

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2018

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.18778 of 2018

S.Kayalvizhi

... Petitioner

vs.

The Principal,
Kendriya Vidyalaya Sangathan,
Anna Nagar,
Chennai - 40.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of mandamus, seeking a direction to the Respondent to provide admission for Freedom Fighter's Grand Child A.Jananiha in I Standard in Kendriya Vidyalaya Sangathan, Anna Nagar, Chennai - 40.

For Petitioner : Mr.V.Nandagopalan
For Respondent : Mr.M.Vaidhyanathan

O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondent to provide admission for her daughter viz. A.Jananiha, who is the great-grand daughter of a Freedom Fighter, in I Standard in Kendriya Vidyalaya Sangathan, Anna Nagar, Chennai - 40.

2. According to the Petitioner, she is the grand-daughter of a freedom fighter, who has been honoured with INA Pension. She made a representation to the Respondent/Kendriya Vidyalaya School on 08.05.2018 seeking admission for her daughter in I Standard. As there was no reply from the Respondent, she is before this Court.

3. In support of his case, learned counsel for the Petitioner referred to a decision of the Delhi High Court in the case of Joint Action Committee vs. Union of India, 77 (1999) DLT 80, wherein, the Guidelines for Special Dispensation Admission in Kendriya Vidyalayas were reproduced. For better understanding, the same is extracted hereunder:

"10. Guidelines for Special Dispensation Admission in Kendriya Vidyalayas:

Each Member of Parliament can refer two cases in an academic year. Children may be admitted to different classes of KVs, if, -

(i) either of his/her parents or both have died; or

(ii) either of his/her parents or both are mentally ill or physically handicapped; or

(iii) either he or she has been abandoned by either of his or her parents; or

(iv) his or her parents are persons under circumstances of undeserved want such as being a victim of mass disaster, ethnic violence, caste atrocities, flood, drought, earthquake or other natural disasters; or

(v) his or her parents are living below poverty line; or either of his or her parents belongs to any socially disadvantaged group such as Scheduled Caste, Scheduled Tribe and other Backward Class; or

(vi) there is non-availability of access to educational institutions within the locality where the parents of the child are residing; or

(vii) either of his or her parents live in any place in difficult areas including North Eastern Region; or

(viii) either of his or her parents has been sentenced to imprisonment on conviction or otherwise detained for a term exceeding five years; or

(ix) he or she is a disabled child; or

(x) he or she is a child or grand child of freedom fighter who is in receipt of pension from Central/State Government for his participation in the struggle for freedom (proof to be furnished); or

(xi) either of his/her parents is transferred to a place where no Kendriya Vidyalaya exists; or

(xii) he or she is a child who is winner of National bravery awards of the national or state level; or

(xiii) he or she is a child or a teacher who has won National/President's award; or

(xiv) he or she has shown special ability in sports or fine arts."

3.1. Citing reference to clause (x) of the above Guidelines, learned counsel for the Petitioner submitted that the Petitioner's daughter is entitled to a seat in the Respondent/School, as she belongs to a Freedom Fighter's family.

4. Though no counter affidavit is filed on behalf of the Respondent/School, learned Standing Counsel appearing for the Respondent/School submitted that the Guidelines for Special Dispensation Admission in Kendriya Vidyalaya School, cited supra, are not at all in force, as the same has been struck down by the Delhi High Court in the case of Joint Action Committee (cited supra). Relevant portion of the said judgment is extracted hereunder:

"18. KVS was founded and brought up for a specified purpose and is meant to serve a well-defined class of society - the paramount feature whereof is All India mobility on account of nature of service.

....

In our opinion, the Special Dispensation Scheme has been so worded

and elastically framed as to provide entry to those for whom it is not meant. The Special Dispensation Admission Scheme (Annexure P4) therefore, falls foul of Article 14 of the Constitution being arbitrary and irrational, also frustrating the object sought to be achieved by KVs and is, therefore, liable to be struck down.

19. Though the Scheme is being struck down, we have to take care to protect the interest of those whose admissions were either cleared or recommended by the Committee upto 28.08.1998, the date on which this Court had passed an interim order staying further admissions under the Scheme. Those students who have already been admitted under the Scheme or those who have cleared for admissions by the Committee must have rested their hopes or may have already commenced taking instructions in KVS. Striking down their admissions would adversely tell upon their career and the loss may be irreparable."

5. Learned Standing Counsel appearing for the Respondent/School drew the attention of this Court to the new Guidelines for Admission in Kendriya Vidyalayas (2018-19) and submitted that no reservation is provided for admitting the kith and kin of Freedom Fighters in Kendriya Vidyalaya.

6. One cannot deny the fact that many of the Freedom Fighters, who did not have sufficient income to maintain themselves, have refused to take benefit of the Freedom Fighters' Pension Scheme, as they considered it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. In the case hand, the Petitioner's grandfather is a Freedom Fighter and he was honoured with Freedom Fighters' Pension. Though the learned counsel for the Petitioner has conveniently referred to clause (x) of the Guidelines framed under the Special Dispensation Admission Scheme, by relying on the Delhi High Court judgment in the case of Joint Action Committee (cited supra), in paragraph 19 of the said judgment, it is clearly stated that the said Scheme is struck down as it falls foul of Article 14 of the Constitution of India. Even assuming that the Special

Dispensation Admission Scheme is in force till date, the Petitioner will not be entitled to seek admission for her daughter, as the said provision permits admission only to the children or grandchildren of the Freedom Fighter and not to his/her great-grandchildren.

7. Unfortunately, even in the New Guidelines for Admission to Kendriya Vidyalayas (2018-19), there is no reservation of seat for the kith and kin of Freedom Fighters. The only provision under which the Petitioner can seek admission for her child is clause (xix) of the Special Provisions under Part-B of the New Guidelines for Admission to Kendriya Vidyalayas (2018-19). For better appreciation, the said clause is extracted hereunder:

"xix. Each Hon'ble Member of Parliament can refer 10 (ten) cases for admission under the Scheme in an academic year, but such recommendations shall be confined to children whose parents belong to his constituency either by domicile or on account of having been soon-before posted there or else on account of exigencies of service, migrate to his constituency. Such recommendations would be for admissions in Kendriya Vidyalaya(s) located in his constituency only. In case there is no Kendriya Vidyalaya in the constituency of the Hon'ble M.P. (Lok Sabha), he/she may recommend these admissions in the Kendriya Vidyalaya(s) located in any neighbouring contiguous constituency. For Member of the Rajya Sabha, the State from which the member has been elected would be deemed to be his constituency for this purpose. Nominated members of the Rajya Sabha and Lok Sabha can recommend 10(ten) cases for admission in any one or more Kendriya Vidyalayas of the Country.

a. These admissions shall be over and above the class strength.

b. These recommendations would be made for classes I to IX only.

c. These admissions would be made at the beginning of the academic year and no admission would be allowed after the prescribed cut-off date of the year.

d. The recommendations to be made shall be valid only if these are made in the prescribed format provided to each Member of Parliament by KVS (HQ). Recommendations sent in any other format/manner shall not be considered.

e. The children recommended by Hon'ble Members of Parliament must be otherwise eligible for admission as per the extant KVS Admission Guidelines."

8. In view of the above, the Petitioner is at liberty to seek admission for her child in the Respondent/School as per clause (xix) of the New Admission Guidelines for Kendriya Vidyalayas, referred to supra. Further, this Court is of the view that the Guidelines for Admissions in Kendriya Vidyalayas (2018-19) need to be vetted, by incorporating a provision, reserving certain number of seats to the great grand-children of Freedom Fighters, upto the fourth generation, as a mark of honouring the Freedom Fighters.

The Writ Petition is disposed of with the above observations. No costs. Consequently, connected W.M.P.No.22127 of 2018 is closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Principal,
Kendriya Vidyalaya Sangathan,
Anna Nagar, Chennai - 40.

+1 cc to M/S.M.NANDAGOPALAN Advocate SR.NO. 50720

+1 cc to M/S.M.VAIDHIYANATHAN Advocate SR.NO. 51169

Order in
W.P.No.18778 of 2018

KAN (CO)
ASK(20/08/2018)