

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

W.A. Nos.942, 943, 944,945,946,947,948,949 & 988 of 2022

1. W.A. No.942 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.11562 of 2022)

Principal, Kendriya Vidyalaya-I, Cuttack

....

Appellant

-Versus-

***Prathamesh Basantia (minor)
represented through his father
guardian and Others***

....

Respondents

2. W.A. No.943 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.12482 of 2022)

Principal, Kendriya Vidyalaya-II, Cuttack

....

Appellant

-Versus-

Ajay Kumar Sethy and Others

....

Respondents

3. W.A. No.944 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.12484 of 2022)

Principal, Kendriya Vidyalaya-II, Cuttack

....

Appellant

-Versus-

Benudhar Nayak and Others

....

Respondents

4. W.A. No.945 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.12485 of 2022)

***Principal, Kendriya Vidyalaya-
I, Cuttack***

....

Appellant

-Versus-

***N.N. Rajalaxmi Ojha and
Others***

....

Respondents

5. W.A. No.946 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.12487 of 2022)

***Principal, Kendriya Vidyalaya-
I, Cuttack***

....

Appellant

-Versus-

Somanath Majhi and Others

....

Respondents

6. W.A. No.947 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.13494 of 2022)

***Principal, Kendriya Vidyalaya-
I, Cuttack***

....

Appellant

-Versus-

***Sai Sidhi Samantaray (minor)
represented through his father
guardian and Others***

....

Respondents

7. W.A. No.948 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.13645 of 2022)

Principal, Kendriya Vidyalaya- Appellant
I, Cuttack

-Versus-

Jasodhara Nanda and Others Respondents

8. W.A. No.949 of 2022

(Arising out of the order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.14027 of 2022)

Principal, Kendriya Vidyalaya-
I, Cuttack

Appellant

-Versus-

Itismita Nayak and Others

Respondents

9. W.A. No.988 of 2022

(Arising out of the order dated 15.07.2022 passed by learned Single Judge in W.P.(C) No.16358 of 2022)

Principal, Kendriya Vidyalaya-
II, Cuttack

Appellant

-Versus-

Nandini Rout and Others

Respondents

Advocates appeared in the cases through Hybrid Mode

For Appellants:

Mr. Hrusikesh Tripathy

For Respondents:

Mr. Prafulla Kumar Rath
in W.A. No.942 of 2022.

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

Date of Hearing: 25.08.2022 Date of Judgment: 25.08.2022

Jaswant Singh, J.

1. The present batch of intra Court Writ Appeals are taken together as they involve similar facts and identical issues and assail the common order dated 24.06.2022 passed by learned Single Judge in W.P.(C) No.11562 of 2022. Further, the W.A. No.988 of 2022 arising out of order dated 15.07.2022 passed in W.P.(C) No.16358 of 2022 is based on the aforesaid common order dated 24.06.2022.

2. The brief facts of the case are that certain students were recommended by Collector & District Magistrate, Cuttack vide Letters dated 09.02.2022, 17.02.2022 and 04.03.2022 for admission to various classes in Academic Session 2022-2023 out of **(i)** the quota of the Chairman, V.M.C. of Kendriya Vidyalaya reserved for the wards of employees of the Sponsoring Agency/State Government, and **(ii)** under his discretionary quota as per Para 1(XVI(b)) and Para 1(XVII) respectively under Part-B (Special Provisions) of guidelines for admission in Kendriya

Vidyalayas for Academic Session (2022-2023) issued on 23.02.2022. The relevant portion of Para 1 of Part B (Special Provisions) of Guidelines for Admission in Kendriya Vidyalayas is produced below:

“GUIDELINES FOR ADMISSION IN KENDRIYA VIDYALAYAS

**PART-A
GENERAL GUIDELINES**

In suppression of all the guidelines governing admissions in Kendriya Vidyalayas that have been issued in the past, the following guidelines are issued to regulate admissions in the Kendriya Vidyalayas with effect from the academic session 2022-23 & onwards.

Xxxx

**PART-B
SPECIAL PROVISIONS**

1. Following categories of children would be admitted over and above the class strength except where stated otherwise in the provision itself (e.g. Item No. XVI)

Xxxxx

(xvi) (a) 05 seats in each section of class-1, within the approved class strength (40) will be filled by the children of Sponsoring Agency in all schools except those specifically notified otherwise by the Commissioner.

*(b) **Similarly, 10 seats in all other classes put together (not more than 02 seats in each section) can be recommended by the Chairman VMC for the wards of employees of the Sponsoring Agency.** In case adequate number of applications for admission of the wards of employees of Sponsoring Agency are not available,*

*the Chairman VMC can recommend wards of other Transferable/Non-transferable Central/State Government employees including Autonomous Bodies/PSUs/IHL. **These admissions will be over and above the class strength, if otherwise eligible as per KVs Admission Guidelines.***

(xvii)Chairman, Vidyalaya Management Committee can recommend maximum two Admissions in the concerned Kendriya Vidyalay/Shift under his Discretionary Quota. *These two admissions may be recommended in one class or all Classes put together, the children so recommend should be otherwise eligible as per KVS Admission Guidelines (upto 30th June)”.*

The recommended names of the students along with their classes in the two Kendriya Vidyalayas situated in Cuttack (for short, K.V.-I & K.V.-II) out of Discretionary Quota & State Sponsored quota of Chairman ★ V.M.C. (Collector-cum-D.M.) are mentioned below:

I. S.R. Sreyan, S/o-N.N. Rajalaxmi Ojha, Collector, Cuttack, Class-II, Petitioner in W.P.(C) No.12485 of 2022 and Respondent in W.A. No.945 of 2022 recommended under Sponsoring Agency Quota.

II. Sai Sidhi Samantaray, S/o-Samir Kumar Samantaray, Class-II, Petitioner in W.P.(C) No.13494 of 2022 and Respondent in W.A. No.947 of 2022 recommended under Sponsoring Agency Quota.

III. Sibaprasad Sathy, S/o-Ajay Kumar Sathy, Collectorate, Cuttack, Class-III, Petitioner in W.P.(C) No.12482 of 2022 and Respondent in W.A. No.943 of 2022 recommended under Sponsoring Agency Quota.

IV. Anwesha Priyadarshini, D/o- Itismita Nayak, Class-IV, Petitioner in W.P.(C) No.14027 of 2022 and Respondent in W.A. No.949 of 2022 recommended under Sponsoring Agency Quota.

V. Tajashree Dash, D/o- Somnath Majhi, Class-III, Petitioner in W.P.(C) No.12487 of 2022 and Respondent in W.A. No.946 of 2022 recommended under Sponsoring Agency Quota.

VI. Srusti Srujani Pati, D/o- Jasodhara Nanda, Class-VII, Petitioner in W.P.(C) No.13645 of 2022 and Respondent in W.A. No.948 of 2022 recommended under Sponsoring Agency Quota.

VII. Prathamesh Basantia, S/o-Pradipta Kumar Basantia, Class-VI, Petitioner in W.P.(C) No.11562 of 2022 and Respondent in W.A. No.942 of 2022 recommended under Discretionary Quota.

VIII. Sai Adarsh Nayak, S/o-Benudhar Nayak, Class-VI, Petitioner in W.P.(C) No.12484 of 2022 and Respondent in W.A. No.944 of 2022 recommended under Sponsoring Agency Quota.

IX. Krisha Mohapatra, D/o-Nandini Rout, Class-IV, Petitioner in W.P.(C) No.16358 of 2022

and Respondent in W.A. 988 of 2022 recommended under Sponsoring Agency Quota.

The students above numbered from I to VI were recommended vide Letter dated 17.02.2022 while the student in Number VII was recommended vide Letter dated 09.02.2022 to take admission in K.V.-I, CDA Cuttack and student numbered VIII & IX were recommended by Letter dated 04.03.2022 & 17.02.2022 to take admission in K.V.-II, Khapuria, Cuttack.

3. The recommendation of the above students were crystallized by an Admission Notice dated 05.04.2022 & 06.04.2022 issued by the Principal(s) of K.V.-I & II to secure admission on 13.04.2022. The Admission Notice dated 05.04.2022 issued for K.V.-I is reproduced below:-

“KENDRIYA VIDYALAYA NO.1 CUTTACK

ADMISSION NOTICE

The following students are sponsored by Hon'ble Chairman (VMC) & District collector and Magistrate of Cuttack to take admission in Kendriya Vidyalaya NO.1 Cuttack for the session 2022-2023.

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

SL NO	NAME OF CANDIDATE	PARENT'S NAME	CLASS	REMARKS
1	PRATHAMESH BASANTIA	PRADIPTA KU BASANTIA	VI	
2	XXX	XXX	XXX	
3	S.R.SREYAN	RAJALAXMIOJH A	II	
4	SAI SIDHI SAMANTARAY	SAMIR KU SAMANTARAY	II	
5	XXX	XXX	XXX	
6	TAJASHREE DASH	SOMNATH MAJHI	III	
7	XXX	XXX	XXX	
8	ANWESHA PRIYADARSHINI	ITISMITA NAYAK	IV	
9	XXX	XXX	XXX	
10	SRUSTI SRUJANI PATI	JASODHARA NANDA	VII	
11	XXX	XXX	IX	ADMISSION TEST ON 12.04.2022. (SUBJECT - HINDI, ENG, MATH, SCIENCE AND SSC OF CLASS VIII) 9.00 AM TO 12.00 NOON
12	XXX	XXX	XXX	

DATE OF ADMISSION — 13.04.2022 TIME - 8.30 TO

10.30 AM DOCUMENTS:

PRINCIPAL”

Similarly, the Admission Notice dated 06.04.2022 to seek admission from 08.04.2022 to 16.04.2022 in K.V. II is reproduced below:

**“ADMISSION NOTICE FOR STUDENTS OUT
OF DISCRETIONARY QUOTA OF CHARIMAN
VMC & OUT OF SPONSORING AGENCY/
STATE GOVT. QUOTA”**

Reference to the letter No.62/Res. dated 09.02.2022, No.71/Res. dated 17.02.2022, No.105/Res. dated 04.03.2022 and No.141/Res. dated 12.03.2022 the following candidates have been recommended by the Collector-cum-Chairman, VMC, KV No.2 Cuttack to seek the admission out of Discretionary Quota and Sponsoring Agency Quota as mentioned below. The parents of the following candidates are instructed to register the names of their wards as recommended for provisional admission in Kendriya Vidyalaya No.2 Cuttack w.e.f. 08.04.2022 to 16.04.2022. The provisional admission may be given on the basis of the submission of the

documents subject to verification by the admission committee of the Vidyalaya.

Xxx

B. List of candidates recommended by the Chairman out of Sponsoring Agency/State Govt. Quota of the Chairman, VMC.

SL. NO	NAMES OF CANDIDATES	NAME OF FATHER/MOTHER	TO SEEK ADMISSION IN CLASS	REMARK
3	Sibaprasad Sethy	Ajaya Kumar Sethy	Class-III	Ltr. No.71/Res. Dated 17.02.2022
6	Miss Krisha Mohapatra	Nandini Rout	Class IV	
9	Sai Adarsh Nayak	Benudhar Nayak	Class VI	Ltr No.105/Res. Dated 04.03.2022

”

4. However, on 12.04.2022, the K.V.-II issued a letter wherein the above admissions to the students were kept in abeyance till further orders. Similar notice was issued on 13.04.2022 by K.V. No-I. The Letter is reproduced below:-

*“ 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.***

This is for your information and necessary action”.

5. It is pertinent to note that vide Office Memorandum dated 25.04.2022 the Kendriya Vidyalaya Sanghathan, Headquarter after approval notified the amended Special Provision under Part B of KVS Admission Guidelines 2022-23. After amendment, the guidelines governing the admission of Respondents/students by recommendation of Chairman of Vidyalaya Management Committee (V.M.C) i.e. Collector-cum-District Magistrate through Special Category under Para 1(XVI(b) and Discretionary Quota under Para 1(XVII) of Part-B (Special Provisions) was abolished. The relevant extracts of the contents of the memo dated 25.04.2022 for ready reference are reproduced below:

“

F.11331/2022-
23/KVS(HQ)/Academic/

Dated
25.04.2022

Office Memorandum

The amended Special Provision under Part B of KVS Admission Guidelines 2022-23 **duly approved**

by competent authority of KVS are hereby notified as follows.”

By way of the instant circular, the position which emerged is as under:

(a) The following categories were added by the memo dated 25.04.2022 which is reproduced below:

“(xiv) 50 Admissions in Kendriya Vidyalays for ward of group-B & C employees of Central Police Organizations, that is, CRPF, BSF, ITBP, SSB, CISF, NDRF & Assam Rifles under Ministry of Home Affairs posted for internal security, border guarding, disaster response & other difficult areas based on list provided by the MHA.

(xv) Admissions of wards of Kashmir Migrants will be given as per the following conditions (existing provision included in the guidelines).

This issues with the approval of the Competent Authority.”

(b) At the cost of repetition, the relevant abolished portion is again reproduced below:

“(xvi) (a) 05 seats in each section of class-1, within the approved class strength (40) will be filled by the children of Sponsoring Agency in all schools except those specifically notified otherwise by the Commissioner.

(b) Similarly, 10 seats in all other classes put together (not more than 02 seats in each section) can be recommended by the Chairman VMC for the wards of employees of the Sponsoring Agency. In case adequate number of applications for admission of the wards of employees of Sponsoring Agency are not available,

*the Chairman VMC can recommend wards of other Transferable/Non-transferable Central/State Government employees including Autonomous Bodies/PSUs/IHL. **These admissions will be over and above the class strength, if otherwise eligible as per KVs Admission Guidelines.***

*(xvii) **Chairman, Vidyalaya Management Committee can recommend maximum two Admissions in the concerned Kendriya Vidyalay/Shift under his Discretionary Quota.** These two admissions may be recommended in one class or all Classes put together, the children so recommend should be otherwise eligible as per KVS Admission Guidelines (upto 30th June)”.*

6. On being aggrieved by the Letter dated 12.04.2022 & 13.04.2022, the above mentioned students approached this Court by various Writ petitions. They submitted that all the above students had taken the Transfer Certificate (TC) as suggested by the K.V. School to secure admission and complied with all the requirements proposed by Kendriya Vidyalaya Sangathan. In the reply to the said writ petitions, the Kendriya Vidyalaya Sangathan (Opposite Parties in the petition) filed a counter affidavit dated 11.06.2022 providing that the Letter/ Notice dated 12.04.2022 & 13.04.2022 will operate prospectively. Further, it did not dispute the above mentioned claims made by Students/Petitioners.

Basing upon such counter affidavit dated 11.06.2022 the learned Single Judge allowed the writ petitions and directed to grant admission to the aforementioned students as per the admission notices dated 05.04.2022 & 06.04.2022 issued by both the Kendriya Vidyalayas situated in Cuttack. The operative portion of the order of the Learned Single Judge dated 24.06.2022 is reproduced below:-

“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”.

7. Hence the present 09 (Nine) Writ Appeals.

8. Counsel for the parties heard at length and with their able assistance perused the pleadings.

Learned counsel for the appellants states that the issue at hand in present appeals regarding grant of admission to Kendriya Vidyalaya Schools under State Sponsoring Quota and Discretionary Quota in terms of Admission Policy dated 23rd February, 2022 duly amended/revised vide Memo dated 25th April, 2022 is squarely covered by the decision of a Division Bench of Kerala High Court in **Writ Appeal No. 760 of 2022 titled, “Kendriya Vidyalaya Sangathan & others vs. Elna Chinchu” decided on**

03.08.2022 wherein the original policy and the impact of the revised policy have been duly considered and the findings were returned in favour of the appellant/Kendriya Vidyalayas. He submits it has been held that mere recommendations of the students under both the above said categories did not vest any right of seeking admission based on doctrine of legitimate expectation.

To a pointed query, learned counsel for the appellants has admitted that only nine extra admissions without prejudice to any other students to seek admission were involved in the present bunch of appeals.

On the other hand, Mr. Prafulla Kumar Rath, learned counsel for the respondents has referred to the additional affidavit dated 18th May, 2022 filed by the Deputy Commissioner (available at page 111) wherein it is the stand of the appellants itself that the amended/revised guidelines for the Sessions 2022-23 (notified on 25th April, 2022) shall operate

prospectively and thus, the rights, though limited, have accrued to the students/respondents for taking admission due to fulfilling the requirements of the Admission Notice much prior to withdrawal of the previous provisions of admission policy on 25th April, 2022. The students would be entitled to be considered and granted admission based on recommendations under the existing provisions of the admission policy having been cleared for admission. In support, he cited two judgments i.e. the judgment of the Hon'ble Supreme Court in **Major Saurabh Charan and Others v. Lieutenant Governor, NCT of Delhi (2014) 6 SCC 798** and the judgment of the Hon'ble Delhi High Court in **Joint Action Committee of Kendriya Vidyalaya Employees Vrs. Union of India, 1998 SCC Online Del 812**. He further submits that the students having obtained Transfer Certificates from their previous schools had changed their position so as to be entitled the protection under the doctrine of promissory estoppel and

doctrine of prospective application. Further, it is also submitted that the Division Bench judgment of the Kerala High Court is a decision based on consideration of doctrine of legitimate expectation and not doctrine of promissory estoppel and hence is liable to be ignored viewed from the principle of *sub-silentio*

9. Two important factors which merit consideration in the present case are that we are dealing with the admission of students of Class II, III, VII etc. and these students, being eligible / fulfilling the criteria, have in pursuance to the Policy duly approved and notified applied for their admissions, got the required recommendations from the competent authority for the Special Provisions (Discretionary Quota and State Sponsoring Quota) and pursuant to the Admission Notice by the Appellant Institution based on approved Admission Policy for such admission under such quota have taken the transfer certificate from the previous institution they were attending. The

relinquishing of lien on seat from the previous institution, naturally, has resulted in a chain reaction to the availability of seats in these various previous institutions and the process of admitting new / fresh students.

10. All the processes regarding recommendation [17.02.2022 / 04.03.2022], admission notice [05.04.2022 / 06.04.2022] for registration and provisional admission, direction to submit transfer certificate which was issued on 11.04.2022 and countersigned by Block Education Officer on 12.04.2022, for the admissions under the Special Provisions was issued prior to the order of keeping the said Special Provision in abeyance [12.04.2022 / 13.04.2022] and much before the abolition of such quota/portion of Admission Policy [25.04.2022]. No formal action was required to be submitted at the end of the students and what only remained was the formal admissions. There is no dispute regarding the fact that the children are eligible and were entitled to

admission except for the action of abolition of Special category [Para 1(XVI(b)) and Discretionary Quota [Para 1(XVII)] of Part B (Special Provisions) through recommendation of Chairman, VMC w.e.f. 25.04.2022.

11. It is undisputed that the abolition of Special category [Para 1(XVI(b)) and Discretionary Quota [Para 1(XVII)] of Part B (Special Provisions) are prospective and not retrospective in nature. In the present case, the process of the said admissions under Special category / Discretionary Quota for Academic Session 2022-2023 started in February 2022 and continued till 12.04.2022 was well within the framework of the then existing and valid provisions, which was completed to the stage of asking the students concerned to submit their transfer certificates [implying to sever the admission and lien on seat in the previous institution] which in turn upon such relinquishment must have been put to process of admission by the previous

institutions/schools. All these processes were carried out with the direct and reciprocal positive action and procedures at the end of the Appellant who suddenly at the stage of giving formal admission orders kept the process in abeyance and later abolished the said Special category / Discretionary Quota admissions.

12. In the present case, based on the existing provisions [as existed prior to 25.04.2022] there was completion of the process by the competent authorities for recommendation of the Special Provisions admissions. The students believing such process to be valid and true and within the framework of the prevailing provisions, participated in such a process which was further carried out by the positive actions of the appellants by issuing the Admission Notice under the then prevailing and valid provisions and also directed the students during such process to sever their relation with the previous institution and submit their transfer certificates. Thus having acted upon the prevailing

provisions which were operational and active mode of admission during such period and having changed their position irreversibly at the point of time having taken the transfer certificate (TC) from the previous institution, in our considered opinion the principle of estoppel, would come into operation against the appellant. It was a process initiated and carried by the Appellants under the established provisions and the respondents having changed their position to their prejudice brings into play the principle of estoppel.

13. In the Indian legal jurisprudence, the principle of estoppel is engrained as a rule of evidence incorporated in Section 115 of The Indian Evidence Act, 1872 which provides as under:

“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe such a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

14. To invoke and apply the principle of estoppel and make any promise binding on the Government / its instrumentalities, the following are the basic ingredients :

(a) The Government / its instrumentalities makes the promise within the ambit of law.

(b) There is an intention to enter into a legal relationship by such promise.

(c) The other party (promise) must do an act in furtherance of that promise or is forbidden to do anything.

15. In catena of judgments by the High Court and the Hon'ble Supreme Court, the doctrine of promissory estoppel has been applied against the Government/its instrumentalities and the defence based on executive necessity has been categorically negated. The Government & its instrumentalities are not exempted from liability to carry out the representation made by it to its future conduct. The judgments to be noticed are ***MRF Limited, Kottayam v. Asst. Commissioner (Assessment)***

Sales Tax (2006) 8 SCC 702; State of U.P. v. Birla Corporation Ltd., 2019 SCC Online SC 1569; Manuelsons Hotels Pvt. Ltd. v. State of Kerala (2016) 6 SCC 766; State of Punjab v. Nestle India (2004) 6 SCC 465; Motilal Padampat Sugar Mills Co. Ltd v. State of U.P. (1979) 2 SCC and KM Refineries & Infraspace Ltd. v. State of Maharashtra, 2020(1) Mh. L.J.904.

Further, in ***MRF (Supra)*** the Supreme Court held as follows:

“32. State and its instrumentalities.....can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any statutory prohibition, absence of power and authority of the promisor and is otherwise not opposed to public interest, and also when equity in favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise.”

“34.where a right has already accrued, for instance, the right to exemption of tax for a fixed period and the conditions for that exemption have been fulfilled, then the withdrawal of the exemption during that fixed period cannot affect the already accrued right. Of course, overriding public interest would prevail over a plea based on promissory estoppel, but in the present case there is not even a whisper of any overriding public interest or equity.....”

16. The doctrine of promissory estoppel is an equitable doctrine and it must yield when the equity so requires. In ***D.C.M. Ltd. v. Union of India, (1996) 5 SCC 468*** it is held as under:

*“6.....We have considered the rival submissions. It is well settled that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter-position of equity which has always proved to its form, stepped in to mitigate the rigour of strict law. **It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also find a cause of action. This doctrine is applicable against the Government in the exercise of its governmental public or executive functions and the doctrine of executive necessity or freedom of future executive action, cannot be invoked to defeat the applicability of this doctrine.** It is further well established that the doctrine of promissory estoppel must yield when the equity so requires. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be unequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority.”*

17. In the present case, the dominance of the factors weigh in favor of the students / respondents than the justification and public interest highlighted

by the appellant. The decision to discontinue the Discretionary Quota and State Sponsoring Quota under the Special Provision is taken after the process of admission had commenced and already completed except formally granting admissions by positive acts of appellant themselves. All the required processes were completed based on the then prevailing and valid Special Provisions as issued prior to the Order of keeping the said Special Provision in abeyance [12.04.2022 / 13.04.2022] and much before the abolition of such special provision [25.04.2022]. When no further formal action was required to be submitted at the end of the students and when they have changed their position in respect of their status in their respective previous schools, the equity rests in favor of these students who are availing the status provided to them under the provisions laid for the admissions in the appellant/ Sangathan. It was the process initiated in terms of the prevailing / valid provisions and culminated to the extent that the

students have irreversibly changed their position to their detriment and grave prejudice. Once the abolition of the special provision is held to be prospective then the ongoing process under the then prevailing / existing provision cannot be held to be invalid and prospectivity will relate to the actions beyond 25.04.2022 when the scheme was abolished and not prior thereto. The appellant failed to evaluate this aspect that its unilateral action will have grave consequences for the students who are small children and have been through this process of admission duly acknowledged and acted upon by the schools/appellants by taking positive steps of issuing admission notices and thereupon their satisfaction asking the students to submit their transfer certificates. It also cannot be ignored that the seats being over and above the normal seats and are further curtailed and having sealing of two students in each Kendriya Vidyalaya under Discretionary Quota and 10 seats in all other classes put together

(not more than 02 seats in each section) under State Sponsoring Agency Quota, thus keeping in mind the principles of fairness and equity, in the given peculiar circumstance would not seriously burden the system for this Academic Session in the two schools of the appellants. Hence, the appellants are directed not to apply the rigors of the revised policy w.e.f. 25th April, 2022 based on the doctrine of promissory estoppel and further hold that the students/respondents are entitled to completion of the process of admission under the Special Provisions relating to Discretionary Quota and State Sponsored Quota as it existed in the original Admission Policy 2022-2023.

18. Furthermore, it is undisputed that the admission process under the Policy duly approved / Notified for Admissions 2022-2023 in February 2022 was completed on 12/13.04.2022 when such approved Policy and the governing regulations were in operation and remained so till the act of superseding by amendment the Special Provisions

which was approved and notified only on 25.04.2022. In this regard, reference to Section 6 of the General Clauses Act, 1897, is relevant to the context of the validity of the action under the February 2022 Admission Notice and its completion by 12.04.2022, which for ready reference is provided as under :

“6. Effect of repeal.—

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

19. The Supreme Court in the case of **Major Saurabh Charan and Others v. Lieutenant Governor, NCT of Delhi (2014) 6 SCC 798** was seized of a similar matter wherein the appellants were parents transferred to Delhi from various other states. They applied for admission of their wards based upon an order passed by LG of Delhi on 18-12-2013 whereby fixed parameters were fixed for admission of students to private unaided recognized school in New Delhi. The parameter provided for an additional 5 points to students whose parents were transferred to Delhi from other states. Further, many students acted upon the order and were confirmed or in various stages of admission. However, on 27-02-2014, the Directorate of Education issued a Notification and deleted the points for inter-state transfer cases and passed the following relevant direction-

“iii. If the school has conducted draw of lots for those applicants securing 70 points that draw shall remain valid for the selected/confirmed candidates only. Fresh draw of lots shall be

held for remaining applicants having 70 points including wait listed applicants and those applicants who were earlier securing 75 points because of inter-State transfer case category.”

Hence, the direction validated the admission of only selected/confirmed students. However, for other students it provided for drawing of fresh lots.

The said direction was challenged and the matter finally reached the Supreme Court. The Supreme Court observed that imparting elementary and basic education is a constitutional obligation on all States. Further, the Court held that it was inappropriate/illegal to take away the admissions being granted under notification dated 18.12.2013 by a subsequent notification dated 27.02.2014. The relevant extract is reproduced below:-

“Having considered the matter, we deem it appropriate to relieve the appellants from the hardship of having the admission being granted earlier under Notification dated 18-12-2013 from being taken away by the subsequent Notification dated 27-2-2014, issued in the mid-stream. In our considered opinion, it was not permissible for the Administration to alter the basis of admission after the admission process had started and further having participated in the selection process the criteria for selection could not have been questioned by unsuccessful participants.”

The Court also granted admission to the successful students under the notification dated 18.12.2013 but not yet admitted due to subsequent notification on the basis of the undertaking by the counsel of the Delhi administration.

20. In the case of ***Joint Action Committee of Kendriya Vidyalaya Employees Vrs. Union of India, 1998 SCC OnLine Del 812***, the Delhi High Court was called upon to adjudicate the validity of the discretionary quota in allotting seats for admission in Kendriya Vidyalayas. The Delhi High Court struck down such quota on the basis that it violates article 14 of the Indian Constitution and is arbitrary and irrational.

However, in doing so, it protected the admission of those students which were admitted, cleared or recommended by the committee up-to 28.08.1998 i.e. the date on which this Court had passed an

interim order staying further admission under the scheme. The relevant extract is reproduced below:-

“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.”

21. In the present case the intent and effect of the process followed under the Admission Notice 2022-2023 notified in February 2022 was that the Special Provision is applicable and the students will be admitted under it. The students participated in the process and their admission was crystallised on 12.04.2022 when the students / respondents got the transfer certificates from the previous schools on the direction of the appellant's school and on such date the said special provisions notified in Admission Notice 2022-2023 in February 2022 was operative and valid. The amendment made in such notification

prospectively on 25.04.2022 cannot take away the rights crystallised prior to that and the processes followed in compliance thereof. Such an interpretation in the peculiar facts of present case and issue being dealt with will be an unfair and harsh approach when the rights and claim are being dealt with for effect and execution in the present session only. We find that the claim of the respondents/students whose names had been recommended and cleared for admission are fully supported by the judgment of the Hon'ble Supreme Court in **Major Saurabh Charan (Supra)** as also by the judgment of the Hon'ble Delhi High Court in **Joint Action Committee of Kendriya Vidyalaya Employees (Supra)**.

22. The reliance of the appellant on the judgment of the Division Bench of the Kerala High Court in **WA 760 of 2022 titled, "Kendriya Vidyalaya Sangathan & others vs. Elna Chinchu"** dated 03.08.2022 is misplaced because the case of the

respondent-students as pleaded and argued before us is not founded on the principle of legitimate expectation, which was core and star argument lead and dealt with in the aforementioned judgment. The appellants may have a case against the plea of legitimate expectation by the students / respondents but the aforementioned judgment is *sub-silentio* on the issue of estoppel, which is applicable and available in favour of the present respondent(s) / students. In this regard reference is made to the decision of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi vs. Gurnam Kaur, (1989) 1 SCC 101*** wherein it is held as under:

“11. x xxx

A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

“A decision passes sub silentio, in the technical sense that has come to be attached

to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.”

23. In the afore-stated judgment in **Gurnam Kaur’s case (supra)** after due consideration of the English authorities held that the decisions which are *sub-silentio* and without argument are not applicable as binding precedents.

24. This High Court in **Ferro Alloys Corporation Ltd. vs. Union of India, 1999 (I) OLR 349** held as under:

“12. The concept of per incuriam is that those decisions which are given in ignorance in forgetfulness of some relevant statutory provisions or some authority. Where the judgment does not consider the statutory provision it passes on sub-silentio. Incuria literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other

binding authority'. (See Young v. Bristol Aeroplane Co. Ltd., (1944) 2 All ER 293). Same has been accepted, approved and adopted by the apex Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedent as a matter of law. In Jaisri Sahu v. Rajdwan Dubey : AIR 1962 SC 83 the Apex Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate Court is not binding.

13. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration? In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passed sub-silentio, in technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind." (Salmond on Jurisprudence, 12th Edn., P. 153), In Lancaster Motor Company (London) Ltd. v. Bremith Ltd.: (194.1) 2 All ER 11, the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by the apex Court in Municipal Corporation of Delhi v. Gurnam Kaur : (1989) 1 SCC 101. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. "

X x x x

25. In the aforementioned decision, this High Court held that a judgment cannot be considered as binding vis-à-vis a legal point it didn't consider and reason. Thus, in the facts of the present case, the applicability of the judgment by Kerala High Court in ***W.A. 760 of 2022 titled, Kendriya Vidyalaya Sangathan & others vs. Elna Chinchu dated 03.08.2022*** is passed *sub-silentio* on the issue of estoppel and principle of fairness which are equitable doctrines evolved to avoid injustice and cannot be taken as a binding precedent.

26. In view of the above considerations, we do not find merit in the appeals and the same are consequently dismissed. The order of the learned Single Judge is upheld with the aforestated observations. The appellants are directed to complete the process of admission *qua* the nine respondents/students within a period of two weeks from today based on the relevant provisions of the unrevised Admission Policy 2022-2023 failing which

the officials concerned shall make themselves liable to be hauled up in contempt proceedings.

27. The Appeals stand dismissed with the above directions. No orders as to costs.

Registry is directed to attach photocopy of this judgment in all connected files.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

*Orissa High Court, Cuttack,
The 25th August, 2022/Sipun*