

(2022) 04 DEL CK 0055

In the Delhi High Court

Case No : Civil Writ Petition No. 3667, 3822, 3842, 3866, 4363 Of 2022, Civil Miscellaneous Application No. 10870, 11357, 11402, 11402, 13024 Of 2022

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APPELLANT

Vs

Kendriya Vidyalaya Sangathan & Ors

RESPONDENT

Date of Decision : 11-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 21A

Right Of Children To Free And Compulsory Education Act, 2009 — Section 2(f), 2(p), 3

Citation : (2022) 04 DEL CK 0055

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Ashok Agarwal, Kumar Utkarsh, Manoj Kumar, Sandeep Deshmukh, Nishant Sharma, Rakesh K Sharma, Ajeet Yadav, Dr.Jugesh Aspal, Subhash Chandran K R, Yogamaya M G, Subhash T M, Chetan Sharma, Apoorv Kurup, S.Rajappa, Gowrishankar, Amit Gupta, Sahaj Garg, Rishav Dubey, Mohit Prasad, Jitendra Kumar Tripathi, Rishikesh Kumar, Sheenu Priya, Sudhir Shukla

Final Decision : Dismissed

Judgement

Rekha Palli, J

1. The petitioners, who are aged about 5 years but yet to complete 6 years as on 31.03.2022, have approached this Court assailing the admission criteria for the academic year 2022-23 issued by the Kendriya Vidyalaya Sangathan (hereinafter referred to as 'KVS') on 24.02.2022, which prescribes the minimum age for admission of a student in Class-I as 6 years or above.

2. On 24.02.2022, the respondent no.1 issued guidelines for admission to all KVS with effect from the academic year 2022-23. According to these guidelines, a child must be 6 years old as on the 31st March of the academic year in which admission was being sought to Class-I. This newly introduced criteria superseded the earlier criteria for admission which permitted the children who were 5 years

or more as on the 31st March of the relevant academic year to apply for admission to Class-I. The petitioners, who will turn 6 years on or after 01.04.2022 and are therefore ineligible to apply for Class-I as per the impugned guidelines have, therefore approached this Court.

3. At the very outset, it may be noted that even though, in the writ petition, the petitioners have sought quashing of the guidelines with a direction to the respondents to reframe the guidelines, during the course of arguments, the petitioners have confined their relief only to this academic year and therefore their grievance is primarily relating to the issuance of these guidelines increasing the minimum age for admission to Class-I by one year just before the start of the academic year, which they urge, is wholly arbitrary.

4. In support of the petition, submissions have been made by Mr. Ashok Agarwal, Dr. Jugesh Aspal, Mr. Rakesh K. Sharma and Mr. Subash T M.

5. Learned counsel for the petitioners submit that though all over Delhi, children aged 5 years or above are eligible to apply for admission to class-I, the respondents have introduced the impugned criteria purportedly on the basis of the National Education Policy, 2020 (hereinafter referred to as the 'NEP, 2020') without appreciating the fact that even if any such change was to be introduced, the same had to be done in a phased manner by giving adequate notice to all the concerned stakeholders. They contend that the NEP, which has been issued in 2020, is yet to be made applicable in a number of States and Union Territories across the country. Once, none of the other schools in Delhi are following the NEP, 2020, the KVS, even if it is a special category of school, ought to have ensured that adequate notice is given to all eligible students before introducing the eligibility criteria of 6 years for admission to Class-I.

6. Mr. Ashok Agarwal, learned counsel for the petitioners submits that without prejudice to his plea that the NEP, 2020 does not in any manner prescribe that the minimum age for admission to class-I should be 6 years, this criteria, which is still to be introduced in all other schools in Delhi could not have so suddenly been brought into force by the KVS. He contends that when all other schools in Delhi are still following the 5-year age criteria for entry to Class-I, the action of the respondents in following the 6-year age criteria would lead to creation of two different age groups for admission to Class-I, in Delhi. This he contends, is wholly arbitrary and irrational and therefore prays that till the NEP, 2020 is introduced in all schools across Delhi, the respondents be also directed to follow the age criteria of 5 years for admission to class-I.

7. Learned counsel for the petitioners submit that notwithstanding the fact that the impugned guidelines are contrary to the Delhi School Education Act and Rules, 1973 as also the report of the Ganguly Committee, all the petitioners have been taken by surprise by the impugned guidelines at this belated stage when admissions to most other schools in Delhi have already been completed and therefore contend that the guidelines are liable to be set aside on this ground

alone. The petitioners, who were keen to join KVS, have been left remediless and would perforce be compelled to wait for one more year for admission to Class-I. In support of his plea, they place reliance on a decision of this Court in *Suman Mishra vs. Govt. of NCT of Delhi* (2016) 227 DLT (CN) 19 as also on the decision of the Apex Court in *Mahabir Auto Stores v. India Oil Corporation*, (1990) 3 SCC 752.

8. Mr. Agarwal then submits that the impugned admission guidelines are also violative of Article 21A of the constitution which guarantees right to free and compulsory education. By placing reliance on the decision on the Division Bench of this Court in *Social Jurist A Civil Rights Group vs. Union of India and Ors.* (2007) SCC Online Del 1515, he submits that Article 21A merely stipulates free and compulsory education to all children between the age group of 6-14 years but does not in any manner, prescribes any minimum age for admission of a child in a school.

9. He further submits that even as on date, a number of schools running under the aegis of the Central Government have been permitting children aged 5 years and above to apply for admission in Class-I for the academic year 2022-23, for which purpose he seeks to place reliance on the admission notice issued by the Army Public School, Bangalore as also by the Vikram Sarabhai Space Centre, Thiruvananthapuram. In fact, it is the respondent's own case that in order to ensure effective implementation of the NEP, 2020, a roadmap of two to three years has been provided so that the policy can be implemented all over the country in a phased manner by first introducing the requirement for the child to attend the pre-primary class from the age of 3 years, which has admittedly not been done till date. He, therefore, contends that the NEP, 2020 could have been made applicable only to children who had completed their pre-primary education and not to the children like the petitioners herein.

10. Dr. Jugesh Aspal, learned counsel for the petitioner in W.P. (C) 3866/2022 submits that since the NEP, 2020, based on which the impugned guidelines have been issued contains contradictory clauses, the respondents ought not to have issued the impugned guidelines in purported implementation of the NEP without reconciling clauses 1.6 and 4 of the NEP, 2020. According to him, while Clause 1.6 suggests that children aged 5 years and above are eligible for admission to class-I, clause 4 suggests otherwise.

11. They therefore submit that grave prejudice will be caused to all the petitioners as they will lose one full academic year in case the impugned guidelines are implemented from this year. Moreover, they would be put in a disadvantageous position compared to those children who were born in the same year and have already taken admission in other schools in Delhi. They, therefore, pray that the respondents be directed to permit the petitioners to apply for admissions to Class-I in the academic year 2022-23.

12. Per contra, the learned ASG appearing on behalf of respondents submits that

the petitioners, having not challenged the NEP, 2020 cannot be permitted to urge that the policy should not be implemented from this academic session merely because other schools in Delhi are yet not following the same. By drawing my attention to section 2 (p) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the 'RTE Act, 2009'), he submits that the KVS are a distinct category of schools catering mainly to the needs of the Central Government employees including the Defence Personnel who have transferable jobs and therefore an urgent need was felt to ensure that the NEP which is already being followed in 21 states across the country is also, at the earliest, introduced in the KVS.

13. He next submits that the petitioners' plea that the impugned criteria violates the provisions of the Delhi School Education Act and Rules, 1973 and the report of the Ganguly Committee, is wholly misconceived as neither the provisions of the Delhi School Education Act and Rules, 1973 nor the Ganguly Committee are applicable to the KVS which are a special category of schools running all across the country. In support of his plea, he seeks to rely on the decision of this Court in WP (C) 3774/2007 titled Neeti Singh Malik vs. Union of India, wherein it has been held that KVS being an autonomous body, which lays down standards of education to be followed uniformly in all its schools, is outside the purview of the Delhi School Education Act and Rules, 1973.

14. He therefore contends that the KVS have a distinct characteristic of its own and are highly sought-after institutions where a large number of students apply for admissions every year. These schools are pace setting institutes catering to the needs of a large number of students all across the country and therefore have to be at the forefront for implementing new policies and regulations. He, thus, submits that the decision of the KVS to implement the NEP from this academic session is fully justified. The petitioners, who were always aware that the new education policy being implemented in the country will be introduced in the KVS as well, cannot now contend that they have been taken by surprise.

15. He further submits that the rationale behind the decision in the NEP, 2020 to increase the age for admissions to Class-I from 5 to 6 years was taken by experts to ensure that the development of the child is at par with the class in which he/she is admitted. Moreover, such a change in age for admissions was also necessitated so as to bring a uniform minimum age for admissions to Class-I throughout the country as it was found that there was a disparity across various States and Union Territories in respect of the age for admissions to Class-I. He submits that such a decision has not been taken in a haste but only after extensive deliberations with the stakeholders concerned and also after taking into account the needs and overall development of the children.

16. The learned ASG then submits the impugned criteria of the respondent school does not in any manner deprive admission to age-appropriate classes and therefore it is not as if the petitioners have been deprived of admissions to the KVS. In fact, the only effect of the impugned guidelines is that the petitioners

would be eligible to apply for admissions in the next academic year and therefore no irreparable loss or prejudice will be caused to the petitioners. Moreover, in response to the impugned circular, the KVS has already received about 7 lakh applications against 1 lakh seats, of children aged between 6-7 years for admission to Class I, which number is expected to increase till the closure of registration of the admission process. He submits that if children with the age of 5 years are now considered for admissions, it would result in the creation of 3 age groups for admissions to Class-I which would result in heterogeneity of class and discrimination qua the candidates who had already applied for admissions to Class-I. He therefore submits that if such a course of action is permitted, it would require a complete overhauling of the academic programme and other formalities thus leading to chaos. He also places reliance on the decision of the Andhra Pradesh High Court in *M. Sireesha (Smt.) & Ors. vs. Comissioner, Kendra Vidhyalaya Sangathan, New Delhi & Ors.* (1998) SCC Online AP 315., where in similar circumstances, the Andhra Pradesh High Court had declined to interfere with the raising of the minimum age for admission to class-I introduced just before the beginning of the academic session. He, therefore, contends that the balance of convenience is against the petitioners.

17. The learned ASG submits that the admission criteria of the KVS is not in violation of the provisions of the RTE Act, 2009 but is in harmony with the said act. He submits that Section 3 of the Act mandates that every child aged between 6-14 years would have a right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. The elementary education, as defined under section 2(f) of the Act means the education from Class I-VIII. He thus submits that even the RTE Act 2009 stipulates the age of admission to Class-I as 6 years.

18. By placing reliance on the decision of the Apex Court in *P. Suseela and Ors. vs. University Grants Comission* (2015) 8 SCC 129, he submits that it is not as if the petitioners' admission to the KVS is being taken away. The petitioners had only applied for admissions with a legitimate expectation that they would get admissions in the KVS and submits that a vested right would have only accrued if the petitioners would have actually been granted admission in the respondent school. In the present case the petitioners do not have any crystallised right of admission in KVS and would still be eligible for admissions in the next academic year. Finally, he places reliance on the decision of the MP High Court in *Kendra Vidyalaya No.1, Rewa vs. Ayan Abdullah Usmani and Ors.* (2019) SCC Online MP 4388, wherein the Division Bench, by referring to the decision of the Apex Court in *Regional Officer, CBSE vs. Ku. Sheena Peethambaran & Ors* (2003) 7 SCC 719 had emphasised that no interim orders for grant of admission of students who are ineligible as per the prescribed criteria, should be issued.

19. Before considering the rival submissions of the parties, it may be once again noted that on 05.04.2022, when the petition was taken up for consideration, learned counsel for the petitioners submitted that the petitioners were neither

assailing the National Education Policy nor its implementation thereof by the respondent no.1 but were only restricting their challenge to the belated changes in the admission criteria issued by the respondent no.1. I am, therefore, confining this decision to the consideration of the petitioners' plea that the introduction of this changed age criteria on 24.02.2022 from 5 to 6 years for admission to Class-I for the academic session 2022-23 can be said to be belated, arbitrary and liable to be set aside on this ground alone.

20. Having given my thoughtful consideration to the submissions of the parties, even though I find merit in the petitioners' plea that this change in age criteria brought about by the impugned guidelines on 24.02.2022 was a little late in the day, the fact remains that the same does not in any manner debar the petitioners from seeking admission in KVS, but it only postpones their right to seek admission in KVS to the next academic year. The respondents have urged that this change was necessitated to ensure that the NEP formulated after extensive consultations with the experts is made applicable all across the country, at the earliest.

21. No doubt, the policy which was formulated in 2020 is yet to be implemented across schools in Delhi, despite the same having been already implemented in 21 states but once the statute i.e., the RTE Act, 2009 in itself places the KVS in a separate category coupled with the fact that all branches of KVS across the country, being run by the same management are obliged to follow the uniform criteria, the anxiousness of the KVS to introduce the age criteria of 6 years in accordance with the NEP, 2020 is well understandable. I may also note that during arguments, the fact that as held in *Neeti Singh Malik (supra)*, the Delhi School Education Act and Rules, 1973 is not applicable to the KVS, was not seriously disputed by the learned counsel for the petitioners and therefore there is merit in respondents' plea that the KVS was obligated to adopt a uniform criterion for admissions in all its branches across the country.

22. Once the NEP, 2020 is not under challenge, the respondents' plea that the minimum age of 6 years for admission to class-I as laid down in the policy to ensure that the development of the child is commensurate with the class in which he/she is admitted, needs to be accepted. When, once a conscious and well considered decision has already been taken by the experts that the entry age for admission to Class-I should be 6 years, this Court cannot and should not interfere with the said decision of the experts. Merely because some inconvenience is being caused to the petitioners who will have to wait for the next academic year to apply for admission to the KVS, cannot be a ground to direct the KVS to make an exception for its schools located in Delhi. Any such direction will have a rippling effect on the age criteria applicable to KVS schools situated all across the country including states wherein the NEP,2020 has been implemented and consequently, the minimum age for admission to Class-I has been fixed as 6 years in all schools in the said states.

23. The petitioners' plea that the age criteria of 5+ is still continuing in some of

the schools like the Army Public School, Bangalore and Vikram Sarabhai Space Centre, Thiruvananthapuram, running under the aegis of the Union of India, overlooks the fact that the NEP, 2020 is being introduced in the country in a phased manner and the purpose of the impugned guidelines is to bring uniformity in the admission criteria in all the branches of the KVS across the country.

24. The petitioners have also not disputed the respondents' plea that they have already received 7 lakh applications for admissions to Class-I in furtherance of the impugned notice. These applicants are admittedly between 6-7 years of age and therefore, I also find merit in the respondents' plea that in case the petitioners and other 5-year-old children are permitted to join Class-I in the KVS, it would lead to huge imbalance in the class making the situation almost unworkable. Not only will the syllabus have to be re-worked, even otherwise, admission of 5-year-old children with children who could be almost 7 years old, would be a highly undesirable situation. The balance of the convenience also, therefore, tilts more in the favour of the respondents than that of the petitioners

25. Reference in this regard may be made to the observations of the Madhya Pradesh High Court in Ayan Abdullah Osmani (supra) which reads as under.

"20. In such circumstances, in our considered opinion, the age criteria prescribed in the guidelines cannot be relaxed and should not be relaxed by the Court, as such relaxation amounts to perpetuating discrimination as those who are aware of the guidelines and did not fulfill the criteria regarding age prescribed in the guidelines did not apply and obtain admission, whereas the respondent Nos. 1 and 2 after having obtained admission as per the guidelines, have sought the relaxation to obtain undue advantage.

30. The law in respect of granting interim orders in academic matters, has again been extensively considered by the Supreme Court in the case of Dental Council of India v. Dr. Hedgewar Smruti Rugna Seva, Mandal, Hingoli & Ors. (2017) 13 SCC 115 : (AIR 2017 SC 1826), wherein the practice of granting interim orders and thereafter, to claim sympathetic considerations at the time of final hearing, has been deprecated and the respondent college in that case, was directed to deposit a sum of Rs. 30 Lacs.

31. In view of the law laid down by the Supreme Court, any direction to permit the respondents who admittedly do not fulfill the eligibility criteria and had themselves obtained admission in accordance therewith in Class-II and have thereafter, taken a about-turn and challenged the same, to continue with Class-III and to treat their admission to be in Class-III, would amount to issuing a fiat directing the appellant school to disobey its own Rules and Regulations to which the appellant owes its existence and would be destructive of the Rule of law, as it would amount to issuing a direction by this Court to the appellants, to disobey their own laws"

26. I may now refer to the decision in Suman Mishra (supra), on which heavy

reliance has been placed by the petitioners but find that the same does not forward the case of the petitioners in any manner. In the said decision, the Court was not dealing with a situation like the present where the minimum age for admission has been increased but was dealing with a situation wherein the upper age limit was reduced at the last minute thereby making some of the eligible children ineligible for admission. In the present case, as already discussed hereinabove, it is not as if the petitioners will become ineligible to apply for admission to Class- I in KVS; on the other hand, they will all, after attaining the age of 6 years, become eligible for admission to Class-I in the KVS in the next academic year.

27. I have also considered the decision in *Mahabir Auto Stores* (supra) and find that the same does not come to the aid of the petitioners. Even if the petitioners' plea that they were taken by surprise were to be accepted, the fact remains that neither they had any vested right to claim admission in KVS nor have they been debarred from seeking admission. The only effect of the impugned guidelines is to shift their eligibility to the next academic year which in my view cannot be a ground to interfere with the impugned guidelines especially when the respondents have already received over 7 lakh applications for admission to Class-I for the academic year 2022-2023. I have also examined the decision in *Social Jurist* (supra) and find that the same is also not applicable to the facts of the present case. In the said decision, the Court was dealing with the effect of Article 21A of the Constitution of India whereas in the present case, the impugned guidelines are based on the NEP, 2020 which is not under challenge in the present proceedings.

28. For the aforesaid reasons, I am unable to persuade myself to agree with the petitioners. The writ petitions are accordingly dismissed, without any orders as to costs.