

(2015) 04 MAD CK 0111

In the Madras High Court

Case No : Writ Petition No. 4618 of 2015 and M.P. No. 1 of 2015

G. Murugendran

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 226

Citation : (2015) 04 MAD CK 0111

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : Su. Srinivasan, ASG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—The petitioner/Party-in-Person is the father of the minor Sri Jeevan, who was born on 15.09.2011 and aged about 3 years and 5 months. The petitioner is an Advocate by profession and since he is residing in Adyar, he is searching for a school to admit his son in the nearby vicinity of his residence and found that the respondent school, namely "Sishya" is situated within 1km from his residence and it is very convenient to drop and pick up his son from the school. The petitioner would further state that he approached the school authorities for admission to L.K.G. class in the year 2015 in the month of October 2013 and he was not allowed to meet the Principal and Correspondent and with great difficulty, managed to get appointment through on-line and met the Principal and Correspondent in the year 2013, however he was informed that for admissions for the academic year commencing 2015, it will be made in the year 2014 and he could find out the same in the website. Information obtained from the website made in the month of November 2014 states that for admissions for the year 2015 will be opened on 2014 and admission interviews will be conducted on the Wednesday of every week from 9 a.m to 1.00 p.m. and the parents need to book an appointment time slot through website. It is further stated by the petitioner that for admission to L.K.G class, the child or ward must

be 3 years plus by 1st of December of the previous year and the parents should register their children in the year of birth, as admission is on first come basis and certain seats are reserved for Christians and priorities from the waiting list are given to those children who already have siblings in the school, Christians and children of old students.

2. The grievance expressed by the petitioner is that the above said procedure adopted by the school authorities, is not valid in the eye of law and inspite of that by fixing appointment through online, he and his wife participated in the interview conducted by the 3rd and 4th respondent and they have not been issued with the application forms and once again fixed the appointment and appeared on 28.1.2015 and at that time also, he was not given any reply as to the admission of the students and he has not been informed about the results of the interview also and therefore, he came forward to file this writ petition.

3. The petitioner/Party-in-Person would submit that the procedure adopted by the School in admitting students is not at all transparent and children hailing from rich and influential families are given admission and so also the wards of VVIPs and as a consequence, wards like the son of the petitioner, who is having middle class background, will never get admission in the school and thereby, the children are deprived of good and quality education and hence, prays for appropriate direction to the school authorities to make their admission procedure transparent and also prays for admission in L.K.G. class for the academic year 2015-16, pursuant to the interview conducted on 10.12.2014 and 28.12.2015.

4. Per contra, Mr. Sathish Parasaran, learned counsel appearing for the respondent school has invited the attention of this Court to the counter affidavit as well as the additional counter affidavit filed by the respondents 3 to 5 and would submit that the petitioner is a religious self-financing minority institution and therefore, the writ petition is not at all maintainable. On merits of the case, the learned counsel appearing for the respondent school would contend that 90 admissions are granted for each academic year insofar as L.K.G. is concerned and the parents should register their children in the year they are born and at the age of admission to L.K.G., the child must be 3 years plus and for admissions to the year 2015, children born in the year 2011 would be eligible to join the L.K.G and admittedly, the petitioner registered his son's name in the year 2011. As regards admission procedure, it is submitted by the learned counsel appearing for the respondent that 90 seats are split up into two categories, namely 70 applicants who are confirmed their ward's admission and the remaining 20 are given chance or waiting list registrations and for the academic year 2015, children with confirmed registrations, siblings, Christian children and children of alumni were called in October/November 2014 and during the said process, 88 seats were filled and the balance seats remained for allocation to waitlisted candidates. On the legal plea, it is the submission of the learned counsel appearing for the respondent/school that in the light of the decision of the Hon'ble Supreme Court of India in T.M.A. Pai Foundation and Others Vs. State of

Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 , right to establish and administer school conferred upon non-minority educational institution is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India and it has been further held in the said decision that conferring maximum autonomy upon private unaided schools would be in the interest of general public as it would ensure that more such institutions are established and hence, prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials available on record.

6. Right to elementary education is held to be a fundamental right and if that right is infringed, it is always open to the aggrieved person to approach this Court by invoking its special original jurisdiction under Article 226 of the Constitution of India. The primordial submission made by the petitioner/party-in-person is that since the admission procedure adopted by Shisya school lacks transparency, it leads to arbitrariness and consequently, children having middle class background and belonging to lower strata of society, cannot get admission at all. Albeit, the submission appears to be attractive, this Court, in the light of the judgments of the Hon'ble Supreme Court in (i) T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 ., (ii) P.A. Inamdar and Others Vs. State of Maharashtra and Others, AIR 2005 SC 3226 : (2005) 4 CTC 81 : (2005) 3 ESC 373 : (2005) 7 JT 313 : (2004) 8 SCC 139 : (2005) 2 SCR 603 Supp : (2005) 2 UJ 1176 : (2005) AIRSCW 3923 : (2005) 5 Supreme 544 and (iii) Pramati Educational and Cultural Trust (r) and Others Vs. Union of India (UOI) and Others, AIR 2014 SC 2114 : (2014) AIRSCW 2859 : (2014) 7 JT 46 : (2014) 7 SCALE 306 : (2014) 8 SCC 1 : (2014) 4 SCJ 626 ., cannot give any positive direction either directing the Shisya school to frame appropriate guidelines or direct them to admit the minor son of the petitioner in L.K.G. class. Right to Education Act is also not applicable to religious minority institutions and admittedly, the respondent school is a religious self-financing minority educational institution and they are having unfettered fundamental right to choose students for admission. However the procedure should be fair, transparent and non-exploitative.

7. In para 8 of the additional counter affidavit it has been stated that the school is adopting certain basis or priority i.e., seats will be offered to children with confirmed registrations, siblings, Christian children and children of alumni and in case, if any seats are available, then only other children on the waiting list are allotted seats in the order of seniority and for the academic year 2015, there were 169 students in the waiting list and the school is also prescribing the procedure that for admission to L.K.G. the parents can register in the year when children are born and the age of admission to L.K.G. class must be 3 years plus.

8. In the considered opinion of the Court, in the light of the pronouncements rendered by the Hon'ble Supreme Court of India in the above cited decisions, it cannot prescribe or modify the procedure adopted for admitting the students to

L.K.G. class. If the petitioner/party-in-person is aggrieved that fair and transparent procedure is not followed by the said institution, it is always open to him to approach the concerned authorities for redressal of his grievance, if the law permits him to do so.

9. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.