

(2022) 06 KL CK 0108

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15261 Of 2022

Dhruv Sai Kiran

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-06-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 21A

Citation : (2022) 06 KL CK 0108

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : B.G.Harindranath, Amith Krishnan H, Manu S

Final Decision : Allowed

Judgement

Raja Vijayaraghavan V, J

1. Two children of tender age have approached this Court challenging the action on the part of the Kendriya Vidyalaya Sangathan ('KVS' for short) in declining admission to them based on revised guidelines issued after the admission process had commenced.

2. As common issues are involved, both these writ petitions are taken up and disposed of by a common judgment.

3. The factual position, as far as it is relevant, is detailed hereunder:

W.P.(C) No.15520/2022 is filed by Elna Chinchu, a child aged 7 years, through her father. It is stated that she applied for admission to Class II in the Kendriya Vidyalaya, Rubber Board, Kottayam, in terms of the admission guidelines 2022-2023. Believing bona fide that she would secure admission, she obtained a transfer certificate from her former school. Based on Ext.P1 application and Ext.P2 transfer certificate, the 3rd respondent issued Ext.P3, allotting a unique ID, to the student. The child remitted the requisite amount and purchased school uniforms, textbooks etc. as is evident from Ext.P4 series bills. When the father of

the child made an attempt to remit the school fees, he was shocked to find that the fee portal link issued to him had been blocked. When he approached the school authorities, he was informed that the admission granted to the child had been cancelled under the cover of a subsequent Government Order. In the said circumstances, representations were submitted before the respondents and he fervently requested that the admission already granted may not be cancelled and the minor child be permitted to join and pursue her studies. The petitioner states that her father is suffering from High-Grade Glioma Grade-III (Brain Tumor) and is physically and mentally weak. It is also contended that refusal to grant admission is illegal, irrational and arbitrary. It is in the above factual backdrop that this writ petition is filed seeking directions to the respondents to permit the petitioner to remit the school fees so that the child can continue studies in the respondent school for the academic year 2022 – 2023 onwards.

4. W.P.(C) No.15261 of 2022 is filed by Master Dhruv Sai Kiran, a child aged about 6 years through his father. It is contended in the writ petition that the child applied for admission in the Kendriya Vidyalaya at Payyannur. At the time of applying for admission, the admission formalities were regulated by Ext.P1 guidelines. The District Collector, Kannur, is the Chairman of the Managing Committee of the Kendriya Vidyalaya. As per clause 1 (xvii) of Part-B of Ext.P1, the Chairman of the Vidyalaya Management Committee is entitled to recommend a maximum of two admissions in the concerned Kendriya Vidyalaya/ Shift under his discretionary quota. These two admissions may be for admission in one class, or all classes put together. The only caveat is that the children so recommended should be eligible as per the Kendriya Vidyalaya Sangathan (KVS) Admission Guidelines (up to 30th of June). The petitioner asserts that he is otherwise eligible to get admitted to the I Standard of the School. After considering all the relevant facts, the District Collector, Kannur, issued Ext.P2 communication on 4.3.2022 to the Principal to include the name of the petitioner in the Chairman's quota and to admit the child to the school. It is contended that as per Ext.P3 admission schedule issued by the 2nd respondent in the month of February 2022, the last date for online registration is 13/4/2022 and the declaration of provisional select and waitlist of registered candidates is on 29/4/2022. The petitioner contends that by the time the online registration window was closed, all other schools in the neighborhood had completed their admission formalities, and under no circumstances could the petitioner aspire for admission to those schools. The petitioner contends that as he had acted in terms of the guidelines issued by the 2nd respondent and he had a legitimate expectation that admission would be granted in the Kendriya Vidyalaya. While so, much after the last date of closure of the online registration, the 2nd respondent came up with an Office Memorandum on 25/4/2022, notifying certain amendments to the special provisions under Part B of KVS Admission Guidelines 2022-2023. As per the amended notification, the respondents have discontinued some of the provisions like the discretionary quota given to the MPs, Chairman of the Vidyalaya Management Committee etc., children and dependent grandchildren of MPs,

grandchildren of serving and retired KVS employees, children of employees of the Ministry of Education (MoE), etc. The petitioner contends that the new guidelines superseding the earlier one for the very same academic year are arbitrary and one which affects the legitimate expectations of students and parents. It is contended that the petitioner did not even apply to any other schools as the admission to the KV was a forgone conclusion in view of the recommendatory letter issued by the Chairman. It is in the afore circumstances that the petitioner is before this Court seeking to quash Ext.P5 to the extent that it purports to interfere with the Chairman's right to recommend two students as per clause (xvii) of Ext.P2 and for issuance of further direction to the 3rd respondent to admit the petitioner to the class-I for the academic year 2022-2023 in the KV Edat, Payyannur.

5. In the counter affidavit filed by the respondents 1 to 3, it is stated that the KVS is an autonomous organization registered under the Societies Registration Act XX1 of 1860 and fully financed by the Ministry of Education, Government of India. The objective of forming KVS is to cater to the educational needs of children of transferable Central Government employees including defence personnel, by providing a common program of education to develop Vidyalaya as a model school. It is contended that in July 2020, the Government of India (GOI) launched the National Education Policy (NEP) 2020 with salutary aims to produce engaged, productive, and contributing citizens for building equitable, inclusive and plural society as envisaged in the Constitution of India. Relying on Ext.R3(a), relevant pages of the NEP 2020, the Government of India took a policy decision to bring out amendments in the admission guidelines in the KVS to align with NEP 2020. In supersession of all previous guidelines governing admission in Kendriya Vidyalaya, the KVS has framed Ext.R3(b) guidelines for admission in KVs during the academic year 2022-2023. Under the special provisions of these guidelines, admissions over and above the class strength is discontinued in certain categories like the Members of Parliament (MPs) quota, Chairman Vidyalaya Management Committee (VMC) quota, children and grandchildren of Members of Parliament, children and grandchildren of retired KVS employees etc. The discretionary power of the Chairman of the VMC to grant admissions in the discretionary quota over and above the class strength was also taken off. It is stated that the discretionary quota admission was becoming a serious concern of the KVS and these admissions were stretching the class strength and adversely impacting the learning. Due to the overcrowding in classrooms, children of transferable Central Government employees were unable to get admissions in the KVs on their transfer from one place to another. Further, the KVS has a reservation policy for RTE/SC/ST/OBC and 3% horizontal reservation for the differently-abled children. It was with the objective of streamlining the admission process that Ext.R3(d) revised admission guidelines were brought out. It is further stated that the right of the petitioners to apply for admission in the KV has not been denied by the respondents. As the petitioners are otherwise eligible to apply, they have applied through the online admission portal and were given

equal opportunity along with other candidates. However, as per the priority list, the result of the petitioner in WP(C) No. 15261 of 2022 in the online lottery is WL-166. It is further stated that it is well within the authority of the KVS to change the criteria for admission and the same has been done in consideration of larger public interest and to ensure that deserving students secure the seats and hence no interference is warranted for the reason that changes in policies are well within the Executive realm.

6. I have heard Sri Amith Krishnan and Sri George T.J., the learned counsels appearing for the petitioners and the learned Assistant Solicitor General of India.

7. Sri. Amit Krishnan, the learned counsel appearing for the petitioner in W.P.(C) No. 15261/2022 would refer to the sequence of events and it is submitted that the minor child had applied for admission in the KV in tune with the guidelines for admission which was operative then. The said guideline empowered the Chairman to recommend a maximum of two admissions. According to the learned counsel, the Chairman after evaluating the relevant aspects, proceeded to recommend the name of the petitioner in his quota. The petitioner had a legitimate expectation that he would secure admission and was waiting for his name to be included in the select list. Abruptly and without any previous notice, the petitioner was informed that the guidelines which were prevalent at the time of online registration have been changed and the quota has been taken away. The learned counsel would rely on the judgment of the Apex Court in *Maharashtra STC v. Rajendra Bhimrao Mandve* [(2001) 10 SCC 51], *Umrao Singh v. Punjabi University* [(2005) 13 SCC 365], *K.Manjusree v. State of A.P.* [(2008) 3 SCC 512], *Hemani Malhotra v. High Court of Delhi* [(2008) 7 SCC 11] and *Major Saurabh Charan v. NCT of Delhi* [(2014) 6 SCC 798] and it was argued that there was no justification on the part of the respondents to alter the basis of admission after the admission process has started. The learned counsel would then rely on *Navjyoti Coop Group Housing Society v. Union of India* [(1992) 4 SCC 477] and it is argued that the respondents being a public authority, were bound by the admission guidelines regulating the admission and the petitioner legitimately expected that he would secure admission based on the recommendation given by the Chairman. It is further contended that the child did not apply for admission in any other school and therefore, it would be next to impossible for the child to secure admission in a school comparable to the KV. The learned counsel would further contend that the assertion of the respondents that the guidelines were revised in tune with the National Education Policy 2020 cannot be accepted as the guidelines takes note of the NEP Policy and its salutary aims and purposes. According to the learned counsel, public orders cannot be construed in the light of the subsequent explanations of the parties in the course of litigation and reliance is placed on the judgment in *Commissioner of Police v. Gordhandas Bhanji* [1952 SCR 135].

8. Sri. George T.J., the learned counsel appearing for the petitioner in W.P.(C) No. 15520/2022 would contend that consequent to the application filed by the

petitioner, the 3rd respondent allotted a unique ID signifying that admission has been granted and thereafter, the petitioner had purchased textbooks as well as uniforms. It was much later when an attempt was made to remit the school fee, that the child realised that the admission already granted had been cancelled. The learned counsel would support the arguments advanced by Sri. Amith Krishnan and it was contended that the prerogative of the executive is subject to the rule of law and fairness in state action embodied in Article 14 of the Constitution.

9. Sri. S. Manu, the learned Assistant Solicitor General of India contended that it was in tune with the policy decision of the Government of India that necessary amendments were carried out in the admission guidelines in KVS to align it with NEP 2020. It is submitted that when the discretionary quota admission was becoming a serious concern stretching the class strength and as it was found that it was adversely impacting the learning of the students that the KVS undertook a review of its admission scheme which provides for granting admission to students through the discretionary quota of the Chairman and the MPs. According to the learned counsel, the petitioners cannot claim that they have a vested right to get admission in the KV through the discretionary quota, which has been dispensed with. Reliance is placed on the law laid down by the Division Bench of this Court in *Aiswariya S. v. Deputy Commissioner, Kendriya Vidyalaya, Kochi and Ors.* [2015 (1) KHC 407] and it was argued that Article 21A in no manner gives a right to the child or the parent to pick and choose a particular school. It is further submitted by the learned ASG that it is settled by now that the protection of any such legitimate expectation as pleaded by the petitioners would not require the fulfillment of the expectation wherein overriding public interest requires otherwise. Unless there is material to show that the decision taken by the authority is arbitrary, unreasonable, and not taken in public interest, would this Court be justified in disturbing the same in the exercise of powers of judicial review. The learned counsel relied on the law laid down by the Apex Court in *Bannari Amman Sugar Mills Ltd. v CTO* [2005] 1 SCC 625, *Union of India and Others v Hindustan Development Corporation and Others* [(1993) 3 SCC 499] to substantiate his contentions. It is further submitted that the issuance of revised guidelines is consequent to the adoption of a new policy to streamline the admission process and in such circumstances, this Court may not unsettle the same.

10. I have anxiously considered the submissions advanced and have perused the entire records.

11. Basic facts are not in dispute. In the month of February 2022, the Kendriya Vidyalaya Sangathan came out with guidelines for admission in Kendriya Vidyalayas for the academic year 2022-2023 onwards. Part-B of the guidelines contains Special Provision for admission. Clause 1 of the special provision states that the categories of children detailed therein would be admitted over and above the class strength except otherwise stated. About 21 categories of children are

mentioned therein. Clause (xvii) provides that the Chairman, Vidyalaya Management Committee, is entitled to recommend a maximum of two admissions. The petitioner in W.P.(C) No.15261/2022 was granted a recommendatory letter by the Chairman. Insofar as the petitioner in W.P.(C) No.15520/2022 is concerned, she has been allotted a student ID she has purchased textbooks as well as uniforms.

12. Exhibit P3 in W.P.(C) No.15261 of 2022 is the schedule of admission for the Session 2022-2023. It is evident therefrom that the advertisement for admission was on the last week of February 2022, the online registration for class-1 was on 28.2.2022 and the last date for online registration was on 13.4.2022 at 7 pm. The respondents were required to publish the declaration of provisional select and waitlist of registered candidates on or before 29.4.2022.

13. It is undisputed that the revised guidelines were issued by the KVS consequent to Ext.P4 office memorandum on 25.4.2022 in W.P.(C) No. 15261/2022. In other words, it was after the close of online registration that the revised guidelines were issued consequent to which the petitioners were informed that their admissions cannot be processed and they cannot be permitted to remit the fee.

14. Multifarious contentions have been advanced by the learned ASG to justify the action of the respondents. The Assistant Solicitor General may be right in contending that it was in implementation of the National Education Policy 2020 that admissions over and above the class strength were discontinued in certain categories like the MPs quota, the Chairman's quota etc. Obviously, such an action was taken to prevent overcrowding in classrooms and to provide admissions to children of transferable Central Government employees. I have no doubt in my mind that the revised guidelines are salutary in nature and would enable deserving students to secure admission to the Kendriya Vidyalaya. But it needs to be borne in mind that the NEP was published in the year 2020 much before the issuance of guidelines for admission to the KV. A perusal of the guidelines produced as Exhibit P1 in W.P.(C) 15261 of 2022 would reveal that while issuing the guidelines, the recommendations made in the NEP were also taken note of. Ergo, while coming up with the revised guidelines, the respondents ought to have reminded themselves that students like the petitioners had applied for admission and they were waiting on the premise that they would secure admission in the KV. The petitioner in W.P.(C) 15261 of 2022 has asserted in the writ petition that as he was certain that he would secure admission in the KV, he did not even apply for admission elsewhere, and by the time the admission was refused as per the revised guidelines, the admission formalities in other schools were over. This assertion is not controverted in the counter affidavit.

15. In *Major Saurabh Charan and Ors. v. Lieutenant Governor, NCT of Delhi* [(2014) 6 SCC 798], the challenge raised was with regard to the retrospective change in admission scheme by a revised notification resulting in deletion of inter-state transfer category students during mid-session. The Apex Court in

paragraph No. 18 of the judgment held that the action of the respondents in taking away the admission by a subsequent notification issued mid-session cannot be sustained. It was held as follows:

18. Having considered the matter, we deem it appropriate to relieve the appellants from the hardship of having the admission being granted earlier under Notification dated 18th December, 2013 from being taken away by the subsequent Notification dated 27th February, 2014, issued in the midstream. In our considered opinion, it was not permissible for the Administration to alter the basis of admission after the admission process had started and further having participated in the selection process the criteria for selection could not have been questioned by unsuccessful participants.

16. The respondents were also directed not to disturb the admissions already granted. In the instant case, the respondents have changed the admission criteria after closure of the online registration, thus depriving the petitioners of their admission.

17. The learned Assistant Solicitor General contended that insofar as the petitioner in W.P.(C) No.15261 of 2022 is concerned, he was only granted a recommendatory letter by the Chairman and nothing more. However, the fact remains that the Child had applied for admission well within the time stipulated and there was no reason for him to suspect that the respondents would revise the guidelines after the admission process had commenced. I find considerable merit in the submission of the learned counsel appearing for the petitioners that the children may have had a legitimate expectation that they would be granted admission in accordance with the extant guidelines. The children would have legitimately expected the respondents to act fairly. The expectation of the children was legitimate and their interest has to be protected by all means. As held by the Apex Court in Major Sourabh Charan (supra), it was not permissible for the respondents to alter the basis of admission after the admission process had started to the disadvantage of the petitioners. I have no doubt in my mind that the decision taken by the respondents to change the admission guidelines after the process had started, is arbitrary, unreasonable, irrational and not taken in public interest.

18. I am not impressed with the contention of the learned Assistant Solicitor General that the KVS undertook a review of the admission scheme in tune with the National Education Policy 2020. A careful perusal of the original admission guidelines for the academic year 2022-2023 would reveal that the mandate of NEP 2020 has been honored and several changes were made. Furthermore, the explanations offered by the respondents in their counter to justify their actions cannot be accepted as such. As held in Commissioner of Police, Bombay v. Gordhandas Bhanji [AIR 1952 SC 16], public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or what was in his mind or what he intended to do.

19. The contention of the learned Assistant Solicitor General that overriding public interest necessitates that the guidelines issued in terms of the NEP be upheld, cannot be accepted. As held above, the children of tender age would be denied admission if such a contention is accepted. The State functionaries are expected to act fairly and reasonably. Fairness is a rule to ensure that the vast power in the modern State is not abused but properly exercised. The State ought to have exercised its power for proper and not improper purposes. Fairness is also a principle to ensure that statutory authority arrives at a just decision in promoting the interest or affecting the rights of persons. To use the hallowed phrase "that justice should not only be done but be seen to be done" is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration and it has no set form or procedure (See *Management of M/s. Nally Bharat Engineering Co. Ltd. v. State of Bihar and Ors.* [(1990) 2 SCC 48]. Regularity, Predictability, Certainty and Fairness are necessary concomitants of state action. (See *State of Bihar and Others v Shyama Nandan Mishra* (2022 Online SCC 554)) The prerogative of the executive is subject to the rule of law and fairness in state action embodied in Article 14 of the Constitution.

20. In *Asha Sharma v. Chandigarh Admn.*, (2011) 10 SCC 86 while dealing with fairness in administrative action by the State, the Apex Court had observed as follows in paragraph 14 of the judgment.

14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided.

21. While revising the admission guidelines, the respondents ought to have been fair and they should have ensured that students like the petitioners, who were legitimately expecting that they would secure admission, were not thrown out. Children are not chattels or toys to be thrown around at the mercy of the administrators. Every action taken by the authorities having an adverse effect on a section of children ought to have been taken cautiously and with all the sensitivity that it deserves. Education is perhaps the most important function of

the State and it is with proper education that the child is awakened to cultural values. All that the respondents had to do was to ensure that the interests of the petitioners are also protected while bringing about sweeping changes. Under no circumstances could the State have ignored Article 21A of the Constitution or the provisions of the Right of Children to Free and Compulsory Education Act, 2009. Though the NEP policy may be laudable, given the noble intentions and the democratic principles it strives to achieve, however, while adopting and implementing such policies, the State ought to have been careful not to trample upon the rights of minor children while striving to uphold the rights of others. By callously dealing with children, the respondents were acting against public interest and not in favour as contended by the learned Assistant Solicitor General. I declare as arbitrary and unreasonable, the action on the part of the respondents in altering the rules and guidelines governing admission after the procedure for admission for the academic year has commenced. In that view of the matter, I hold that the respondents are not justified in refusing to grant admission to the petitioners in the respective schools.

In view of the discussion above, the petitioners are entitled to succeed. There will be a direction to the respondents to admit the petitioner in W.P.(C) No. 15261/2022 to the I Standard for the academic year 2022-23 in the Kendriya Vidyalaya, Edat, Payyannur and the petitioner in W.P.(C) No.15520/2022 to the II Standard in the Kendriya Vidyalaya, Rubber Board, Kottayam.