

(2011) 03 P&H CK 0465
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 319 of 2011

Sacred Heart School and Others

APPELLANT

Vs

Union Territory and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Constitution of India, 1950 — Article 21A

Right of Children to Free and Compulsory Education Act, 2009 — Section 11, 12, 2, 4

Citation : (2011) 03 P&H CK 0465

Hon'ble Judges : Ranjan Gogoi, C.J.; Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ranjan Gogoi, C.J.—These appeals are directed against an order dated 15.02.2011 passed by a learned Single Judge of this Court in proceedings registered and numbered as Civil Writ Petition No. 2104 of 2011 and other connected cases.

2. The impugned order passed by the learned Single Judge is an interim order inasmuch as the writ petitions have remained pending. Yet, the decision of the learned Single Judge has finally terminated the controversy in question which relates to the minimum and maximum age for admission to nursery classes in the Respondent (s) schools (four in number) in so far as the academic session 2011-12 is concerned. The aforesaid order which has the effect of some what enhancing the minimum age for entry by extension of the date of birth from 01.04.2006-31.03.2007 to 01.04.2006-30.09.2007 has been construed to be adverse to the interest of the Respondent(s) schools who have filed the instant appeals. At this stage, it would be convenient to clarify that the aforesaid dates of birth of prospective candidates for admission is in respect of nursery classes, though such extension has also been granted in respect of next higher class i.e. upper K.G. which is the point of entry in one of the Appellant-schools, namely, St. Johns High School. For the sake of convenience the reference contained in

the present order would be in respect of the dates of birth for the nursery class alone which could be understood with the addition of one more year, wherever necessary, for the next higher class i.e. upper K.G.

3. The facts lies within a short compass.

4. The Appellant-schools are unaided minority institutions providing education to the children of Chandigarh forlong. Being minority institutions, the Appellant-schools have been largely free from governmental policies and control and have been left with the option of laying down conditions on which the admissions are to be made including the age of the students in different classes. Though the policy followed in the government schools in Chandigarh requires a child to be 3+ on the first day of April of the academic year to be eligible for admission in Nursery/LKG class and 5 years and above to be eligible for admission in Class-I, the said policy is not being very rigorously followed and implemented in respect of the private schools, particularly, unaided minority institutions like the Appellant-schools. However, after coming into force of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the Right to Education Act"), a circular dated 14.01.2011 was issued by the Chandigarh Administration to the effect that the age criteria for admission would be 3+ years for Nursery class and 5+ years for Class-I respectively. The Respondent(s) schools, by the time the aforesaid circular was published and served on them on 17.01.2011, had already taken steps to start the process of issuing forms for admission to the next year commencing from April, 2011. In the said Prospectus it was stipulated that children born between 01.04.2006 to 31.03.2007 would be eligible for admission to the nursery classes. However, with the advent of the circular dated 14.01.2011, clarificatory notices were published on the notice boards of the schools and correction in the Prospectus/Forms yet to be issued were made by hand altering the dates 01.04.2006 to 31.03.2007 to 01.04.2007 to 31.03.2008. Thereafter, on 17.01.2011, U.T. Administration, Chandigarh issued a letter to the Appellant-schools permitting them to continue with the criteria followed in the past. The Appellant-schools therefore reverted to the position as advertised in the Prospectus, namely, children born between 01.04.2006 to 31.03.2007 would be eligible. As the said decision had the effect of making many children born between the altered dates i.e. 01.04.2007 to 31.03.2008 ineligible, the writ petitions in question were filed.

5. The learned Single Judge after a detailed consideration of the arguments and counter arguments advanced on behalf of the contesting parties took the view that if the past practice was to be adopted by the schools the relevant dates should have been 01.10.2006 to 30.09.2007. The abrupt change of dates to 01.04.2006 to 31.03.2007 left out of consideration the children born between 01.04.2007 to 30.09.2007. Repelling the contentions of the schools that the aforesaid change of dates was made to facilitate the admission of children at the entry level at such age so that they could be six years and above at the time of seeking admission to class-I, which is mandated by the Right to Education Act,

the learned Single Judge has ordered for treating all children born upto 30.09.2007 to be eligible for admission into Nursery/LKG classes. The learned Single Judge also clarified that the above would be a one time exception until a uniform fixation of age is decided. Aggrieved, the appeals have been filed.

6. The Appellant-schools are unaided minority institutions who undoubtedly would have the freedom and autonomy to decide all matters pertaining to the governance and administration of the schools including admissions. The law which has crystalized till date on such autonomy of minority institutions would not permit governmental control so long the internal management of the schools is conducted in a fair, transparent and reasonable manner. Whether the aforesaid principles of law laid down by the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Ors. v. State of Maharashtra and Ors. 2005 6 S.C.C. 537 would continue to hold the field if such rights of minority institutions are to be considered in the light of the provisions of the Article 21A of the Constitution is an altogether different matter from which the Court proposes to stay away in the present case as the same does not strictly arise for consideration. What is sought to be emphasized is that so long as the internal management of the schools, including admissions and the eligibility thereof, is not founded on any irrationality and otherwise conforms to the professed norms and also does not violate Article 21A of the Constitution of India, such institutions must be left with a freedom of having their due autonomy. It is from the aforesaid perspective that the Court has to examine the actions of the schools and the grievances of the parents arising therefrom altogether and thereafter consider whether the direction with regard to the extension of the minimum age as made by the learned Single Judge is an effective answer to the controversy between the parties.

7. The Appellant-schools contend that though as per earlier practice, 1st October of a calendar year and the last date of September of the following year determined the eligibility of prospective students with regard to the age, the same was changed to 01.04.2006 to 31.03.2007 in the present year to ensure that children admitted at the entry level class (Nursery) reach the age of six years by the time they became entitled to seek admission in Class-I. According to the Appellant-schools the aforesaid transformation was necessary as the Right to Education Act, in their comprehension, require a child to be at least 6+ in age for admission to Class-I. Reference to the definition of "Child" contained in Section 2(c) of the Act and "elementary education" as defined by Section 2(f) of the Act together with the provisions contained in Sections 4, 11 and 12 of the Act have been relied upon to buttress the argument advanced.

8. It is not necessary for the Court to pronounce on the correctness of the view taken by the Appellant-schools with regard to the provisions of the Right to Education Act inasmuch as the necessity of exercise of the power of judicial review can be judged on less authoritative planks. As already emphasized, the minority unaided schools would have the necessary freedom to decide so long

the decision is not founded on an unreasonable basis. If the alteration of dates has taken place to coincide with the start of a new academic year and the understanding of the schools with regard to the provisions of the Right to Education Act, dehors the correctness thereof, the decision that had eventually emerged, by no means, can be said to be unfair or unreasonable. If that is so the first step in the scrutiny of the decision making process must end in favour of the Appellant-schools.

9. The decision of the schools must next be subjected to the requirement of conformity with the established norms. Admittedly, the stand taken by the U.T. Administration discloses that in so far as the schools like the Appellants are concerned there are no effective directions with regard to the minimum or maximum age for admission unlike in the government schools and the whole matter has been left to the wise discretion of the School management authorities. If that be so, the new criteria evolved, cannot be said to be violative of any established norms.

10. It is the contention of the Petitioner(s) parents that their wards born between 01.04.2007 to 30.09.2007 have been made ineligible for admission in the ensuing academic session. That they will be eligible in the next year, has been sought to be explained by contending that by the time they become eligible for admission in Class-I, all such children would be well beyond six years which is the minimum age for admission to Class-I. The argument does not meet the test of logic. For the present year, children between 4 and 5 years are made eligible for admission in nursery classes and the same would be the position next year if in the meantime there is no drastic change in the cut off dates i.e. 1st April of one year and 31st March of the next year. There would, indeed, be a handful of students who would be close to seven years at the time of admission into Class-I but the above is a consequence of such children being close to 5 years at the time of admission to nursery classes. A margin of one year from the minimum age for admission to any particular class has to be considered to be reasonable. All children having a difference of one year of age are to be at par for admission into a particular class. This has been the prevailing practice for long. Viewed from the aforesaid context the approach of the parents to the Court has to be understood to be an attempt to hasten the process of admission, the denial of which by the policy adopted by the schools cannot be understood to be an infringement of any legal right much less the Fundamental Right guaranteed by Article 21A of the Constitution. The children of the Petitioners do not stand debarred from admissions by the policy of the schools. Such decisions only have the effect of postponing their eligibility to the next academic session.

11. Viewed from the aforesaid context the extension of the last date of birth for determining the eligibility i.e. from 31.03.2007 to 30.09.2007, as made by the learned Single Judge, in our considered view does not provide a solution to the problem that has arisen. A pedantic answer to continue with past practice, as directed by the Union Territory Administration in the letter dated 17.01.2011 to

the Appellant-schools, must be avoided, particularly, when such continuance merely postpones the issue to the future academic years when once again the effective dates could be set from 1st April to 31st March say 01.04.2012 to 31.03.2013, which dates have already been acknowledged, has some reasonable connection to the commencement of the academic year in the schools in question i.e. 1st April of a year.

12. We are, therefore, of the view that the directions in question passed by the learned Single Judge, namely, extending the last date of birth to be eligible to 30.09.2007 for nursery classes and 30.09.2006 of upper K.G. Classes, ought not to have our approval. However, we are in full agreement with the learned Single Judge that the solution to the impasse lies in evolving a uniform admission policy with regard to age in all schools and strict implementation thereof which is the subject matter of the main writ petition that awaits the consideration of the learned Single Judge.

13. We, therefore, allow all these appeals, set-aside the direction of the learned Single Judge extending the last date of birth to be eligible for admission for nursery and upper K.G. Classes to 30.09.2007 and 30.09.2006, respectively. Consequently, the Appellant-schools are permitted to complete the admission process on the basis of the dates as originally announced. The appeals, shall stand disposed of in terms of the above.