

(2013) 04 KAR CK 0139

In the Karnataka High Court

Case No : Writ Petition No. 14316-318 of 2013 (EDN-RES)

Karnataka Unaided Schools Management Association
(Kusma), Sri Saraswathi Vidya Mandir Association and Sree
Vasavi Education Society

APPELLANT

Vs

The State of Karnataka Department of Education and The
Commissioner of Public Instruction New Public Offices

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Constitution of India, 1950 — Article 19, 26

Right of Children To Free and Compulsory Education Act, 2009 — Section 12(1)c, 13(1)

Citation : (2013) 3 AKR 548 : (2013) ILR (Kar) 4427 : (2013) 6 KarLJ 59 :
(2013) 3 KCCR 2397

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : S. Basavaraj, for the Appellant; R. Om Kumar, AGA, for the
Respondent

Final Decision : Disposed Off

Judgement

B.S. Patil, J.—In these writ petitions, petitioners-Institutions have challenged the circular dated 12.03.2013 issued by the Commissioner of Public Instruction, Bangalore-respondent No. 2 herein vide Annexure-F contending that the same is violative of the fundamental rights guaranteed under Articles 19 and 26 of the Constitution of India and are contrary to the law declared by the Apex Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, Although several grounds are urged in support of the prayer made, it is not necessary to examine all these grounds as the learned counsel for the petitioners, during the course of arguments has confined his arguments to the ambiguity and inconsistency that allegedly emerges from the reading of Annexure-F Circular as a whole thereby affecting the rights of the petitioners-Institutions in selecting the students by adopting certain norms as provided under Clause 3 of the Circular.

2. In order to appreciate the grievance of the petitioners, it is necessary to state few background facts.

3. In terms of the provisions contained u/s 13(1) and Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (for short "the Act") and pursuant to the guidelines issued by the Government of India, Ministry of Human Resources Development, Department of School Education and Literacy on 23.11.2010, the State Government has issued the impugned circular on 12.03.2013. In the said Circular, it is made clear that in order to ensure a fair and transparent process in the matter of admission of students to the private institutions both aided and unaided, the institutions are required to follow certain procedure while making selection of students for admitting them to the I Standard or Pre-Primary School.

4. Clauses 1 to 4 found in the said circular read as a whole will indicate that 25% of seats have to be filled up from out of children belonging to weaker sections and disadvantaged groups in the neighbourhood for the purpose of providing free and compulsory elementary education to them. In making admission to this class for filling up 25%, as per the Circular Clause I, the schools and institutions are instructed to follow a transparent method in that after receipt of the applications from all the intending applicants, random selection shall be made by adopting lot system. Insofar as the other 75% of the students to be admitted in the institutions, the guidelines as contained in the remaining clauses of the Government Circular are that without providing any scope for discrimination or unfair method, the random selection by adopting a lot system has to be followed to ensure transparency.

5. Further, the schools and institutions are permitted to formulate their own rules, regulations, norms and formula for admitting the students for the remaining 75% of the seats and in doing so the concerned school has to keep in mind its aims and objects which have to be fair, just and reasonable. Again, in order to ensure transparency, the schools are required to publish these norms and formula framed for admission by way of prospectus and also display the same on the notice board of the institution and to adopt other methods so as to give wide publicity for the purpose of information to the general public. Clause 4 of the Circular states that all admissions, be it for 25% as provided u/s 12(1)(c) of the Act or 75% referred to above shall be done by following transparent method and by random selection by adopting a lot system.

6. It is in this area that the learned counsel for the petitioners points out that the condition imposed in Clauses 2 and 4 of the Circular are inconstant with Clause 3 of the Circular.

7. Learned counsel for the petitioners points out that when the private institutions are entitled to formulate their own norms regulating admission of students for 75% of the seats to be filled up keeping in mind the aims and objects of the institutions by adopting a fair, reasonable and transparent method

there can be no further interference by the respondent-Authorities requiring the schools to again pool all the applications together and then adopt random method of selection by adopting a lot system. To substantiate this contention, learned counsel for the petitioners draws the attention of the Court to paragraph 14 of the writ petition to contend that in the instant case petitioners have adopted sound criteria for admission of the students which include but are not limited to admission of the students residing in the nearby area, admitting brother/sister of the student already studying in the school, children of Government/private sector employees (both husband and wife working), children of staff of the school who have contributed immensely for the education institution and so on. These aspects, it is urged, being rational are in consonance with the fundamental right of the educational institution in the matter of admission of the student. He submits that if the institutions are required to make a common selection to admit 75% of the students by blindly following the lot system, the very purpose of formulating the norm and categorizing the different category of beneficiaries keeping in mind such norm and formula adopted gets defeated.

8. Learned Additional Government Advocate has filed affidavit of the Commissioner of Public instruction, Bangalore today into the Court explaining the stand of the State. The Director of Public Instruction for Primary Education is present before the Court.

9. Learned Additional Government Advocate points out that as long as such categorization and formula or norm framed by the Rule is just, fair, reasonable and is traceable to the aims and objects of the institutions concerned the State will not insist for making selection by adopting lot system for the entire admissions to be made. The lot system will come into play only when there are more number of applicants in a particular category of seats available or earmarked as per the just, fair and transparent norms adopted by the concerned school. Therefore, learned Additional Government Advocate submits that there is no reasonable basis for the apprehension entertained by the petitioner institutions in this case. In the light of the respective contentions, it is clear that the purpose of issuing the instant circular is to ensure transparency in the procedure to be followed by the private institutions while admitting the students. Freedom is given to different institutions to frame their own norms adopting their one formula consistent with their aims and objects and to give wide publicity to the same so that the said norm and formula is scrupulously followed removing any scope for arbitrary choice of students while making admissions. Question of adopting lot system would arise only when the number of students seeking admission is more than the prescribed strength in the particular category. If the school has framed certain norms earmarking ten seats at the entry level to a particular category, say children of the staff of the institution who have contributed to the institution, then the requirement to adopt random selection process choosing the candidates by the system of lot would arise if the applicants in that category are more than ten. This will ensure transparency and avoid

arbitrary approach in selecting the student. This is what is intended by the impugned circular. Once such norms are framed and the schools scrupulously observe such norms there should not be any apprehension by the petitioners-Institutions that there will be unnecessary interference by the Authorities in the admission process and that they would be required to adopt the system of choosing the students by adopting lot system for the entire admissions to be made in the relevant year. The circular cannot be understood in that manner.

Hence, this writ petition is disposed of making it clear that the lottery system will have to be pressed into service only when the applicants in a particular category are more than the available or permitted seats.