iyer, Advocates for R-1 to
3.

Mr. Dev P. Bhardwaj, CGSC for R-
4/UOI.

%

Date of Decision: 5th February, 2016.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

**CM APPL. 4439/2016 in W.P.(C) 1015/2016, CM APPL. 4441/2016 in
W.P.(C) 1016/2016, CM APPL. 4443/2016 in W.P.(C) 1017/2016, CM
APPL. 4445/2016 in W.P.(C) 1018/2016, CM APPL. 4472/2016 in
W.P.(C) 1023/2016, CM APPL. 4477/2016 in W.P.(C) 1024/2016, CM
APPL. 4480/2016 in W.P.(C) 1025/2016, CM APPL. 4512/2016 in
W.P.(C) 1035/2016, CM APPL. 4514/2016 in W.P.(C) 1036/2016**

1. Present batch of writ petitions has been filed challenging the order dated 18th December, 2015 passed by the Government of NCT of Delhi under Section 16(1) of Delhi School Education Act & Rules, 1973 [for short “DSEAR, 1973”] whereby the upper age limit for admission to pre-school, pre-primary and class one has been fixed.
2. While Mr. Akhil Sachar, Mr. Sundeep Srivastava and Mr. Rishi Manchanda, learned counsel for petitioners contend that some of the petitioners would be over age on 31st March, 2016, Mr. Ashok Aggarwal and Mr. Khagesh B. Jha point out that some of the petitioners belong to EWS/disadvantageous category and/or differently abled category would not be eligible to apply for admission in nursery class in Academic Session 2016-17. Mr. Aggarwal and Mr. Jha state that due to poverty and ignorance, parents of the wards belonging to EWS/disadvantageous group were not aware that children have to be admitted to school at the earliest and not at their convenience.
3. Learned counsel for petitioners submit that the impugned order is in violation of Articles 14, 19(1)(a), 21A and 45 of the Constitution of India. They point out that in accordance with Article 21A of the Constitution, every child of the age of six to fourteen years has a fundamental right to education, which corresponds to the compulsory elementary education from classes 1 to 8 as defined in Section 3 of Right to Education Act, 2009 [for short “RTE Act, 2009”]. According to them, since most schools do not open admissions to pre-primary and class one, and instead open admission to the nursery/pre-school class, correspondingly every child has a right to apply for nursery at age 4+ years.

4. Learned counsel for petitioners further submit that upon a strict reading of Sections 2(c), 2(f), 3 and 12(1)(c) of RTE Act, 2009, it is apparent that the entry level for class one is upon attainment of six years. They contend that since the impugned executive order fixes the upper age limit for class one as less than six years as on 31st March of the year in which the admission is sought, the same is inconsistent with the Parliamentary Statute, i.e., RTE Act, 2009.

5. Learned counsel for petitioners submit that the upper age limit can only be fixed by way of a law and not by way of an office order which has neither any legislative sanction nor approval by Administrator, i.e., Lieutenant Governor.

6. Learned counsel for petitioners contend that the impugned order is also in violation of the earlier Order dated 24th November, 2007 issued by Lieutenant Governor, inasmuch as the said Order specifically provides that there shall be no bar to children older than the age specified in its Clause 21 in gaining admission in nursery class.

7. According to them, the impugned order is also contrary to the guidelines issued by Central Government and Kendriya Vidyalaya Sangathan as well as by the State of Maharashtra.

8. They lastly state that as the respondents have exempted two similarly placed children in W.P.(C) 472/2016 and 473/2016 from the application of the impugned order dated 18th December, 2015, the petitioners herein are also entitled to the same benefit.

9. On the other hand, learned senior counsel for Govt. of NCT of Delhi states that it was only on public demand that an upper age limit to admit students be fixed that the Delhi School Education Advisory Board under

Section 22 read with Rules 186 to 189 of DSEAR, 1973, set up a Sub-Committee under the Chairmanship of Additional Director of Education with other prominent educationists/principals of renowned private schools to look into the aspect of fixing the lower and upper age limit.

10. It is stated that the Sub-Committee was of the opinion that for better socio psycho development of a child, the child should be exposed to the peer group of his/her age so that the whole group represents the same kind of needs and behaviour. The Sub-Committee was of the view that in earlier stages of childhood when the child is developing fast, difference of few months/year in age of a child can have a big effect not only on his/her psychological appearance, but in behaviour and attitude as a whole. The Sub-Committee was of the opinion that children with minimum possible difference of age should be allowed in the same class in a school.

11. Learned senior counsel for Govt. of NCT of Delhi states that the intent behind the impugned order dated 18th December, 2015 is to give effect to the aforesaid Sub-Committee report. He also submits that the main aim of RTE Act, 2009 is that every child of the age of six to fourteen years should have a right to free and compulsory education and he/she should be admitted into a Class appropriate to his/her age. In support of his submission, he relies upon Section 4 of the RTE Act, 2009.

12. Learned senior counsel for Govt. of NCT of Delhi further states that if any child is not able to or willing to start education at the age level of three years, he/she may start at four years or five years of age and will get admission in the class, age appropriate to him/her. According to him, if a child who is four years old is allowed to sit/study with children of three

years, the percentage difference comes to more than 25%, which would not be good for other smaller children in the same class.

13. Learned senior counsel for Govt. of NCT of Delhi also states that the impugned order has been validly passed in accordance with the Constitution.

14. Learned senior counsel for Govt. of NCT of Delhi lastly states that the grant of any order at this stage would have the effect of interference with the admission schedule. He points out that the concession given in the earlier two writ petitions being W.P.(C) 472/2016 and 473/2016 was in the peculiar facts of those cases as those petitioners had approached the Court in time.

15. Having heard learned counsel for the parties, this Court is prima facie in agreement with the submission of learned senior counsel for Govt. of NCT of Delhi that interference by courts in education and academic matters should be minimal.

16. Since in the present case, a Sub-Committee of experts was constituted by a statutory body and action has been taken in pursuance to its report, this Court would, normally, be hesitant to interfere with the same.

17. But this Court is of the view that the State cannot take its citizens, especially the children by surprise. Both the parents as well as the children are entitled to fundamental right to education and to plan their future. As there were no upper age limit prior to 18th December, 2015, the parents of the children who are attaining the age of four prior to 31st March, 2016 could have well decided in the Academic Session 2015-16 they would get their children admitted in this Academic Year 2016-17 in the nursery class. Consequently, this Court is of the view that the impugned order issued on 18th December, 2015 virtually has a retrospective effect inasmuch as some of the petitioners have been deprived of their fundamental right to seek

admission in nursery class without any forewarning inasmuch as the upper age limit has been fixed only on 18th December, 2016, i.e., on the eve of commencement of admission process for Academic Session 2016-17. This Court also takes judicial note of the fact that it is impossible for a child to obtain admission directly in class one or any other appropriate class as every school gives priority in promoting its own students to the next class.

18. Consequently, till final disposal of the writ petitions, the impugned order dated 18th December, 2015 is stayed. All children above four years of age who are desirous of seeking admission in pre-school/nursery class in the Academic Session 2016-17 shall be entitled to apply for admission on or before 9th February, 2016 till 4.00 p.m. Respondents are directed to ensure that online applications qua EWS/disadvantageous/differently abled students are accepted. Further, the private schools / government schools are directed to accept hard copies of applications of such children as well as children belonging to general category till the date and time specified hereinabove. Applications already filed by the parents of such wards shall be considered by the schools and their points/marks shall be uploaded on or before 12th February, 2016. This Court may mention that the aforesaid directions have been passed as the last date for displaying first list of candidates is 15th February, 2016 and this Court desires that all the parties adhere to the schedule fixed.

Accordingly, present applications stand disposed of.

Order dasti.

CM APPL. 4440/2016 in W.P.(C) 1015/2016 , CM APPL. 4442/2016 in W.P.(C) 1016/2016, CM APPL. 4444/2016 in W.P.(C) 1017/2016, CM APPL. 4446/2016 in W.P.(C) 1018/2016, CM APPL. 4474/2016 in W.P.(C) 1023/2016, CM APPL. 4478/2016 in W.P.(C) 1024/2016, CM

APPL. 4481/2016 in W.P.(C) 1025/2016, CM APPL. 4513/2016 in W.P.(C) 1035/2016, CM APPL. 4515/2016 in W.P.(C) 1036/2016

Allowed, subject to just exceptions.

W.P.(C) 962/2016, W.P.(C) 1014/2016, W.P.(C) 1015/2016 , W.P.(C) 1016/2016 , W.P.(C) 1017/2016, W.P.(C) 1018/2016 , W.P.(C) 1023/2016 & CM APPL. 4473/2016, W.P.(C) 1024/2016 , W.P.(C) 1025/2016, W.P.(C) 1035/2016, W.P.(C) 1036/2016

Issue notice.

Mr. Peeyoosh Kalra, learned standing counsel accepts notice on behalf of respondent-GNCTD. He prays for and is permitted to file a reply-affidavit within four weeks.

Rejoinder, if any, be filed within two weeks thereafter.

List on 18th April, 2016.

MANMOHAN, J

FEBRUARY 05, 2016

rn