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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12606/2019 & CM No.2974/2020**

Judgment reserved on 04.02.2020
Judgment pronounced on 17.02.2020

RAM BRIKSH MALL Petitioner

Through Petitioner-in-person.

versus

THE COMMISSIONER KENDRIYA VIDYALAYA SANGATHAN
AND ANR. Respondents

Through Mr. S. Rajappa, and Mr. R.
Gowrishankar, Advocates.

Mr. Santosh Kr. Tripathi, ASC with
Mr. Arpit Bisht, and Mr. Rajat
Mangla, Advocates for DOE.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

1. This is a second round of litigation initiated by the petitioner who is the father of a girl-child by the name Nidhi Mall.
2. In the first round, the petitioner had sought admission for his ward in Grade-XI in ASN Public School, Mayur Vihar, Phase-I Extension, Delhi-110091 (in short "ASN Public School").

3. The petitioner, being aggrieved by the fact that ASN Public School had not entertained his request to grant admission to his ward, had filed a writ petition [i.e. W.P.(C)No.10198/2019] in this court.

4. Upon notice being issued in the aforesaid petition, it came to light at the hearing held on 23.09.2019 that no seats were available in the said school and that whenever the petitioner had visited the school, he was informed of this status by the concerned employees of ASN Public School.

4.1. Furthermore, on enquiries being made from learned counsel, who appeared on behalf of the Directorate of Education (in short “DOE”) as to whether the petitioner’s ward could be admitted in a government school which was proximate to the petitioner’s residence, I was informed that since the first semester examinations had already commenced, no purpose would be served in having the petitioner’s child admitted.

4.2. Given this situation, I had ascertained from the petitioner as to whether he would be interested in getting his ward admitted in ASN Public School in the next academic year. The petitioner expressed his disinclination *qua* this suggestion and, therefore, the writ petition was closed.

5. This time around, the petitioner has arrayed the Commissioner of Kendriya Vidyalaya Sangathan and the Deputy Commissioner of the Delhi Region of Kendriya Vidyalaya Sangathan as respondent nos.1 and 2.

6. The petitioner has in the instant writ petition sought a *mandamus qua* the said respondents to the effect that his ward be admitted to Grade-XI, in the Humanities Stream, in Kendriya Vidyalaya, INA Colony, New Delhi (in short “Kendriya Vidyalaya, INA”).

7. The instant writ petition came up for hearing on 29.11.2019 when,

learned counsel for the respondents entered appearance based on advance notice. On that date, the following order was passed in the writ petition: -

“3. Mr. Gowrishankar, who appears on advance notice on behalf of the respondents says that he has received instructions to the effect that no seat is vacant in the humanities stream in the Kendriya Vidyalaya located in INA colony.

4. It is stated that this position obtains not only as of today but was also the same as on 9.10.2019.

5. Furthermore, learned counsel says that admissions up until 30.11.2019 are possible only in respect of wards of parents who fall in Category I to IV i.e. Civil and Defence Sector and Category I to V in Projects & Institutes of Higher learning who have been transferred during the Previous Year/Current Academic Session.

6. The petitioner, who appears in person, draws my attention to clause 8 of the guidelines issued for admission in Kendriya Vidyalaya.

7. It is contended by the petitioner that if vacancy exists, as per guideline no. 8, admission can be granted in class XI for students of State Boards/ICSE/NIOS.

8. Accordingly, issue notice. Mr. R. Gowrishankar accepts notice on behalf of the respondents.

9. Respondents will file a counter affidavit within one week from today.

10. In the counter affidavit, respondents will, inter alia, address the specific issue raised by the petitioner which I have made a reference above.

11. Renotify the matter on 19.12.2019.

12. If there are any seats available after 30.11.2019, one seat will be reserved for the petitioner's ward.”

8. On the returnable date i.e. 19.12.2019, Mr. S.Rajappa, who appears on behalf of the respondents, informed me that he had filed a short memorandum instead of a counter affidavit in view of paucity of time.

9. Since the petitioner insisted that the stand taken by the respondents that no vacancies were available was incorrect and that he would like to file

a rejoinder to place this fact on record, an opportunity in that behalf was granted to the petitioner and the matter was listed for further proceedings on 30.01.2020.

10. In the interregnum, the petitioner moved the captioned application (i.e. CM No.2974/2020), in which, the petitioner claimed the same relief except that he relied upon the interim direction which had been issued by me on 29.11.2019.

11. This application was renotified for 27.01.2020. On that date, notice was issued in the application and opportunity was granted to Mr. Rajappa to file a reply to the same.

12. On 30.01.2020, both, the writ petition and the application, were renotified for 04.02.2020, after hearing arguments, only in the best interest of the petitioner's ward.

13. On 04.02.2020, the following was recorded and the judgment in the writ petition and the application was reserved: -

“1. In the best interest of the petitioner's ward, I had requested Mr. Tripathi, who is on the panel of the DOE, to ascertain as to whether the petitioner's ward could be admitted to the school of correspondence or a regular school with the intercession of the DOE in view of the difficulty expressed by Mr. S. Rajappa qua admission to Kendriya Vidyalaya Schools.

2. Mr. Tripathi has returned with instructions to the effect that the petitioner's ward could be considered for admission in Grade-XI via both avenues, having regard to suitability and vacancy.

3. The petitioner, who appears in person, has declined the offer.

4. Therefore, the orders on merits will be passed in the writ petition and the captioned application having heard the petitioner and Mr. Rajappa at length on the previous date.

5. The writ petition and the application are, accordingly, reserved for orders.”

14. The petitioner's contention, mainly, is as follows:

(i) That there are five seats available in Grade-XI in Humanity Stream in Kendriya Vidyalaya, INA, which, if not filled, will get wasted.

(ii) Under Clause 1(xv) of Part-B of KVS Guidelines¹, applicable for academic session 2019-2020, if adequate number of applications for admission from eligible children are not available, then, the Kendriya Vidyalaya Sangathan can nominate names of students for admission up to the prescribed limit until 30.11.2019. In this behalf, Clause 8 of Part-A of KVS Guidelines, 2019-2020 is also invoked.

15. The respondents have filed their response, in which, they have categorically stated; an aspect that I have noticed hereinabove as well, that firstly, there are no seats available in Kendriya Vidyalaya, INA, in the Humanities Stream. The respondents have emphasized that this position obtained not only on 29.11.2019 but also on 09.10.2019.

16. Secondly, the respondents have also stated that the last date for registration for admission in Kendriya Vidyalaya was 31.07.2019 and that the Deputy Commissioner (i.e. respondent no.2) is not vested with power to order fresh admission after 31.07.2019.

17. Thirdly, the power available to grant special permission for admission beyond the prescribed date, as given in the admission guidelines, is accorded only *qua* children of government employees who hold transferrable or non-transferrable posts, falling in Categories I to IV in civil and defence sector.

17.1. It is asserted that in this category, 45 students can be admitted till

¹ "In case adequate number of applications for admission of eligible children are not available for provisions under (XII), (XIII), and (XIV), Kendriya Vidyalaya Sangathan may nominate additional names up to the prescribed limit to ensure full utilization of

November 30 of the concerned academic session.

17.2. Furthermore, it was contended that even Clause 8 of the admission guidelines cannot be invoked in the petitioner's case as that clause is applicable to children who seek admission to Kendriya Vidyalaya Schools from schools which are affiliated to boards other than CBSE i.e., State Boards/ICSE/NOIS.

17.3. It was, thus, contended that since the petitioner's ward had passed her Grade-X exam from a school which was affiliated to CBSE, Clause 8 of the admission guidelines could not be invoked in the petitioner's ward's case.

18. Having considered the matter, at length, I am of the view that the petitioner, in a sense, has marred the interests of his ward by not seeking registration for admission in Kendriya Vidyalaya Schools prior to the cut-off date i.e. 31.07.2019.

19. As noticed hereinabove, the petitioner, in the first instance was seeking to gain admission in ASN Public School based on his impression that there were seats available in the said school. Once that door was closed, the petitioner filed the instant writ petition to seek admission in Kendriya Vidyalaya, INA.

20. The respondents have filed an affidavit stating that there are, as a matter of fact, no seats available in the humanities stream, in Grade-XI, in Kendriya Vidyalaya, INA.

21. There is nothing on record to show that this stand of the respondents is incorrect.

22. The petitioner, in fact, realising that he may not succeed on this ground, has sought to invoke the powers of the respondents to admit his

these provisions". (upto 30th November)

ward in a special quota which is reserved only for wards of government employees who have either transferrable or non-transferrable jobs and fall in Categories I to IV in the civil and defence sector.

23. The petitioner is, concededly, not a government employee, and therefore, the provisions of admission policy which have been invoked by the petitioner in that behalf cannot help his cause.

24. Insofar as Clause 8 of the admission policy is concerned, the said provision also cannot further the cause of the petitioner's ward. The said clause reads as follows: -

“8. STUDENTS OF N.I.O.S / STATE BOARDS ICSE FOR ADMISSION IN CLASS XI IN KENDRIYA VIDYALAYAS

The students of State Boards/ICSE/NIOS be considered for admission in class XI if vacancies exist.”

25. A plain reading of the said clause would show that it applies to only those students who have been students of State Boards/ICSE/NIOS. This is a prerequisite for seeking admission in Grade XI, in Kendriya Vidyalaya schools.

26. The petitioner's ward, concededly, has passed her Grade-X exam from Delhi Convent School, Ganesh Nagar, Pandav Nagar Complex, Delhi which is affiliated to the CBSE.

27. As noted in my narration above, though, attempts were made to convince the petitioner to have his ward admitted in a correspondence school or a government school in Grade-XI so that his child did not lose an academic year, the petitioner declined the suggestion made in this behalf. These avenues, resultantly, could not be explored.

28. Thus, for the foregoing reasons, I find no merit in the captioned petition and application. Accordingly, the writ petition and the application are dismissed.

RAJIV SHAKDHER, J

FEBRUARY 17, 2020/aj

