

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.11173 OF 2023 (EDN-RES)

BETWEEN:

...PETITIONER

(BY SRI K.N.SRINIVASA, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
REPTD. BY ITS CHIEF SECRETARY
DEPARTMENT OF PRIMARY AND HIGHER EDUCATION
VIKASA SOUDHA, BENGALURU-560001.
- 2 . THE COMMISSIONER
DEPARTMENT OF PUBLIC EDUCATION
NRUPATUNGA ROAD, BENGALURU-01.

- 3 . THE DIRECTOR OF PRIMARY AND HIGHER EUDCATION
DEPARTMENT OF PUBLIC EDUCATION
M S BUILDING, BENGALURU-01.
- 4 . THE PRINCIPAL
RASHTROTTHANA VIDYA KENDRA-A
#115, ARKAVATHY LAYOUT,
THANISANDRA MAIN ROAD,
BENGALURU-560077.

...RESPONDENTS

(BY SRI. VIKRAM HUILGOL, AAG FOR
SMT. KAVITHA.H.C, AGA FOR R1 TO R3;
R4 SERVICE HELD SUFFICIENT V/O DTD: 06.06.2023)

THIS WP IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER
DATED 26.7.22 BEARING NO.ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಇಪಿ260ಪಿಜಿಸಿ2021,
ಬೆಂಗಳೂರು ದಿನಾಂಕ: 26.07.2022 WHICH IS PRODUCED AT ANNEXURE-L TO
THE WRIT PETITION AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR
ORDERS ON 14.07.2023, COMING ON FOR PRONOUNCEMENT OF
ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed seeking a writ of certiorari
to quash the impugned notification/order dated 26.07.2022
vide Annexure-L and consequently, issue a direction to the
respondent No.3 to allow the petitioner to study in LKG for the
academic year 2023-24.

2. The facts leading to the case are as under:

The petitioner is born on 01.10.2019 and joined respondent No.4-school for Nursery (Pre-KG) on 23.10.2021. The petitioner claims that she is eligible to take admission to LKG and the respondent No.4-school has collected fees of Rs.93,010/- on 29.04.2023 and also fees of Rs.19,000/- towards transportation facilities. The respondent No.3-school having admitted the petitioner to LKG sent a mail on 27.05.2023 indicating that petitioner is not eligible to take admission to LKG as she has not completed the age of 4 years as on 01.06.2023 and therefore, intimated that petitioner has to be retained in Nursery. The said mail is issued by respondent No.4-school based on publication dated 23.05.2018 for having issued an order on 23.05.2018 fixing the age criteria to take admission for class-I in the Government schools, aided and unaided schools. The respondent-State by the said order has fixed the admission age for class-I as 6 years. The State has also indicated that

enforcement of admission age shall come into force for the academic year 2025-26. It is in this background, the respondent No.4-school has intimated that petitioner has to be retained in Nursery as she would not complete 6 years for the academic year 2025-26. Assailing the order dated 26.07.2022 vide Annexure-L, the petitioner through her natural guardian has knocked the doors of the writ Court.

3. The respondent-State, on receipt of notice, has filed statement of objections and has countered the grounds urged in the writ petition. The State has further taken a stand that the minimum age for admission to class-I is fixed by bearing in mind the communication dated 31.03.2021 issued by the Government of India and also bearing in mind the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for short 'Act, 2009') as well as National Educational Policy (NEP), 2020. At para 9 of the statement of objections, the respondent-State has placed the age criteria to take admission for LKG, UKG and Class-I. Therefore, State

has taken a contention that the order under challenge vide Annexure-L is in compliance of NEP, 2020 as well as provisions of the Act, 2009. While countering the contentions, the State at para 11 has also taken a contention that children in the age group of 3 to 6 years were not covered in 10+2 structure as class-I begins at the age of 6. The NEP, 2020 contemplates 5+3+3+4 new structure and the same is intended to promote better overall learning, development and well-being. Therefore, the respondent-State contends that NEP, 2020 modified the prevalent 10+2 education. The respondent-State therefore contends that the order under challenge vide Annexure-L is in conformity with the provisions of the Act, 2009 and NEP, 2020 and therefore, requests this Court to dismiss the writ petition.

4. Learned counsel appearing for the petitioner would vehemently argue and contend that the impugned order vide Annexure-L is not published in the official gazette and therefore, the impugned order is not enforceable and State

cannot insist and direct the schools in implementing the minimum admission age to avail admission for class-I. To buttress his arguments, he has placed reliance on the judgment rendered by the Hon'ble Apex Court in Civil Appeal No.6937/2004. He would vehemently argue and contend that the petitioner was admitted to Nursery based on earlier notification dated 11.03.2020 which prescribed minimum admission age for class-I at 5 years 5 months and for LKG at 3 years 5 months. Therefore, referring to these notifications, he would point out that the petitioner was already admitted to Nursery based on earlier notification dated 11.03.2020 and therefore, the subsequent impugned notification does not apply to the petitioner and any proposal to relax or enhance the minimum admission age limit for class-I has to be prospectively applied and not to the students already enrolled based on earlier notification.

5. Learned counsel has also placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of

Anushka Rengunthwar and Others vs. Union of India and Others¹. Placing reliance on the said judgment, he would vehemently argue and contend that the petitioner was permitted to take admission based on an old notification which fixed the minimum admission age limit at 5 years 5 months for class-I and 3 years 5 months for LKG and having permitted to take admission for LKG and having collected the fees, a right is accrued to the petitioner in the process and the same cannot be taken away by a prospective amendment fixing the age limit to apply for admission for class-I. The impugned notification vide Annexure-L cannot be retrospectively applied to students who availed admission for Nursery based on earlier notification dated 11.03.2020. Therefore, placing reliance on Annexure-H, learned counsel appearing for the petitioner would contend that the petitioner was found to be eligible under old notification and a right was conferred on her to avail admission to Nursery and therefore, such rights cannot be taken away by subsequent notification which is

¹ AIR 2023 SC 903

found to be detrimental and therefore, he would persuade this Court to grant appropriate reliefs as petitioner is entitled to avoid subsequent notification enhancing the age limit under which petitioner has incurred ineligibility to take admission for LKG.

6. Per contra, learned Additional Advocate General Shri Vikram Huilgol, reiterating the defence set up in the statement of objections, however, would strongly object and contend that any relief granted by this Court would have a cascading effect. To counter the claim of the petitioner, he has placed reliance on the judgment rendered by the High Court of Telangana and Delhi High Court. Referring to the law laid down by various High Courts, he would point out that age criteria prescribed in the impugned notification cannot be relaxed and should not be relaxed by the Court. He would vehemently argue and contend that the petitioner is not entitled for any direction. No admission can be made contrary to the Act, 2009 and NEP, 2020. He would further point out

that the Hon'ble Apex Court has already dealt with this issue and has come to conclusion that NEP has fixed the age criteria with a view to ensure uniformity in admission age. He would also point out that the petitioners claim in identical cases with change in age criteria without any prior notice is prejudicial to the interest of students and it violates a child's right under the Act, 2009, is also dealt with by the Apex Court. He has also referred to the judgment rendered by the Delhi High Court which also pertain to same school. The Delhi High Court taking cognizance of the implementation of NEP 2020, has also found that prescribed minimum age of 6 years for admission to class-I is found to be in consonance with NEP, 2020 as well as the Act, 2009 and therefore, the Delhi High Court was of the view that student cannot insist for relaxation of age criteria. The Delhi High Court has further held that if student desires of seeking admission in class-I, it is open for the petitioner in the said case to seek admission in other schools which have not implemented NEP, 2020. Referring to these

judgments, he would point out that the controversy relating to fixing of age criteria in terms of NEP, 2020 is dealt with by various High Courts and therefore, no reliefs can be granted to the petitioner in the instant case.

7. Heard learned counsel appearing for the petitioner and learned Additional Advocate General for the respondent-State. I have given my anxious consideration to the earlier notification vide Annexure-H. I have also given my anxious consideration to the NEP, 2020 and the judgment rendered by the other High Courts on this issue.

8. The respondent No.4-school is being run by the Central Government through its Ministry of Education, Government of India. Unlike private schools affiliated to CBSE and State Boards, the age of entry to class-I has remained 5 plus years for the academic year 2022-23. Therefore, respondent No.4 is bound to follow the guidelines issued by NEP, 2020 and imparting school education has envisaged

creation of infrastructure (pre-school of age 3 to 6). The respondent No.4 has adopted NEP, 2020 and therefore, the eligibility criteria of minimum and maximum age for registration for admission to class-I and above is rightly modified by respondent No.4 which is obviously in terms of mandate of NEP, 2020. The admission guidelines issued by respondent No.4 and by the State are found to be legal, valid and in conformity with NEP, 2020.

9. The respondent-State has come up with a age norm in accordance with NEP (NEP, 2020 guidelines). The Karnataka Education Department has rightly mandated that minimum age limit for admission to class-I in schools in Karnataka should be 6 years as on June 1st, while currently the age limit is 5 years 5 months. The petitioner's contention that the guidelines have to be implemented prospectively cannot be acceded to. The NEP guidelines in fixing the age criteria is based on overall global education standards. Following the adoption of Global Education Development

Agenda, India is seeking to ensure inclusive and equitable education for all by 2030. The new 5+3+3+4 education system aims at developing individuals with emphasis on cognitive capacities such as critical thinking and problem solving and building social, emotional and ethical abilities. This policy proposes to replace the existing 10+2 structure of school education with 5+3+3+4 education system covering ages 3 to 18 and includes kindergarten/play school education. The classification of stages in NEP education system has been done based on the intellectual growth of a student. In the earlier model, the age group of 3 to 6 was not covered. Therefore, experts have come up with a new guidelines with a hope that a strong foundation of early childhood care and education would be given to the students and this is obviously aimed at promoting play-based, activity-based, inquiry-based and flexible way of learning.

10. If the experts are of the view that policy focuses on formative and holistic assessment to reduce exam-related

pressure and fear among students as the students reach to a higher secondary education, this Court under the garb of judicial review cannot alter the educational guidelines set up by the competent authority. NEP 2020 guidelines are brought into force with a hope that it will address multiple problem areas across educational institutions that require improvement. *Prima facie*, I am convinced that there is a core focus on enabling holistic development of students and therefore, one student's inconvenience that he/she will be compelled to repeat the class cannot in itself constitute a ground to interfere with the guidelines.

11. Having given my thoughtful consideration to the submission made by the parties, even though I find some force in the petitioner's plea that this change in age criteria by NEP, 2020 is found to be little late in the day, cannot constitute a ground to interfere with the said policy. The respondents have strongly urged that this change was necessitated to ensure that NEP formulated after extensive

consultation with the experts is made applicable all over the country at the earliest. The RTE Act, 2009 in itself places the Kendriya Vidyalaya Sangathan in a separate category coupled with the fact that all branches across the country being run by the same management are obliged to follow uniform criteria. It is also borne out from the records that NEP, 2020 is not under challenge in the captioned petition.

12. For the foregoing reasons, I am not inclined to grant any relief to the petitioner. This Court has to bear in mind the role of statutory expert bodies in education and role of Courts are well defined. If the question of educational policy or an issue involving academic matter is raised before writ Courts, the Courts keep their hands off. The Hon'ble Apex Court in catena of judgments has held that, Judges must not rush in where even educationist fear to tread. The Hon'ble Apex Court has held that while there is no absolute bar, it is a rule of prudence that Courts should hesitate to dislodge decisions of academic bodies. Unless, any illegality is

committed in the education policy or same is contrary to law, decision bringing about change cannot *per se* be interfered with by the Court. Taking cognizance of the statement of objections, this Court is not inclined to express and test the guidelines issued by the NEP. I am of the view that it is best left to the discretion of the State.

13. Accordingly, I pass the following:

ORDER

The writ petition is dismissed.

The pending interlocutory application, if any, does not survive for consideration and stands disposed of.

Sd/-
JUDGE

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