

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 11562 of 2022

Prathamesh Basantia

....

Petitioner

Mr. P.K. Rath, Advocate

-versus-

**Principal, Kendriya Vidyalaya-1,
Cuttack & others**

Opp. Parties

Mr. Hrusikesh Tripathy, Advocate

**CORAM:
JUSTICE M.S. SAHOO**

ORDER

24.06.2022

Order No.

- 04.
1. This matter is taken up through hybrid mode.
 2. On 18.05.2022, the following order was passed:-
 1. "1.This matter is taken up through hybrid mode.
 2. The counter affidavit dated 16.05.2022 filed on behalf of opposite parties does not deny the facts pleaded in the writ petition that, after the admission notice issued by the Kendriya Vidyalaya-1 on 05.04.2022 (Annexure-1), the notification by the Ministry of Human Resource Development was issued on 12.04.2022 (Annexure-7). It is also not disputed that the admission process was started as per the prevailing guideline of 2021-22.
 3. Mr.Tripathy, learned counsel appearing for Kendriya Vidyalaya Sangathan refers to a letter no.210350 dated 12.04.2022 (Annexure-7) issued by the Kendriya Vidyalaya Sangathan which states as follows :

RJ "... .. As per the directions of KVS Hqrs, New Delhi, you are hereby informed that "No admissions should be done under Special Provisions" (Under Para-1 of part-B-page no.8, 9, 10, 11) till further orders."
 4. On being pointedly asked whether the notification dated 12.04.2022 would be applicable prospectively or also shall apply to the admission

procedure started earlier (in the present case finalized on 05.04.2022), learned counsel for the opposite party no.1 seeks further time to obtain instructions.

6. On reading of the counter, it is clear that the aspect of prospectively has not been dealt with.

7. It is contended by the learned counsel for the opposite party no.1 that the admission notice, as at Annexure-1 published on 05.04.2022, was for the following :

“Parents of the following candidates are hereby informed to visit the Vidyalaya for registration and provisional Admission of their ward with required documents.”

8. The list of required documents was also mentioned in the notification dated 05.04.2022, fixing the date of admission to be 13.04.2022 time-8.30 to 10.30 A.M. and the list of documents is quoted from the said Annexure-1 herein:

“Documents:

1. Date of Birth Certificate of Candidate
2. Employer certificate of parent (form may be downloaded from Kv1 Cuttack-website)
3. Recent salary slip from DDO
4. T.C. from concerned school (counter signed by B.E.O. for class-I to VIII and from D.E.O. for Class-IX). For CBSE affiliated School counter sign of BEO or DEO is not required but the TC must be uploaded in the website of concerned school)
5. Caste Certificate (if any) in the name of candidate.
6. Residential proof, (in the name of parent, if not then rent agreement)”

(underlined to supply emphasis)

9. It is pertinent to indicate here that the list of documents required transfer certificate from the concerned school, counter sign by District Education Officer (DEO) from Class-I to VIII from D.E.O. for Class-IX.

10. For the reason of the specific mention of the transfer certificate from the school, the learned counsel for the opposite party no.1 was also again pointedly asked, after the transfer certificate was issued whether the subsequent admission can be treated to be the provisional, as contended by him. He seeks further time to obtain instructions.

It was also asked to the learned counsel for the opposite party no.1: whether any other kind of admission other than that is notified in Annexure-1 is conducted for any Class in the Kendriya Vidyalaya, and if so the same has to be brought to the notice of the Court by filing affidavit.

11. In the counter affidavit dated 16.05.2022, the deponent, i.e., Principal-in-charge Kendriya Vidyalay-1 in her counter affidavit has referred to the decisions of this Court rendered in **Khirod Kumar Patra & other v. Kendriya Vidyalaya Sangathan & others in W.P.(C) No.11298 of 2013 vide its judgment dated 16.04.2015 at paras-15, 16, 17, 18 & 1;**

Judgment of Hon'ble Supreme Court in **SLP(C) No.7374/2022 (Arising out of impugned final judgment and order dated 11.04.2022 in W.P.(C) No.3822/2022 passed by the High Court of Delhi at New Delhi) filed by Rivansh Shripad (Minor) through his father & others v. Ministry of Education & others;**

The decision reported (2011) 6 SCC 597-**State of Himanchal Pradesh v. H.P. Nizi Vyavasayik Prishikshan Kendra Sangha;**

The decision reported 2013(5) Supreme 763-**Kachchh Jal Sankat Nivaran Samiti & others v. State of Gujarat & Anr;**

2007 (7) Supreme 40-M/s. **Dhampur Sugar (Kashipur) Ltd-vrs- State of Uttranchal & others;**

AIR 1998 SC 1703-State of Punjab & others v. Ram Lubhaya Bagga etc.; and

AIR 1980 SC 379-Tamilnadu Education Deptt. Ministerial and General sub-ordinate Services Association v. State of Tamilnadu.

12. This Court is of the considered opinion that the said decisions have no applicability to the present case, in view of the fact that the deponent has admitted in the counter the dates of admission/notification and for the fact that the policy was withdrawn on 12.04.2022, after the admission notification was made on 05.04.2022. None of the decisions cited by the deponent lay down that the Admission after being finalized by issuance of notice can be withdrawn after the student has taken transfer from earlier school on the ground of purported change

in policy. Further, in the present writ petition, the change of policy is not challenged, rather the challenge is to refusal of admission validly granted to a student as per the existing policy that was withdrawn after admission was notified.

13. Learned counsel for the petitioner relies on the decision of the Delhi High Court rendered by Justice R.C. Lahoti (as his lordship then was), particularly paragraph-19 thereof, which is quoted hereunder :-

“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 28.08.98, 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 been 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.”

(underlined to supply emphasis)

14. It is also fairly submitted by the learned counsel for the petitioner that as a special dispensation the Scheme was struck down by the Delhi High Court, but it is a matter of fact the Scheme was continuing in different spells since 1975 and in the case at hand the scheme was continuing since about 2010 till it is withdrawn on 12.04.2022.

15. Learned counsel for the opposite party submits that he has no specific instruction regarding continuation of the Scheme till it was withdrawn by the notification dated 12.04.2022 and he may be accommodated to obtain specific instructions.

16. A further submission is made by the learned counsel for the opposite parties that the notification dated 12.04.2022 (Annexure-7) in furtherance of the Article 21-A of the Constitution of India.

17. For reference Article 21-A is quoted hereunder :-

“21-A. Right to Education- “The State shall provide free and compulsory education to all children of the age of six to fourteen years as a fundamental right in such manner as the State may, by law, determine”

18. In the considered view of this Court, the notification dated 12.04.2022 (Annexure-7) does not refer to the said Article-21-A nor can be interpreted to be furthering the objective of Article 21-A by taking away the right of the education of children after they have taken transfer certificate pursuant to the “admission notification” issued on 05.04.2022 by the Kendriyavidyalaya.

19. As prayed for, list on 23.06.2022 to grant further opportunity to the opposite parties to file their response as per the discussions noted above.

20. The interim order passed earlier shall continue till disposal of the writ petition.

Urgent certified copy of the order be granted on proper application.

Copy of the order be uploaded in the official website.

3. Pursuant to the detailed order dated 18.05.2022, the opposite parties have filed their affidavit through Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar, Mancheswar, Bhubaneswar. Para-4 of the said affidavit dated 11.06.2022 is quoted herein :-

“4. That the Amended/Revised Admission Guidelines for the Session 2022-23 will operate Prospectively. Hence, the order dated 12.04.2022 will applicable prospectively.”

Further at para-7 of the affidavit, the following has been stated:-

“7. xxx xxx. Therefore, the Special Provisions Scheme continued till it was withdrawn by the order dated 12.04.2022 of the Competent Authority.”

4. It has been argued by the learned counsel for the opposite parties that the admission those are notified, as per the Special

Provisions Scheme, are provisional subject to verification of original documents and payment of fees.

5. Learned counsel for the petitioner submits in the present case, in fact, the petitioner was asked to submit their detail particulars along with Transfer Certificate for taking admission and as far as students are concerned, no further action was left to be done by the students for getting admission after their admissions were notified. It is further submitted that the Transfer Certificate dated 11.04.2022 (Annexure-6) of the student was issued by the School, countersigned by the Block Education Officer, Cuttack Sadar on 12.04.2022.

6. There is no indication in the affidavits filed by the opposite parties that the students did not comply with any of the condition of admission after the admission notice was notified by the Kendriya Vidyalaya.

7. In view of the very fair stand taken by the opposite parties in the affidavit dated 11.06.2022 in response to the order dated 18.05.2022, at para-4 and para-7 (which are quoted herein):-

“4. That the Amended/Revised Admission Guidelines for the Session 2022-23 will operate Prospectively. Hence, the order dated 12.04.2022 will applicable prospectively.

7. xxx xxx. Therefore, the Special Provisions Scheme continued till it was withdrawn by the order dated 12.04.2022 of the Competent Authority.” ;
the writ petition has to be allowed.

8. It is directed that the authorities shall grant admission to the student as per the Admission Notice issued by Kendriya

Vidyalaya No-1: Cuttack, annexed to the writ petition marked as Annexure-1. The admission process shall be completed immediately after receipt of the certified copy of this order.

9. The writ petition is allowed accordingly.

10. In the facts and circumstances of the case, there shall be no order as to costs.

All the interim orders passed earlier stand vacated.

Urgent certified copy of the order shall be issued as per rules.

Copy of the order be uploaded.

