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

+ W.P.(C) 1225/2014

PRAMOD ARORA

..... Petitioner

Through Mr. Kirti Uppal, Sr. Advocate with
Ms. Kiran Kalra Uppal, Mr.
Anshumaan Sahni, Mr. Aman Bhalla
and Ms. Aastha Dhawan, Advocates.

versus

HONBLE LT. GOVERNOR OF DELHI AND ORS

..... Respondent

Through Ms. Zubeda Begum, Standing
Counsel with Ms. Sana Ansari and
Ms. Vanessa Singh, Advocates for
GNCTD.
Mr. Sachin Datta, CGSC with Ms.
Niti Arora, Advocate for UOI with
Mr. A.K. Tiwari, Under Secretary,
Ministry of HRD.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

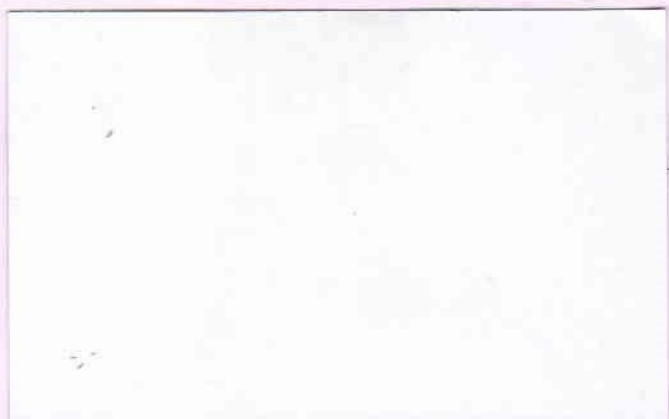
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26.02.2014

1. During the course of hearing, learned Standing Counsel for the Central Government has produced a letter dated 25.2.2014, which seeks to clarify the decision with regard to the 3% quota earmarked under the Persons with Disabilities (Equal Opportunities, Protection

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of Rights and Full Participation) Act, 1995.

2. Learned counsel for the parties had urged that a change had been brought about by the amendment to the Right of Children to Free and Compulsory Education Act, 2009 by amending Act, 2012, especially Sections 2 (d) and 2(ee) r/w Section 3(iii).

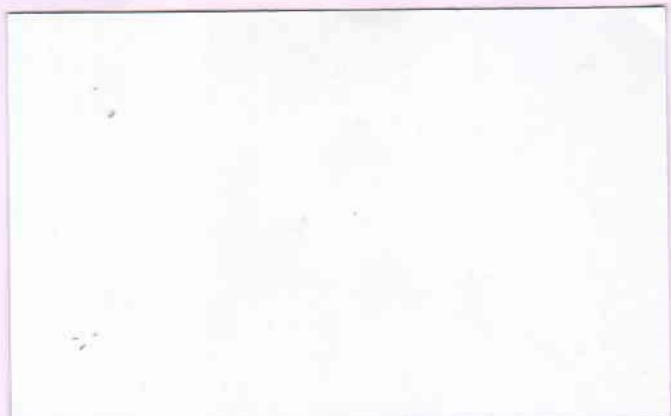
3. Moreover, learned counsel for the petitioner had argued that the change does not in any manner affect or seek to affect the right of children with disabilities under the 1995 Act, especially Section 26 and 39 and that the 3% quota earmarked in the said 1995 Act would prevail over and above the 25% quota amended by the RTE Act.

4. Learned counsel for Government of NCT argued that the 3% quota would have to be split up within the 25% quota by way of horizontal reservation and the balance within the 75% open category.

5. The letter dated 25.2.2014 instructing the counsel in this regard at one stage states that private schools can earmark seats for children with disability within the 75% quota, but at a later stage, favourably it also states that appointment of children with disability as a disadvantaged group is an enabling provision and would not be a reservation one and that the sub-categorization of 75% reservation under Section 12(i)(c) of the RTC Act is within the domain of the State.

6. Apparently, the Central Government and the Government of NCT appear to point out the same objective, although they are doing so in a diverse manner.

7. This Court is of the opinion that before proceeding further and



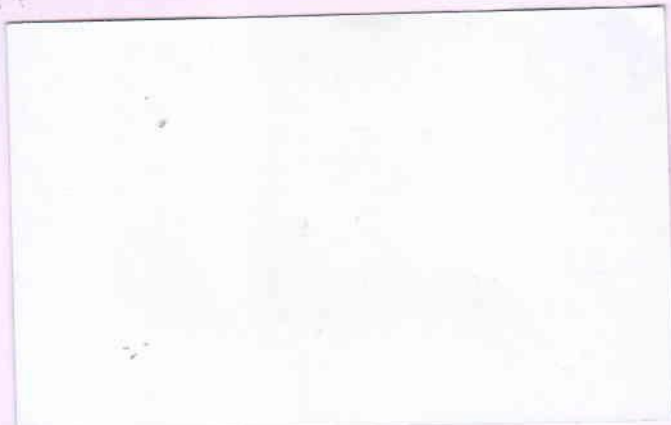
ruling upon the feasibility of a horizontal reservation within the 25% quota earmarked for EWS category students, and allocating 3% from 75% which can be suitably notified by the concerned unaided schools, the State Government should have regard to the total number of intake of all the private schools, work out the available 3% quota as a whole and also indicate which schools are equipped to deal with what kind of disability, keeping in mind the sub-categorization in Section 2(i) of the 1995 Act. To illustrate, if the total intake of seats for a given year is in the range of one thousand, the disability quota would be 3%, i.e. 30 seats, which would, for each of the seven sub-categories in 2(i), work out to 4 seats.

8. The Government of NCT before carrying out the exercise should indicate which schools are geared up to cater to the concerned disability, i.e. sight disability, hearing impairment, locomotive disability, blindness and the other categories mentioned in Section 2 (ee)(B) of the 2012 Amendment to the Right to Education Act.

9. This is in order to facilitate a broad scheme whereby the seats are specifically earmarked having regard to the facilities in that school so that the highest concentration of students to be admitted from such category are admitted to the concerned institutions.

10. The Central Government shall indicate the funds available in terms of the various schemes under the National Trust for Welfare of Persons Disabilities Act, 1999 and the trusts created under that Act as well as the existing schemes formulated by it in that regard.

11. The Court is of the opinion that for a fuller appreciation of the



issues which are likely to arise in the present proceedings, it would be essential to implead the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Sarojni House, 6, Bhagwan Das Road, New Delhi.

12. It is clarified that the reference to reservation for disabilities in the previous order was 3% and the reference to Section 62 was inadvertent, the correct provision being Section 26.

13. The quota of the 1995 Act shall be kept vacant to await the outcome of the final decision in this case.

14. List on 12th March, 2014 for further proceeding/hearing.

15. Dasti under the signatures of the Court Master.