

(2024) 10 SHI CK 0040

In the High Court Of Himachal Pradesh

Case No : CWPII No. 35 Of 2024 a/w CWP's No. 2872, 3441, 4739, 6052 and 6053 Of 2024.

Monika Sharma

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 16-10-2024

Acts Referred:

Constitution of India, 1950 — Article 21A, 45
Right of Children to Free and Compulsory Education Act or Right to Education Act, 2009 — Section 4, 11

Citation : (2024) 10 SHI CK 0040

Hon'ble Judges : Rajiv Shakdher, CJ; Satyen Vaidya, J

Bench : Division Bench

Advocate : Suman Thakur, Neeraj Kumar Shashwat, Ashok Kumar, Mukesh Sharma, Balram Sharma, Anup Rattan, Rakesh Dhaulta, R.P. Singh, Anirudh Sharma

Final Decision : Allowed

Judgement

Satyen Vaidya, J.

1. All these petitions have been heard and are being decided together as common questions of facts and law are involved.
2. Aggrieved against the communications dated 24.11.2023 and 16.02.2024 issued by respondent No.2 with respect to implementation of National Education Policy, 2020 (for short "NEP-2020") in the State of Himachal Pradesh, petitioners have filed the instant petitions.
3. Petitioners are espousing the cause of those students, who would be aged less than 6 years even as on 30.09.2024 but have already completed their pre-school curriculum and are being denied admission to Class 1.
4. The relevant extracts from text of impugned letters dated 24.11.2023 and 16.2.2024 addressed by 2nd to 3rd respondent are being reproduced hereunder:

Letter dated 24.11.2023

Subject: Request for amendment of age of

Admission for 1st Grade according to NEP,2020.

Sir,

I am directed to refer to your letter No. EDN-H(Ele)(4)- 8/2018-20 (Admission) dated 21st February, 2023 on the subject cited above and to convey herewith the approval of the Government for implementation of 6+ years age criteria for admission to Grade/Class 1 in the State of Himachal Pradesh from next Academic Session i.e. 2024-25. A child must be 6 years old as on 31st March in the Academic year in which the admission is sought for Grade/Class-1st (Child born on 1st April should also be considered)

Letter dated 16.2.2024

"In continuation to this department's letter of even number dated 24- 11-2023 ? n subject cited above, I am directed to convey the following:-

a. One time relaxation of 06 months (in age) for ad-mission in Grade/Class 1 is hereby granted. Thus, a child who attains the age of 06 (Six) years upto 30th September, 2024 shall be allowed admission in Grade/Class 1st for the academic session 2024-25.

This relaxation is only for the academic session 2024-25.

b. The pre-school admissions will be regulated as per the NEP structure of 5+3+3+4. Thus, the following age criteria be implemented: -

Grade

Nursery/ Balvatika-1

LKG (Lower Kinder- garten)/Bal vatika-2

UKG (Upper Kinder- garten)/Bal- vatika-3.

Age

3+years

4+years

5+years

5. The grievance as raised by the petitioners is that by issuance of communication dated 24.11.2023 and 16.02.2024, the State Government has decided to implement provisions of NEP-2020 in an irrational and arbitrary manner and as a result thereof a large number of students (likely to number in thousands) will have to repeat the Upper Kindergarten Class (UKG) which will not only impede their intellectual and psychological development but will also cost

the poor students in terms of money.

6. We have heard learned counsel for the parties and have also gone through the entire record carefully.

7. By 86th Constitutional amendment, Article 21A has been added to the Constitution of India to the following effect:

"21A- The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the State may, by law determine."

8. The Right of Children to Free and Compulsory Education Act, 2009 (for short "RTE") has been enacted to achieve the objectives as enshrined Article 21A of the Constitution. The RTE has made mandatory for every child of the age of 6 to 14 years to have free and compulsory education in a neighbourhood school till the completion of his/her elementary education. The term "child" under the act *ibid* means a male/female child of the age of 6 to 14 years. The term "elementary education" as per the said Act means the education from 1st class to 8th class.

9. Thus, what has been mandated under Article 21A of the Constitution and RTE is that the State is obligated to provide free and compulsory education to the children of 6 to 14 years at elementary school level.

9.1 As per the provisions of RTE Act a student once admitted to elementary education even if exceeds the age limit of 14 years, shall be entitled to free education till completion of elementary education. Second proviso to Section 4 of the RTE Act reads as under:-

"Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years."

9.2 In this backdrop, before advent of NEP-2020, we see no embargo on admission of a student below 6 years of age to class 1st, such student however, would not be entitled to the benefit of free education at elementary level before the age of 6 years.

10. The NEP-2020 has introduced a new pedagogical curricular in school education with a purpose to modify 10+2 with 5+3+3+4 structure covering ages 3-18 years. New structure provides first 5 years at foundational level with further bifurcation of first 3 years (ages 3-6) in Anganwadi/Pre-school/ Balvatika and next 2 years i.e. ages 6-8 in classes 1 & 2. The next is preparatory level for ages between 8-11 in classes 3 to 5 followed by middle stage for ages 11 to 14 in classes 6 to 8 and finally the secondary level for ages 14 to 18 in classes 9 to 12. The aforesaid envisioned change also notably aims at improvements of Early Child Care and Education (for short "ECCE"). Clause 1.6 of the NEP reads as under:

"1.6. It is envisaged that prior to the age of 5 every child will move to a

"Preparatory Class" or "Balvatika" (that is, before Class 1), which has an ECCE qualified teacher. The learning in the Preparatory Class shall be based primarily on play-based learning with a focus on developing cognitive, affective and psychomotor abilities and early literacy and numeracy. The mid-day meal programme shall also be extended to the Preparatory Classes in primary schools. Health check-ups and growth monitoring that are available in the Anganwadi system shall also be made available to Preparatory Class students of Anganwadi as well as of primary schools."

11. It is by way of NEP-2020 that admission to the students with less than 6 years of age is not allowed to class 1st. The communications dated 24.11.2023 and 16.02.2024 issued by the 2nd respondent have their basis in the provisions of NEP.

12. To trace the chronicle, the constitutional recognition to the concept of ECCE came by way of 86th Constitutional amendment which inter alia substituted Article 45 as under:-

"45. The State shall endeavor to provide early child care and education for all children until they complete the age of 6 years."

13. Thus, on one hand by incorporation of Article 21A in the Constitution a fundamental right has been granted to the students between the age group of 6 to 14 years to get free and compulsory education between class 1 to 8th (elementary education), the State has simultaneously been obligated by way of directive principle of State policy to make endeavor to provide early child care and education for all children until they complete the age of 6 years.

14. With above directive as the guiding force, the provision with respect to ECCE has also been incorporated in RTE by way of Section 11 in following terms:-

"11. With a view to prepare children above the age of 3 years for elementary education and to provide early child care and education for all children until they complete the age of 6 years, the appropriate government may make necessary arrangements for providing free pre-school education for such children."

15. Indisputably, the State Government is in the process of implementing the NEP-2020 in the schools recognized by the State Government, however, the manner of its adoption and implementation by the State Government has provided the petitioner with a cause to knock the doors of this Court.

16. The State has come up with a stance that it is under a mandate to implement the NEP-2020 and as the policy prohibits admission to class 1 for students below the age of 6 years, it cannot carve out any exception. The extension of six months till 30.09.2024 granted by the State Government is stated to provide accommodation to the students, who by strict implementation of policy are likely to miss out by a few months only.

17. The State has also raised question as to the competence and jurisdiction of

this Court to decide on the matter of policy.

18. We are not oblivious to the limitation of the writ court in the matter of policies framed by the State. We, however, feel that in view of the nature of issue raised by the petitioner, we are not required to deal or adjudicate upon any provisions of the policy as such. What we have been asked to adjudicate upon is the manner in which the State Government of Himachal Pradesh has sought to implement the policy in the State, which in our considered view, can always be looked into by the writ court at the touchstone of principles of fairness and equality.

19. The prominence of ECCE becomes evident from the constitutional and statutory recognition given to the concept by the State recently. NEP-2020 has lastly highlighted the need to recognize ECCE as the most crucial stage in the development of the child. The NEP-2020 has itself noticed that 85 % of child's cumulative brain development occurs prior to the age of 6, which has been highlighted to indicate the critical importance of proper care and stimulation of brain in the early years in order to ensure healthy brain development and growth. With the objective to overcome the shortcomings in providing ECCE, NEP-2020 issues certain directive and for the purpose of the adjudication of the issue involved herein it will be relevant to notice one of such directives issued vide clause 1.4 of the NEP as under:-

"1.4. The overarching goal will be to ensure universal access to high-quality ECCE across the country in a phased manner. (emphasis is ours) Special attention and priority will be given to districts and locations that are particularly socio-economically disadvantaged. ECCE shall be delivered through a significantly expanded and strengthened system of early childhood education institutions consisting of (a) standalone Anganwadis; (b) Anganwadis co-located with primary schools; (c) pre-primary schools/sections covering at least age 5 to 6 years co-located with existing primary schools; and (d) stand-alone pre-schools – all of which would recruit workers/teachers specially trained in the curriculum and pedagogy of ECCE."

20. To understand easily, reference can be made to the contents of communication dated 16.02.2024, as already noticed above. As per paragraph No.2 of the communication, the pre-school admissions are required to be made as per NEP-2020 structure of 5+3+3+4 and as a result thereof the following age criteria is to be implemented:-

Grade

Nursery/Balvatika-1

LKG

(Lower Kindergarten)/Balva tika-2

UKG

(Upper Kindergarten)/Balva tika-3

Age

3+years

4+years

5+years.

21. The NEP has come into being in the year 2020. The NEP-2020 nowhere provided that each and every provision thereof has to be implemented brusquely and harshly in one-go. Clause 1.4 of the NEP, as noticed above, clearly provides for the implementation of ECCE in phased manner.

22. The creation of infrastructural facilities is another prerequisite besides deployment of workers/teachers specially trained in curriculum and pedagogy of ECCE. The Union of India by way of its reply has made a reference to letter dated 31.03.2021 in order to inform that the States and Union Territories were requested to align their age of admission with the NEP 2020 and provide for admission to class-1 in 6+ years in order to bring uniformity in age of admission throughout the country and for such purpose preparation of road map by individual State/UTs was suggested to ensure smooth transition over next 2-3 years. It will be gainful to reproduce the relevant extract of above referred communication dated 31.03.2021 issued by Government of India, Ministry of Education:

"2. In this regard, comments were sought from all the States and UTs regarding age of admission in various classes in schools. Based on the reports given by all the States and UTs, it has been observed that 13 States/UTs are taking admission in class 1 at age 5+, whereas 21 States are taking at 6+. This anomaly also results in incorrect reporting of enrolment of children in age-appropriate classes and hence incorrect reporting of under-age and overage children, thus affecting the Net Enrolment ratios in different states and at the national level.

3. The National Education Policy (NEP), 2020 envisages a pedagogical structure of 5+3+3+4. The first 5 years comprise of 3 years of pre-school/anganwadi/balvatika corresponding to the age groups of 3-6 years and 2 years of Class 1 & 2 corresponding to the age group of 6-8 years. Also, The Right of Children to Free and Compulsory Education (RTE) Act, 2009 states that every child of the age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education (defined as education from first class to eighth under the Act).

3. In view of the provisions of NEP, 2020 and RTE Act, 2009, all the States and UTs are requested to align their age of admission with the NEP, 2020 and provide for admission to class 1 in age 6+ years in order to bring uniformity in age of admission throughout the country: In this regard a roadmap may be prepared

state wise to ensure smooth transition over next 2-3 years.

4. In view of the above, you are requested to take appropriate action and to ensure implementation of uniform age criteria for admission to class 1 in your jurisdiction. The roadmap and action taken report in this regard may be shared with this Department at the earliest.”

23. The Government of Himachal Pradesh either from its record or otherwise has not been able to show that prior to issuance of communication dated 24.11.2023, any other steps had been taken by the State Government towards the implementation of NEP 2020. Now, the State Government has sought to implement the NEP 2020 in the State from academic session 2024-25. It is not in dispute that till the academic session 2023-24 the educational curriculum in the State allowed admission to class 1 of the students of 5 years age. As necessary corollary, the child had two years to spend in pre-school classes by whatever name or nomenclature identified. Evidently, prior to the issuance of communication dated 24.11.2023, State Government had taken no steps to implement NEP 2020 and hence the petitioners cannot be said to be unjustified in raising their grievance.

24. Viewed from another angle, it is not the case of the State Government that it has already provided the infrastructural facilities for implementing the ECCE scheme as per NEP 2020. Rather it is manifest from the material supplied by the petitioner in the shape of RTI information received by them that neither the provision for Balvatika-1, Balvatika-2 and Balvatika-3 has been made nor the specially trained workers/teachers in the curriculum and pedagogy of ECCE have been recruited or trained in the state.

25. By granting extension upto 30th September, 2024, the State Government has already recognized difficulty in immediate implementation of NEP-2020 in the State. It is, however, not understandable as to why the extension has been limited to a period of six months only. If the State has the power to extend the period, same has to be exercised in a rational manner so as to achieve the object of

26. No doubt, State Government is within its jurisdiction to implement the NEP 2020, however, in light of what has been noticed above, we have no hesitation to say that neither the entire NEP 2020 nor any other provisions of law mandate the State Government to implement the NEP 2020 tersely. Rather, there are clear directions to do it in a phased manner. Because the State Government has not done so till 24.11.2023, it does not get a valid reason to do so abruptly. Once it has taken a conscious decision to implement NEP 2020 as late as in November, 2023, as is disclosed from the communication dated 24.11.2023, the manner in which the policy is sought to be implemented is clearly arbitrary, irrational and inequitable.

27. In any case by forcing the students like petitioners to repeat the UKG class, the purpose of NEP 2020 will not be served for the reason firstly that the

curriculum for Balvatika-1, Balvatika-2 and Balvatika-3 has not yet been formulated and pressed in service and secondly, there are no trained teachers to further the cause of ECCE. During the proceedings held by this Court on 01.10.2024 in the instant batch of cases, learned Additional Advocate General had sought time to obtain instructions on various aspects including steps being taken by the State Government to establish nursery/Balvatika-1, LKG/Balvatika-2 and UKG/Balvatika-3 in line with NEP 2020, but on the next date i.e. 03.10.2024 no such information was provided which affirms our above view that the State still lacks in infrastructural facilities for providing the ECCE benefits to the students. That being so, we do not find any rational in the approach of the State Government in not implementing the NEP 2020 in the State in a phased manner. We are also of the view that the State cannot be adversarial to the petitioners that too when there is no statutory mandate for the State to implement NEP-2020 in a particular manner. The purpose is to achieve the laudable goals of NEP 2020. The state being welfare State is obligated to look after the varied interest of its citizens within four corners of law.

28. We, thus, allow the prayers made in the petitions to the extent that the 2nd and 3rd respondents shall be under mandate to implement the NEP-2020 in a phased manner as suggested vide communication dated 31.3.2021 issued by the Union of India and further those students who are under the age of 6 years and have already completed pre-school educational curriculum will not be denied admission to Class-1st for academic session 2024-25.

29. The petitions are accordingly disposed of so also the pending miscellaneous application(s), if any.