

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM:

THE HON 'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No.7924 of 2017 and

WMP.No.8672 of 2017

Punitha
Minor rep. by her Father and Natural Guardian
A.Jaya Kumar,
No.1-A, St.Micheal Nagar,
Dr.Ambedkhar Main Road,
Mittanamalli, Avadi, Chennai-55. Petitioner

Versus

1. The Chairman,
Deputy Inspector General of Police,
Kendriya Vidyalaya,
Central Reserve Police Force,
Group Centre, Avadi, Chennai-65.
2. The Nominee of Chairman,
The Commandant,
Kendriya Vidyalaya,
Central Reserve Police Force,
Group Centre, Avadi, Chennai-65.
3. The Principal,
Kendriya Vidyalaya,
Central Reserve Police Force,
Group Centre, Avadi, Chennai-65. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents to admit the petitioner's daughter Punitha, Serial No.34 with Registration No.P-1770-7429029343 in the 1st Standard in the 3rd respondent school by considering the Rental Agreement dated 31.03.2017.

For Petitioner : Mr.M.Md.Ibrahim Ali
For Respondents : Mr.J.Madhanagopal Rao for R1 and R2
Mr.M.Vaidyanathan for R3

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to admit the petitioner, namely, minor Punitha, Serial No.34 with Registration No.P-1770-7429029343 in the 1st Standard in the 3rd respondent school by considering the Rental Agreement dated 31.03.2017.

2. On behalf of the petitioner-ward, her father has submitted an Application Form for Admission to 1st Standard in the 3rd respondent school in which the 1st respondent is the Chairman and the 2nd respondent is the Nominee of the Chairman. The selection was by drawing a lot and the result was published on 24.03.2017 in which the petitioner-ward's name was listed as Serial No.34. Thereafter, the father of the petitioner-ward approached the 3rd respondent on 24.03.2017 along with the necessary documents, namely, Birth Certificate, Community Certificate and Income Certificate. Though, the petitioner's father approached the 3rd respondent daily from 25.03.2017 to 31.03.2017 for the admission of his daughter in the 1st Standard, they refused to admit her on the ground that the distance of the address mentioned in the application is above 5 kms. from the school. But, according to the father of the petitioner-ward, now, he has shifted his residence near the school by entering into an agreement for rent. Though the same was produced, the 3rd respondent refused to admit the petitioner-ward stating that the address mentioned in the application form is final. Hence, the present Writ Petition.

3. A detailed counter affidavit has been filed by the 3rd respondent in which it is specifically mentioned that children of the persons employed in the private sector or self-employed individuals fall in the 5th category will be considered only if there are vacancies left after providing admission to children falling in other categories. After the introduction of Right to Education Act, 2009, the Kendriya Vidyalaya like other Educational Institutions had to reserve 25% of the seats for those eligible under the said enactment and it has framed a separate method for admission under the Right to Education Category and under this method, 25% reservation was made and the seats are filled up by drawing of lots from all applications from SC/ST/EWS/BPL/OBC (non-creamy layer/differently abled, who are residents of neighbourhood) taken together. In the application of the petitioner, it has been clearly mentioned

that admission was being sought under the RTE Category and the distance from the petitioner's house to the school was shown as only 4 kms. But, on scrutiny of the application forms, it came to light that the petitioner's residence was approximately 8 kms away from the school and hence, her name was removed from the list. The contention that since the petitioner had shifted her residence to a nearby place which is within the stipulated 5 kms., she is entitled to admission is incorrect because if he had mentioned the correct distance between the school and the residence of the petitioner-ward in the application, at the initial stage itself, her name would have been ineligible under the RTE Category. Hence, for all the above reasons, the Writ Petition has to be dismissed.

4. Learned Counsel for the petitioner submits that the petitioner-ward was selected for admission in the 3rd respondent school among 40 students by drawing a lot and her Serial Number is 34. He would further submit that though required certificates have been furnished, admission was rejected to the petitioner on the ground that she is residing above 5 kms. from where the school is situate. Therefore, now, the father of the petitioner has changed their residence and also produced a copy of the rental agreement. But, the 3rd respondent has refused to consider the same. It is also the contention of the petitioner Counsel that many of the students who got admission, are residing far away from 5 kms. and the address of the petitioner given in the application form is well within 5 kms. Therefore, the present Writ Petition has to be allowed.

5. Learned Counsel for the 3rd respondent by reiterating the contentions of the counter affidavit submits that the candidate applied under RTE category should reside within 5 kms radius as far as the major cities are concerned. Further, in the instructions, it has been clearly stated that any wrong information will lead to rejection of the application because under RTE Category, 1523 applicants have applied for 40 seats. In this regard, an e-mail has also sent to the ward's father. Therefore, the present Writ Petition has to be dismissed.

6. I have considered the above submissions and I have also gone through the typed set of papers.

7. At the outset, it is not in dispute that on behalf of the petitioner-ward, her father has applied for 1st Standard admission in 3rd respondent school under RTE Category pursuant to the advertisement dated 01.02.2017 by the Regional Office, Chennai and Kendriya Vidyalaya Sangathan. Further, the facts that she emerged successful in Serial No.34 while drawing a lot and rejection of her admission after verifying the documents

furnished by her father on the ground that the candidate is residing 8 kms. far away from the place of the school are also not in dispute. The dispute is only in respect of the fact that though the petitioner has shifted his residence within 5 kms. from the school, the 3rd respondent has refused to give admission to the petitioner-ward.

8. In this regard, attention is drawn to the instructions issued by the 3rd respondent that the petitioner has applied under RTE Category for which the instructions are as follows:

'19. Admission under RTE: (RTE Section is applicable only for Class I)

If admission under RTE is sought then fill 'Whether seeking admission under RTE': If 'Yes' is selected, the application will be considered under RTE. Although for shortlisting following distance criteria will be applicable. Since Kendriya Vidyalayas are located at places with varied density of population, they have been categorised as follows for determining the limits of neighbourhood.

1. Major cities and Urban Area (All District Hqrs. & Metros) - 5Kms. Radius;

2. Places and areas other than included in 1 above - 8 kms radius.

Note :

* Proof of residence shall have to be produced by all applicants. However admission cannot be denied due to non-submission of proof of residence.

* A self-declaration in writing from the parent about distance may also be accepted to this effect.

* The RTE shortlisting will be automatically processed based on the school selected for admission and distance entered.'

9. There is a distinct difference between giving preference on the ground of neighbourhood in terms of some extra points and in making fixed or rigid limits of neighbourhood as sole criteria for admission to Nursery. This has become an annual feature in the High Court with regard to confusion over even nursery admission. Schools shall not refuse admission to the residents of the locality is the principle behind it. Such restriction giving admission only to the immediate neighbourhood of the School may result in restricting the growth and vision of the students. Students admitted in a School from all faiths,

communities and different parts would only promote diversity, openness and greater understanding of the metropolitan city and its culture. The distance criteria has denied a child the fundamental right to be considered for admission in a school of choice. It may be the reason that there are inadequate number of good quality CBSE schools. Till the quality of all Government schools improves in terms of syllabus and infrastructure, the demand will be on the increase. Those parents who do not have good school in their vicinity will be at loss if the distance restriction is followed.

10. In the instant case, the petitioner's father is a tailor and has given the distance as 4 KM from his residence. It is the contention of the respondent that he had furnished false details. The distance measured may vary depending on the mode in which it is done. Irony is the petitioner being a tailor cannot go wrong in measurements! The petitioner having now shifted the residence within 3 KM radius has complied with the distance criteria. Admittedly, the petitioner is seeking admission in RTE category. Merely because the distance is marginally in excess cannot disentitle the child of admission in nursery school. Therefore, this Court is of the view that the provisional selection given by the respondent to the petitioner may be confirmed. The respondent is directed to give admission to the minor child in the I Standard in the respondent-School. It is also suggested that the respondent may revisit the KVS Rules and regulations in this regard.

11. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Deputy Inspector General of Police,
Kendriya Vidyalaya,
Central Reserve Police Force,
Group Centre, Avadi, Chennai-65.

2. The Nominee of Chairman,
The Commandant,
Kendriya Vidyalaya,
Central Reserve Police Force,
Group Centre, Avadi, Chennai-65.

3. The Principal,
Kendriya Vidyalaya,
Central Reserve Police Force,
Group Centre, Avadi, Chennai-65.

+1cc to Mr.Madanagopal Rao, Advocate, S.R.No.263480
+1cc to Mr.M.M.D.Ibrahim Ali, Advocate, S.R.No.26325
+1cc to Mr. Vaidyanathan, Advocate, S.R.No.26184

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AD(CO)
RS(05/05/2017)

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