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

+ LPA 927/2024 & C.M.Nos.53680-81/2024

BABY AAYAT (MINOR) THROUGH HER MOTHER MS.

TANZEEM KHAN

.....Appellant

Through: Ms. Monisha Handa, Advocate
(DHCLSC).

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI& ANR

.....Respondents

Through: Mr. Divyam Nandrajog, Panel
Counsel, GNCTD and Mr. Aman
Wasan, Advocates for R-1 with Mr. B
K Sharma, DDE (Zone 4) and Mr. A
K Goswami, LA (Zone 4).

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Date of Decision: 13th September, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the order dated 30th August, 2024 passed by the learned Single Judge in W.P. (C) 10649/2024 titled "*Baby Aayat (Minor) Through Mother Ms. Tanzeem Khan vs. Government of National Capital Territory of Delhi*", whereby the learned Single Judge held that the appellant should not be allowed to misuse the policy drafted for economically weaker or disadvantaged groups by filing income certificates



of the relatives, only for the purpose of being covered under EWS/DG category.

2. Ms. Monisha Handa, learned counsel for the appellant states that the appellant is about six (6) years of age. The present appeal has been preferred by the appellant, through her mother. She further states that the respondent no.1 issued Circular dated 24th April, 2024 inviting admissions into the EWS/DG/CWSM in Private Unaided Recognized Schools at the entry level classes. Learned counsel for the appellant submits that respondent no.2 is a private school and by way of a computerized draw of lots, the appellant was allotted the respondent no.2/school for the academic year 2024-2025. She further contends that since the Food Security Card has not been issued in the name of the parents of the child but in the name of the grandmother, the respondent no.2/school has refused to grant admission to the appellant. Aggrieved, the appellant filed the underlying writ petition seeking admission in class I under EWS/DG category for the academic session 2024-25 in the respondent no.2/school. The learned Single Judge dismissed the underlying writ petition by directing the appellant and her parents to apply afresh for the draw of lots for securing admission under EWS/DG category, in future. Hence, the appellant, through her mother has filed the present appeal.

3. Learned counsel for the appellant submits that on account of there being an ambiguity in the Circular dated 24th April, 2024 issued by the respondent no.1, grandchildren of EWS/DG category are being deprived of their rightful entitlement. She states that the Circular does not place any embargo upon the Food Security Card holder, being the grandparent of the candidate, to seek admission under the EWS/DG category. According to her, the said assumption has no legal or factual basis. She states that the



confusion or ambiguity in the said Circular cannot be construed to deprive the appellant from right to education and admission under the EWS category. She also states that keeping in view the provisions of the Right to Education Act, 2009, the ambiguity, if any, has to necessarily be interpreted and inferred in favour of the appellant. Since the respondent no.1 has already allotted admission in EWS category to the appellant in respondent no.2/school, the said school could not have deprived the appellant from such allotment on the ground that the policy does not envisage grandparents as eligible to seek admission in the EWS category for their grandchildren.

4. She also states that during the pendency of the underlying writ petition the father of the appellant had obtained the income certificate which may be considered even now at this stage for the purpose of entitling the appellant for admission under the EWS category to the respondent no.2/school.

5. *Per contra*, Mr. Divyam Nandrajog, learned counsel (GNCTD) for the respondent no.1 states that the present appeal has become infructuous on account of the said seat having been allotted to another student belonging to the EWS category. He states that the policy does not envisage grandparents as persons who would be entitled to seek admission in the EWS/DG category for their grandchildren. Though he admits that there could be a possibility of ambiguity in the terms of the policy, yet, he states that the fact that only parents of the child are recognized under the said policy is not doubted. On that basis, he states that the present appeal be dismissed.

6. This Court has heard the arguments of learned counsel for the appellant and the respondent no.1 and examined the impugned judgement.

7. Having perused the impugned judgement, it would be appropriate to



extract para 11 thereof to appreciate that the learned Single Judge had in fact tested the terms and conditions prescribed in the relevant notification no. 15(172)/DE/Act/2010, dated 7th January, 2011, which is reproduced as under:-

“11. In this regard, it will be important to note that as per Clause 6 of Notification No. 15(172)/DE/Act/2010 dated 07.01.2011, the documents required for seeking admission for EWS/DG category are as under:

*“...(a) For the admission of child belonging to weaker sections **Income-Certificate issued by a revenue officer not below the rank of Tehsildar or BPL Ration Card (yellow coloured) or AAY Ration Card (Pink coloured) shall be considered as proof of income:***

*Provided that the **parents of the child** belonging to weaker section shall submit a self-declaration of annual income on an affidavit every year for continuation of free seat in the school once admitted against free seat. However, no student shall be expelled or debarred from the school in case of non-submission of above mentioned documents without the prior approval of Director (Education), Dte. of Education, GNCTD.*

*(b) For the admission of child belonging to disadvantaged group a certificate issued by a revenue officer not below the rank of Tehsildar or any other competent authority, in the name of child or **his/her parents** shall be considered*

(c) The school shall not consider any other document except any one of the following documents, as proof of residence: -

(i) Ration card issued in the name of parents

(mother/father having name of the child)

(ii) Domicile certificate of child or of his/her parents.

(iii) Voter I-card of any of the parents

(iv) Electricity bill/MTNL telephone bill/water bill/Passport in the name of any of the parents or child...”

8. Apart from the aforesaid, this Court also finds that the learned Single Judge had also examined and considered the terms of the Circular dated 24th April, 2024 issued by the respondent no.1, which stipulated the nature of documents to be submitted by the parents of the candidate. After having examined the policy as also the Circular dated 24th April 2024, learned Single Judge concluded that the policies refer only to the parents of the



candidate and not the grandparents. Learned Single Judge had also taken into consideration that in case the interpretation as projected by the appellant is agreed to, the same would lead to absurd results. In that, the possibility of the misuse of the said provision could not be checked nor controlled.

9. This Court too has scrutinized the clauses in the notification dated 7th January, 2011 which makes it apparent that the conditions stipulated therein refer only to the parents. The examination of the Circular dated 24th April, 2024, brings to fore the mandatory direction of submission of Aadhaar Card of parent/legal guardian only. Apart from that there is no reference to grandparents anywhere in the said notification too. In view of the clear mandate of the notification dated 7th January, 2011 and the Circular dated 24th April, 2024, this Court is unable to appreciate as to on what grounds the appellant is predicating her entitlement on the basis Food Security Card issued in favour of the grandmother. It is trite that what is not specified cannot be inferred in a policy document nor can the *cassus omissus* be supplied by a Court. The law in this regard has been authoritatively pronounced by the Supreme Court in ***Commissioner of Sales Tax, U.P., Lucknow vs. Parson Tools and Plants, Kanpur, (1975) 4 SCC 22*** which is reproduced as under:-

“16. If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so “would be entrenching upon the preserves of legislature”⁶, the primary function of a Court of law being jus dicere and not jus dare.”

10. So far as the arguments regarding procurement of income certificate



by the father of the appellant during the pendency of the underlying writ petition and the same being a document to be considered for admission is concerned, the said submission cannot be entertained at this stage. It has been informed to this Court by learned counsel for respondent no.1 that the seat reserved for the appellant under the interim orders of the learned Single Judge, has already been allotted to another candidate belonging to the EWS/DG category. Since the said EWS/DG category seat has been allotted to another candidate belonging to the same category, at this stage to pass any orders in favour of the appellant would result in deprivation of a right to another candidate of the same category. This would not only be unfair but also unjust. This Court cannot countenance such situation. Accordingly, the said submission is also rejected.

11. For the aforesaid reasons, present appeal along with the applications is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 13, 2024/rl