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**(2003) 07 JH CK 0124**

**In the Jharkhand High Court**

**Case No : Writ Petition (PIL) No. 1264 of 2002**

Shashi Bhusan Pathak

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 25-07-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2003) 4 JCR 510**

**Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J**

**Bench : Division Bench**

**Advocate : Mahesh Tiwari, Rita Kumari, Rashmi Pradhan and Sujata Bhattacharya, for the Appellant; P.K. Prasad, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

R.K. Merathia, J.—In this writ petition, learned counsel for the petitioner sought to raise the following grievancees in public interest. The first grievance of the petitioner is that the respondents, while taking admission of the students under the general category i.e. category 3 (vii) of the "Kendriya Vidyalaya Sangathan Admission Guidelines 2000, cannot give preference, to the students coining from other Kendriya Vidyalayas who were admitted in those Kendriya Vidyalaya under the said general category, over the students of general category who are more meritorious. The second grievance is that the minimum eligible age limit prescribed as five years for admission in class I and consequently 15 years in class XI is bad in law. The third grievance is with regard to the policy of transfer within the schools and the last one is for a direction upon the respondent No. 3 to pay the cost awarded in some other case from his own pocket. In other words mainly the petitioner, is challenging the policies of admission and transfer of the Kendriya Vidyalayas.

2. Under Clause 3 of the said guidelines, priorities in admission has been fixed. Under Clause 3 (a)(vii), "children from any other category" can be admitted if the seats are vacant after fulfilling the higher priorities i.e. from i to vi.

3. Learned counsel for the petitioner with reference to annexure 7 submitted that 23 students were admitted from other Kendriya Vidyalaya who were less meritorious than other students falling under the general category, 3(a)(vii), only because, they were students from other Kendriya Vidyalayas, which is bad and arbitrary. Learned counsel for the petitioner relied on the judgment reported in A.I.I.M.S. Students Union Vs. A.I.I.M.S. and Others, , to show that the institution cannot give preference to the students of the same institution over the other meritorious students.

The relevant portion of Annexure 7 is reproduced as follows :--

"KENDRIYA VIDYALAYA, HINOO RANCHI-2

Admission in class XI during the Session 2000-2001

in Kendriya Vidyalaya, Hinoo Ranchi-2

Total Seats available in XI Sc. In 02 sections (excluding over & above of class strength cases) = 80

Admission granted :

Fresh cases (of category-I and II only) 25 K.V. Hinoo, case 32 Other K.V.'s 23  
80 Over and above of the class strength

KVS, Ward 07 Sponsored 03 80% and above 23 33 Grand Total 113 in 2 Section  
Total seats in class XI Humanity in one section = 40

Admission granted

Fresh cases 03 KV Hinoo 27 Other KV 15 KVS Ward 01 46 Note.--Strength increased due to the closure of XI Sc & Humanity in Kendriya Vidyalaya HEC,. CCL Rajendra Nagar, Ranchi & Dumka. There is no class XI in K.V. Namkum. These are KVS Liability.

Sd/- Principal"

4. In reply, learned counsel for the respondents submitted that the petitioner has not made necessary averments in support of his first grievance. It is stated and submitted in a vague and general manner, with reference to Annexure 7 that 80 students have been admitted in class XI in Kendriya Vidyalaya, Hinoo, Ranchi out of which 23 seats have been filled up by the students of other Kendriya Vidyalayas although they secured less marks than other students of other schools.

He further submitted that there is nothing on the record to support the said allegation made on behalf of the petitioner, and it is not stated as to who were the said students from the general 3 (a)(vii) category, being more meritorious than the students of other Kendriya Vidyalayas who were refused admission. He further submitted that this Court is not required to go into this debate in the absence of the foundational facts he also submitted that from the said

Annexure-7 itself it will appear that 23 students who secured more than 80% marks were admitted over and above the class strength. As per the policy of Kendriya Vidyalaya, a discretion has been given to the principal to take admission of a student in Class XI over and above the class strength, irrespective of the category to which he belongs, if he has secured 80% or more marks in class X examination. He pointed out that nothing has been said in this case that any student from the general category i.e. category 3(a)(vii) having secured 80% or more marks in class X examination has been denied admission in preference to the students coming from other Kendriya Vidyalayas, having less marks. Learned counsel for the respondents submitted that the Annexures in this writ petition contains a list of about 170 students falling under the priority III, V & VI categories, who could not be accommodated due to non-availability of seats in class XI during the academic session 2000-01. This itself shows that there was no scope for accommodation of any student from general category.

5. We are satisfied that the foundational facts have not been laid down in this case and we are not in a position to consider the first grievance of the petitioner as the same is speculative and hypothetical.

6. Regarding the second grievance i.e. prescribing minimum age limit for admission in class I as five years, learned counsel for the petitioner submitted, that a student below the age of 15 years coming from other school (which school does not have minimum age limit), cannot be denied admission in class XI on the ground that he is underage.

7. Learned counsel for the respondents in reply submitted that Annexure 3 shows that several candidates belonging to the categories I to VII were denied admission to class XI due to under age/over age, as per the Rules of Kendriya Vidyalaya Sangathan, therefore it is clear that candidates from all the categories were treated equally so far as the eligibility regarding age is concerned. He further submitted that such a restriction regarding minimum age is essential and it is for the benefit of the student community as the child is required to read and write independently and acquaint with learning process. He also submitted that it has been found in several studies that up to the age of five years a child learns several things by natural process of learning which should not be disturbed or overburdened with academic learning. He further submitted that now this minimum age of five years is accepted everywhere as minimum age for admission in class I.

8. We are satisfied that there is nothing wrong and arbitrary in fixing the said age limit of five years for admission of a student in class I and consequently a minimum age of 15 years for admission in class XI.

9. Regarding the transfer policy of the employees also, no case has been made out calling for our interference.

10. The Hon'ble Supreme Court in the judgment reported in State of Rajasthan and Others Vs. Lata Arun, , held that such matters fall within the realm of policy

decision and therefore, the Court should not interfere in such matters. In the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, , the Hon"ble Supreme Court held that, it is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved; and that the policy cannot be struck down merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

11. Regarding payment of cost of Rs. 5,000/- awarded in another case, we find that there was no such order by this Court to pay the same from the pocket of respondent No. 3.

12. We are surprised to note that the petitioner who is a teacher of another school namely Vivekanand School at Dhurwa, Ranchi is seeking to raise such issues in the guise of public interest. Although we had considerable doubt about the locus standi of the petitioner in this public interest Litigation, we have gone into the merits of this case in order to find out whether Public Interest has suffered. In the result, we find no merit in this writ petition and accordingly the same is dismissed. However we are not making any order as to costs.