

Keshav & ors. V Principal & ors.

**IN THE COURT OF CHAVI GOEL, CIVIL JUDGE JUNIOR
DIVISION, GURUGRAM.**

Date of order: 28.03.2022

1. Keshav Tanwar, age 15 years minor son Pawan, through his father Pawan, being natural guardian and next friend,
2. Jaishree Tanwar age 12 years, minor daughter Pawan, through his father Pawan, being natural guardian and next friend,
3. Aditi age 12 years, minor daughter Rakesh Yadav, through her father Rakesh Yadav, being natural guardian and next friend,
4. Moksh age 9 years minor son/daughter of Rakesh Yadav, being natural guardian and next friend,
5. Ayan age 9 years minor son of Jitender Kumar, through his father Jitender being natural guardian and next friend,
6. Ayan Vashishth, age 10 years minor son of Dharmender Kumar through his father Dharmender Kumar being natural guardian and next friend,
7. Achuki age 11 years, minor daughter of Rajesh Kumar through her father Rajesh Kumar being natural guardian and next friend,

All residents of VPO Sidhrawali, Tehsil Pataudi District Gurugram.

.....Plaintiffs

Versus

1. Principal, Rao Lal Singh Public School, VPO Sidhrawali, Tehsil Manesar District Gurugram, through its Management/Director.
2. State of Haryana, through Collector, Gurugram.
3. Block Education Officer, Ist Floor, Pataudi, Tehsil Pataudi District Gurugram.
4. District Education Officer, 5th Floor, Mini Secretriare, Gurugram.
5. Director of School Education, Haryana, Shiksha Sadan, Sector-5, Panchkula.

.....Defendants

**Chavi Goel
Civil Judge (JD)
Gurugram
28.03.2022**

UID HR0377

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Application under Order 39 Rule 1 & 2 read with section 151 CPC

Present: Ms. Deepika, Advocate for plaintiffs/applicants.
Sh. P.R. Yadav, Advocate for defendant/respondent no. 1.
Sh. Hardeep Hooda, Leadned Government Pleader for
defendants/respondents no. 2-5.

Order:-

This order of mine shall dispose off an application filed under
Order 39 Rule 1 & 2 read with Section 151 CPC.

1. Learned counsel for the plaintiffs/applicants argued that the present suit has been instituted by the respective fathers of plaintiffs being natural guardian and next friend as the plaintiffs/applicants are minors on the date of filing of the present suit. It is submitted that the parents of the applicants fall under the category of economically weaker section/Below Poverty Line as defined by Hon'ble Punjab and Haryana High Court and certificates in this regard are also issued by the competent authority in their names. It is further submitted that the applicants have applied for admission to the respondents as per Rule 134-A of Haryana School Education Act, 1995 and the rules framed thereunder in the year 2003 with a review of 08.09.2007, PS (3) dated 19.06.2007. It is submitted that the applicants have passed their entrance test got conducted by respondents and they were declared as successful candidates for their admission *vide* draw drawn dated 16.12.2021. It is further, submitted that as per the above rule, the applicants are required to pay same fees as charged in Government School of Haryana for same Classes under Rule 134-A which

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is for reservation for meritorious students who belong to economically weaker section/Below Poverty Line card holders. It is further submitted that the recognized private school shall reserve 10% of seats under Rule 134-A of Haryana School Education Act, 1995 for meritorious students belong to Economically Weaker Sections/Below Poverty Line cardholders and the parents of the applicants fall into that category as their income is less than Rs. 2 lakhs per annum. It is further, submitted that the applicants have applied to seek admission in the defendant's school from Class 2nd to 12th but despite being selected in the entrance test and the allotment of the school ie defendant No. 1 to the applicants, they are not allowed to sit into the defendant No. 1 school and defendant No. 1 has refused to provide admission to applicants in illegal and arbitrary manner. It is further submitted that as per the rules mentioned above, the applicants are entitled under the policy of Government to take admission in defendant No. 1 school but the defendant No. 1 is not complying the order of the Government as well as the policy. With these averments, it is lastly submitted that the due to this behaviour of the defendants, the future of the applicants are in dark as despite being the meritorious students they are not allowed to take education from defendant No. 1 school and in these circumstances, keeping in view the importance of the present matter, it is prayed that the present application should be allowed and the respondents should be directed to gave admission to the applicants in the school of

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respondent No. 1 so that the applicants can utilize their right to education as provided under Indian Constitution. With these submissions it is pleaded that the present application may be allowed.

2. On the other hand, learned counsel for respondent No. 1 argued that the applicants have not put the true facts before the Court because the applicants No. 1, 2, 5 and 6 are already studying in the school of respondent No. 1 but it has not been disclosed by the applicants in their application. It is further submitted that the matter involved in the present suit is subjudised before Hon'ble Punjab and Haryana High Court in CWP No. 22164/2021 and is fixed for 18.07.2022. It is further submitted that *vide* order dated 01.11.2021 the Hon'ble High Court adjourned the matter to 28.02.2022 and it is also directed that no coercive steps to be adopted and then *vide* order dated 24.03.2022, the Hon'ble High Court adjourned the matter to 18.07.2022 and also directed the interim order to be continued till next date of hearing. It is further submitted that in these circumstances when the matter is already subjudised before Hon'ble Punjab and Haryana High so this Court should not order against the same. It is further argued that the respondent no.1 has never refused to provide admission as per the policy of Haryana Government but the applicants are not falling into the category of beneficiaries of that policy. With these submissions, it is pleaded that there is no merits in the present application so the same should be dismissed.

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3. On the other hand, Learned counsel for respondent No. 2 to 5 submitted that as per the Rule 134-A of Haryana School Education Act, 2003 the recognized private schools were directed to reserve 10% seats for the meritorious students belonging to economically weaker sections or Below Poverty Line category and in compliance of said rule, the Director Elementary Education, Panchkula issued letter to all District Education Elementary Education, Block Education and Block Elementary Education Officers vide its office memo No. 33/2/2021 PS (E-1) dated 21.12.2021 for giving admission and allotment of school under the above said rules. It is further submitted that in compliance of these directions the Department District Elementary Education Officer, Gurugram vide memo No. G-II/2021/6070/77 dated 20.12.2021 and Block Education Officer, Pataudi instructed to Constitute Committee as per rules and issued directions to all Principles/Headmasters of private schools for admission under Rule 134-A. It is also submitted that the letter of all private schools coming under the jurisdiction of Block Pataudi vide its Office memo No. 2539/21 dated 20.12.2021 regarding submission of compliance report of admission under Rule 134-A was also issued but the respondents No. 2 to 5 had received complaints from the parents against the respondent No. 1 i.e. Rao Lal Singh Public School, Sidhrawala Block, Pataudi and upon receiving those complaints, the respondents No. 2 to 5 have served many notices to school respondent no.1, to explain but respondent No. 1 had not replied any of

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those notices. It is further submitted that thereafter the respondent No. 2 to 5 informed the District Elementary Education Officer, Gurugram regarding the non-compliance of direction by respondent No. 1 and then the District Elementary Education Officer, Gurugram had issued show cause notice to respondent No. 1 as per instructions issued by Department vide its office memo No. 8/334/016/PS (1) dated 12.04.2017. It is further submitted that the District Elementary Education Officer, Gurugram recommended the Department action against the private school defaulting in giving admission under Rule 134-A of Haryana School Education Act, 2003 by forwarding the list of all defaulting private schools coming under the jurisdiction of District Gurugram vide its memo No. G-II/22/11038 dated 01.02.2022. It is further submitted that the respondent No. 2 to 5 complying all the directions issued by Department and also recommended departmental action against respondent No. 1 so there is nothing against respondents No. 2 to 5 on the case file and further as the respondents No. 2 to 5 are complying all the rules of Haryana Government as per the policy made so there is nothing against respondent No. 2 to 5. With these submissions it is pleaded that the present application filed by the applicant be disposed off as per rules.

4. In reply of these arguments, Ld. Counsel for the applicants submitted that the version of the respondent no. 1 that it has given admission to some of the applicants is of no value because none of the

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applicant is allowed to sit in the school. Lastly, it is prayed that the applicants have all the rights to take the education from the respondents so the present application deserve to be allowed.

5. I have heard the learned counsels for the parties and have gone through the case file carefully.

6. In order to get the beneficiary relief of temporary injunction the essential requirements to be satisfied are as under:-

- i) that the applicants have a prima facie case in his favour;
- ii) that the balance of convenience lies in favour of the applicants; and
- iii) that the applicants shall suffer an irreparable loss and injury, if the relief of temporary injunction as prayed for is not granted.

7. At this point it would be proper to high light law of the land in context of granting of temporary injunction. As laid down by the Apex Court in Plethora of decisions, three things must co-exist before the Court proceeds to grant ad interim injunction and these are as stated above prima facie case, balance of convenience in favour of applicant, irreparable loss to applicant. Further these three terms are not rhetoric phrases of incantation but are words of width of an elasticity. Prima facie case does not necessarily means that plaintiff should establish his title to the suit property rather there should be a probability of plaintiff getting a prima facie relief. Similarly, balance of convenience also denotes that by refusing injunction greater inconvenience will be caused to the applicant

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and irreparable loss does not mean that there should be no possibility of repairing the injury rather it only means that injury must be a material one. Further it is settled law that a party is not entitled to an injunction as a matter of right and granting of relief lies in discretion of the Court

8. The present application has been filed by the plaintiffs/applicants for the relief that the respondents should be directed to provide admission to the applicants in their respective classes under reserved category for Economically Weaker Sections/Below Poverty Line category and rules for economically weaker section/BPL cardholders as per Rule 134-A of Haryana School Education Act, 1995 and the rules framed in the year 2003. On perusal of the file it is found that admittedly defendant No. 1 is the school which got conducted an entrance exam and the applicants got clear the same. It is also admitted by respondent No. 1 that applicant No. 1 Keshav, applicant No. 2 Jai Shree, applicant No. 5 Ayan and applicant No. 6 Kaushan, were given admission in the school of respondent No. 1 and they are taking their education from there. It is also submitted on behalf of respondent No. 1 that these students have attended the last session completely and their result is already out. It is required to mention here that respondents No. 2 to 5 had also admitted before the Court the Rule 134-A of Haryana School Education Act, 2003, which provides the reservation of 10% seats for meritorious students belonging to economically weaker section and below poverty line categorically. This

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court has also perused the same as the copy of that rule is filed on record by the respondents no. 2-5. Although all the directions have been issued by respondents No. 2 to 5 to all the District Elementary Education Officer, *qua* the compliance of the Rule 134-A as stated above yet, it is also submitted by respondents No. 2-5 as well as averred in its written statement that they are receiving complaints against respondent No.1, for not complying the Rule 134-A. In these circumstances when admittedly, some of the applicants have given admissions in the school to respondent No. 1 then there seems no ground to arbitrarily decline the admission to remaining applicants No. 3, 4 and 7 who have also qualified the entrance exam and no such objection has been taken by respondent No. 1 that these applicants do not fall under the category of Economically Weaker Sections/Below Poverty Line card holder or they are not covered by the Rule 134-A of Haryana School Education Act, 2003. Further, the respondent No. 1 approached Hon'ble Punjab and Haryana High Court to challenge to this rule, on the ground that the same is not applicable on that school but in that Writ no. CWP-22164-2021, no interim relief is granted to respondent No. 1 except the interim relief of no coercive steps to be taken. Hence, in my considered view, at this stage, keeping in view the fact that the education is the basic human right which is also appreciated by The Constitution of India and the applicants being the students of economically weaker section as well as meritorious, deserve to sit in the

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school of respondent No. 1 which has been given to them as per rules and on the basis of their capability and to avail the benefit of education. Further, at this interim stage, this court need not to go into the merits as that is the matter of adjudication at final stage, still *prima facie* applicants are certainly entitled to get admission in the school as new session of the school, is going to be started. Further, nothing can be worse than the loss of education so in the present suit, at this stage, irreparable loss is also going to be caused to the applicants and certainly balance of convenience also lies in their favour. Hence, in the light of the above the present application in hand filed by the applicants stands **allowed** and the respondent No. 1 is directed to provide admission to all the applicants for their respective classes under reserve category for Economically Weaker Sections/Below Poverty Line card holders as per Rule 134-A of Haryana School Act, 2003 on filing their respective documents.

9. Nothing expressed herein shall have any bearings on the merits of the case.

Announced in open court.
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Note:- Certified that all the 10 (ten) pages of this Order have been checked and signed by me.

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Present: Ms. Deepika, Advocate for plaintiffs.
Sh. P.R. Yadav, Advocate for defendant no. 1.
Sh. Hardeep Hooda, Leadned Government Pleader for
defendants no. 2-5.

Written statement and reply to application filed under Order 39 Rule 1 & 2 read with Section 151 CPC filed on behalf of the defendant no.1 filed. Copy supplied.

Arguments heard on the application filed under Order 39 Rule 1 & 2 read with Section 151 CPC.

Vide my separate detailed order of even date, the injunction application is hereby **allowed and respondent No. 1 is directed to provide admission to all the applicants for their respective classes under reserve category for Economically Weaker Sections/Below Poverty Line card holders as per Rule 134-A of Haryana School Act, 2003 on filing their respective documents.**

Now, to come up on **18.07.2022** for filing reply of the application filed under Order 6 Rule 17 CPC by the plaintiffs.

Announced in open court.
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