

**IN THE COURT OF SUB- JUDGE/ CJM
AT SRINAGAR.**

CNR No.....JKSG-0200-4813-2020

File No.....54/N

D.O.I.....10.12.2020

D.O.O.....11.10.2020

In the Case of:

Reyaz Ahmad Dagga

S/o Ghulam Mohammad Dagga

R/o: Sector 1-A Qamarwari Sgr.

(.....Plaintiff)

VERSUS

Presentation Convent Higher Secondary

School Rajbagh, Srinagar through its principal

(.....Respondent).

In the matter of:

1. Application laid by the defendant in terms of Order 07 Rule 11 of the Code of Civil Procedure.
2. Application for issuance temporary injunction.
3. Application on behalf of the defendant seeking recalling of orders dated 25.03.2021 and 27.04.2021.

CORAM: Mr. Farooq Ahmad Bhat

JO Code: JK-00119.

Adv. Shafqat Nazir, Counsel for the Plaintiff/ Petitioner.

Adv. Hakeem Suhail Ishtiyag and Sheikh Rizwan Javaid, Counsel for the Defendant/ Respondent.

ORDER

This order intends to dispose of three applications:

1. Application laid by the defendant in terms of Order 07 Rule 11 of the Code of Civil Procedure.
2. Application for issuance temporary injunction.
3. Application on behalf of the defendant seeking recalling of orders dated 25.03.2021 and 27.04.2021.

The plaintiff/ petitioner has filed a suit for declaration and mandatory injunction asking therein that a decree of permanent injunction directing the defendant school to grant admission of the younger ward of the plaintiff namely Zainab Riyaz preferentially on the principle that the sibling of the ward is enrolled and is studying in class 3rd at the same school and also on the ground that the ward of the plaintiff fulfils the eligibility criteria. It is averred that the plaintiff is a Physician Specialist besides being a noted Social activist in the field of healthcare. The elder daughter of the plaintiff namely Mahirah Riyaz is a bright student studying in class 3rd-D in the defendant school. The Plaintiff along with his family is residing in the heart of

Srinagar city and thus falls within the catchment area of the Defendant School. It is averred that the plaintiff sought admission for his younger daughter namely Zainab Riyaz to Class LKG academic session 2020-21 in the Defendant School. The application form of the said ward of the plaintiff was accepted by the defendant with registration number 2578 and pertinently the defendant school does not provide admission to a student unless certain terms and conditions are fulfilled which include the good educational qualification of the parents of the ward and that the parents of the ward should be residing in the catchment area of the defendant school. It is the settled rule and established practice that the candidate who is already having a sibling studying in a school has to be given the preferential treatment at the time of admission. The plaintiff is satisfying all such conditions and the application form of the ward of the plaintiff was thus supposed to be considered by the defendant school. It is averred that a checklist for admission on the subject has laid down the eligibility criteria related to educational and financial status of

parents, area of residence and sibling already studying in the school which criterion the plaintiff fulfils. It is averred that as already submitted the plaintiff is a Physician specialist (MBBS, MD) besides being a noted social activist in the field of healthcare and the mother of the ward is Post Graduate in Mathematics with B-ED who voluntarily works as a community teacher. The elder sister of the ward namely Mahirah Riyaz is a bright student studying in class 3rd -D in the defendant School, as such the conditions pre requisite for seeking admission on preference stand fulfilled. Despite fulfilling the terms and conditions and having merit over other students the application seeking admission for the younger ward of the plaintiff has not been considered by the defendant school. It is averred that denial of admission to the ward of the plaintiff is unjust and unwarranted as the defendant school has itself flouted the said criteria by granting admission to non- deserving candidates. Further, the candidates having no sibling studying in the defendant school have been granted admission while as the candidature of the ward of the

plaintiff has been virtually rejected without assigning any reason and under these facts and circumstances, grant of admission to the sibling is a well established norm adopted by all the educational institutions in order to ease out the sufferings of the parents and facilitate imparting quality education to the ward. It is submitted that there is no denial of the fact that the elder sister of the ward can take extra care of the sibling and also the parents will be satisfied and relieved from their concerns. Further it is submitted that the elder sister of the ward has never been a defaulter in payment of dues even during odd times when even transport charges were not admissible. It is averred that the plaintiff has never been negligent in fulfilling the assignments of their elder daughter including parent-teacher meetings (PTMs) and in case they are forced to seek admission of their younger ward in some other school, that may cause considerable inconvenience to them, besides casting adverse effects upon the education of both the wards and that the Right to Education is an enforceable Constitutional right which includes the choice of the

about selection of the school for their ward. It is submitted that while seeking admission for the elder daughter Mahira Riyaz, the plaintiff has consciously chosen defendant school as their choice and accordingly the plaintiff has the right to choose same school for the younger ward.

Along with this suit, the plaintiff has laid an application for issuance of temporary injunction which is duly supported by an affidavit. Objections have been called from the otherside. It is submitted that the plaintiff/ petitioner has no prima facie case and balance of convenience does not lie in favour and no irreparable loss shall be caused to the plaintiff in case relief prayed for is not granted. It is submitted in the written statement that the Plaintiff and his family reside at Qamarwari, as per the documents submitted by the Plaintiff, which is not the heart of Srinagar but is at the outskirts of Srinagar city and the fact of the matter is that mere submission of application form does not create a right in favour of a candidate nor it is a guarantee that the candidate would be admitted. By

filing an application form, a candidate seeks admission, however, the same is subject to the decision of the management of the defendant-School. Merely seeking the details of the qualification of the parents, income of the parents or residence does not mean that the same is an eligibility criterion for admission. Also, the fact that a sibling is a student in the defendant-School also does not mean automatic admission. The Plaintiff is well aware of this fact as the same has been mentioned in the school diary of the Plaintiff's elder daughter. The document Information/ checklist is merely an information to the parents regarding the documents required while scrutinizing the admission forms and is never projected as an admission criterion. It is submitted that Mahira Riyaz is a student of the defendant-school. The defendant-school follows a uniform procedure for admission and after interaction with the parents and the candidates assesses the candidate's suitability to fit in the environment and curriculum of the School. In other words, the defendant-school assesses whether a particular

candidate would be comfortable in the environment provided by the defendant-school and whether such candidate could be groomed well in the School. For the said purposes, experts, having decades of experience in the same, conduct the said interaction and the Plaintiff is no one to adjudge that his daughter is having merit over all the other selected candidates that too without having even seen them. The Plaintiff is no expert in the field and cannot undermine the merit and suitability of any other candidate. Moreover, the form seeking admission for the Plaintiff's younger daughter is incomplete to the extent of the information pertaining to the Plaintiff's elder daughter, as her name has not been mentioned in the said form. It is submitted that the decision of the defendant-school to not admit the daughter of the Plaintiff was based on the opinion of the experts. No rules have been flouted. It is unfortunate on the part of the Plaintiff to declare all other candidates who have been selected in the defendant-school to be non-deserving just because his daughter could not make it to the select list. All the children are

unique in their own way and no one has the right to tag a particular ward as non-deserving. It is submitted that the defendant-school follows the expert advice while preparing the select list. Also, there is no rule which provides that a candidate shall be admitted merely because her sibling is a student of the School. Also, it has been expressly mentioned in the school diary in possession of the plaintiff, which merely because a sibling is a student of the school would not entitle the other sibling to an automatic admission. The claim of the Plaintiff, therefore, speaks volumes about the interest he has shown in the education of his elder child. The plea that the elder sibling would take extra care of the younger sibling is no criteria for admission. The Plaintiff may be asked as to who was there to take care of his elder daughter till now. The defendant-school has enough staff to take care of each and every child and the safety of a student's is the responsibility of the management and not the sibling. It is submitted that the conduct of the parents towards the defendant-school viz-a-viz a child is not an eligibility criterion to be taken

into account for admitting a child. For the sake of repetition, it is submitted that the admission is based on the opinion of the experts and no other factor is taken into account. It is submitted that there is no denial to the factum of Right to Education being available to every child, however, that does not mean that the Plaintiff can dictate to the School to admit her ward just because he wants them to. There is a procedure set in place for admissions and the same is followed. As per the Right to Education Act, 2009, it is the duty of the Government to ensure every child receives free and compulsory elementary education at a neighborhood government school. The same has no applicability on the defendant-school in the present case. If this interpretation of the law is assumed to be correct, the defendant-school shall have to admit each and every applicant which is not practically and economically viable. It is the thrust of the submissions advanced by the defendant that the suit of the plaintiff along with application for issuance of temporary injunction be dismissed with costs.

Heard both the counsels for the parties and perused the entire record on the file. Now taking up all the applications, one laid for issuance of temporary injunction by the plaintiff/ petitioner and the other one moved by the defendant/ respondent seeking rejection of the plaint in terms of Order 07 rule 11 of the code of Civil Procedure along with the application laid by the defendant seeking recalling of the orders dated 25.03.2021 and 27.04.2021, it appears that the plaintiff/ petitioner is aggrieved by the decision of the defendant not to accord admission to his younger daughter namely Zainab Reyaz to Class LKG for the academic session 2020- 21. This Court while hearing arguments of both the counsels for the parties in the motion laid for issuance of temporary injunction directed the ld. counsel for the defendant vide order dated 01.09.2021 and 30.09.2021 to produce the record of the candidates who have been admitted in the Class LKG for the session 2020- 21 in terms of provisions of Sec. 151 of the code of Civil Procedure to enable this Court to arrive at a just decision in the matter. This Court had a thread bare examination of the record brought before it of the successful candidates who made it to the select list and the said record was compared with the

credentials furnished by the plaintiff for the admission of his daughter Zainab Reyaz for the session 2020- 2021 before the school authorities.

It was found from the material on record that the candidature of the plaintiff's daughter for the admission is in-conformity and is parallel to requisite norms of the criteria adopted by the school authorities for admission of the successful candidates who have made it to the select list for the session 2020- 21. It was absolutely and in unequivocal terms fulfilling all the parameters prescribed by the school authorities to seek admission for the session 2020- 21. As per record certain candidates have been admitted who belong to areas which are on the country side of the city thereby leaving no scope for the defendant to justify the content of the respondent/ defendant that the petitioner does not belong to heart of the city. It is a matter of record produced by the school authorities that due preference has been given to certain candidates who are affiliated with the school management thereby discarding the content of the defendant that the plaintiff/ petitioner daughter Zainab Reyaz has no claim to seek admission in

the class LKG. The criteria adopted by the school for the admission shall be cleared, equitable, non-discriminatory and unambiguous and the school is required to adopt those parameters which are in the best interests of children and are in proximity with their own philosophy. This content of the defendant is not tenable that the child who seeks admission for the session must reside in such a neighborhood which has an access to the school and the social and economic conditions of the child are not so grim that she can't be equally considered for the admission. It is the duty of the defendant to ensure that the school must make a conscious effort to admit children with special needs, as the parents prefer that their children study in the same school. As a result thereof, the school may give preference to Zainab Reyaz who has a sibling studying in the same school coupled with the fact that the child had a substantial education background and socially and economically her parents are suitable to comply the standards of the school.

The moot question before the Court at this stage is whether the plaintiff is entitled to grant of temporary injunction by way of a command upon the defendant/ respondent to admit the ward in the class LKG for the session 2020- 21. It transpires from the record and the pleadings filed by the parties that the plaintiff duly applied for the admission of his daughter Zainab Reyaz and her application was turned down by the defendant. The plaintiff is required to prove that the plaintiff has a prima facie case and for proving prima facie case, it is incumbent upon the plaintiff to show that his legal rights have been infringed by the act of the defendant. Prima facie case means that there are issues to be tried and points and pleas to be decided and determined by the Court. If there are points in the suit or pleas in the suit to be determined in between the parties, then there may be said to be a prima facie case, and the question of granting injunction may be considered particularly when the plaintiff is shown to be aggrieved by the infringement of his legal rights at the hands of the defendant. Prima facie case does not mean that it must be shown that in all probability the party applying for injunction would succeed in the suit. It would be sufficient from him to show that he has a fair question to

raise as to the existence of the right he claims and that it is necessary in the interest of justice to presume the said right till the disposal of the suit. Prima facie case is not to be confused with prima facie title. For establishing a prima facie case, it is not necessary for the party to prove his case to the hilt and if a fair question of law and fact is raised for determination, it should be taken that a prima facie case is established. Having a cursory look at the matter in issue, it appears that the minor girl has a sibling in the same school and she resides in a catchment area which is not far from the reach of the school, as both the parents of the minor girl are social and economically well off and highly qualified and the parameters set out by the school appear to be vague and ambiguous while rejecting the candidature of the daughter of the plaintiff. I am aware of the fact that interviews are generally a tool for profiling and eliminating children and therefore screening to assess a child's intelligence should be prohibited. I fail to understand what else additional parameters the child has to fulfill while asking for admission in a high profile school like Presentation Convent School. The school authorities have unfettered

powers and have no checks and balances upon their unfettered powers and in this case they have adopted a pick and chose policy. The school shall come up with a uniform policy to ensure that there is complete transparency in the admission process and rejection of candidature of a child while seeking admission is not discriminate, absurd and ambiguous. Prima facie the plaintiff has been able to show that the rationale adopted by the defendant in rejecting the candidature of baby Zainab Reyaz is based on ambiguity and is irrational, so the Court is bound to safeguard the interests of the plaintiff. The infringement of legal right is sine quonon for issuance of temporary injunction and the circumstances adhered with are sufficient to ask this Court to intervene and safeguard the interests of the plaintiff. Usually the prayer for grant of interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation by the defendant are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The Court, at this stage, acts on certain well settled principles of administration of this form of interlocutory

remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the 'balance of convenience lies'.

The balance of convenience in the factual circumstances tilts in favour of the plaintiff/ petitioner and against the defendant/ respondent. While granting temporary injunction the Court must be satisfied that:

- a. The party seeking issuance of order of ad-interim besides having a strong prima facie case must also show that.
- b. Protection is necessary from the species of injuries knows as irreparable before legal right is established and

c. The mischief or inconvenience likely to arise from withholding of injunction is greater than from granting it.

A mischief and inconvenience is likely to arise in the present case in case temporary injunction is not granted as it will legalize an unauthorized act of the defendant/ respondent. In case injunction is refused, the plaintiff/ petitioner will be put to such a mischief which shall give unfettered authorization to the illegal act of the defendant and that too on a claim that is based on dishonesty, unjust an unauthorized action of the defendant. The loss complained of by the plaintiff/ petitioner is irreparable in nature and cannot be compensated by monetary benefits or payment of damages to the plaintiff/ petitioner. The assertions put forth by the plaintiffs do substantiate his claim that the act of the defendant qua the decision taken for rejecting the candidature of the minor daughter of plaintiff is unwarranted and issuance of injunction is justified to mitigate the miseries of the plaintiff.

In light of observations, I am of the opinion that the plaintiff has a prima facie case and balance of convenience lies in his favour and irreparable loss shall be caused to the plaintiff, in case relief prayed for is not granted. Therefore, the defendant is temporarily directed to issue a provisional admission in favour of the daughter of the plaintiff namely Zainab Reyaz in class LKG for the academic session 2020- 21 and in case new session has started or is likely to start in October- November 2021, then under such eventuality the daughter of plaintiff Ms. Zainab Reyaz shall be admitted in class UKG subject to her appearance in the annual exams of class LKG in case conducted by the school authorities under the relevant norms applicable in the school. However, the plaintiff is directed to furnish an undertaking before this Court that he will withdraw the candidature of his daughter at any time and at any stage of the subsequent sessions, in case the plaintiff does not succeed in the main suit. Let a copy of this order be forwarded to defendant/ respondent for information and compliance.

Taking up the other application filed under Order 07 Rule 11 of the code of Civil Procedure, it appears that the question of cause of action is a mixed question

of fact and law and shall be taken up during the trial after the issues are framed in the main suit. At this stage, the grounds taken in the application are not sufficient to warrant rejection of the plaint in terms of Order 07 Rule 11 of the Code of Civil Procedure. Accordingly, all the applications are disposed of and shall form part of the main file.

Announced
11.10.2021

**SUB-JUDGE/ CJM
SRINAGAR.**