

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) NO. _____ OF 2020

IN THE MATTER OF

Writ petition under Article 226 of the Constitution of India;

AND

IN THE MATTER OF

Impugned action of the Respondents in not granting admission to the petitioner in Class XI in Respondent 2 School or in any other Respondent 1 school in the academic year 2020-21 on the alleged ground of the petitioner being overage;

AND

IN THE MATTER OF

Violation of Petitioner's Fundamental Right to Education as guaranteed by Articles 21 and 21A of the Constitution of India read with the provisions of Delhi School Education Act, 1973 and Rules framed thereunder;

AND

IN THE MATTER OF

Violation of Article 14 of the Constitution of India by the Respondent No. 1 by laying down age criteria for admissions to Classes KG to XII, different for similarly placed students, by means of Circular dated 19.09.2016 bearing no. DE.23(363)/Sch.Br./2016/1553;

AND

IN THE MATTER OF:

1. Constitution of India;
2. Right of Children to Free and Compulsory Education Act, 2009;
3. Delhi School Education Act, 1973

AND

IN THE MATTER OF:

ShekhHabibul

...Petitioner

Versus

- 1. Government of NCT of Delhi**
Through Director of Education
Old Secretariat Building, Civil Lines
Delhi-110054
E-mail:diredu@nic.in

- 2. Government Sarvodaya Bal Vidyalaya**
Through Principal
Government of NCT of Delhi
PrahaladPur Delhi- 110042
E-mail:zmskv2009@gmail.com

...Respondents

To,

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THE HON'BLE CHIEF JUSTICE OF HIGH COURT OF DELHI AT NEW DELHI AND HIS COMPANION JUSTICES OF THE SAID HIGH COURT

The humble petition of the petitioner abovenamed

MOST RESPECTFULLY SHOWETH:

1. That present writ petition is directed against the impugned action on the part of the Respondents in refusing admission to the petitioner in Class XI in the academic year 2020-21 in Respondent 2 School, hereinafter referred as respondent school, on the alleged ground that petitioner have crossed the age limit stipulated vide Circular dated 19.09.2016 bearing no. DE. 23(363)/Sch.Br./2016/1553 issued by Respondent 1, hereinafter referred as respondent Government, and thereby violating his Fundamental Right to Education as guaranteed to him by the Articles 21 and 21A of the Constitution of India read with Delhi School Education Act, 1973 and Rules framed thereunder.
2. The present writ petition also challenges the legal and Constitutional validity of the said Circular dated 19.09.2016 bearing no. DE. 23(363)/Sch.Br./2016/1553 issued by respondent Government. The respondent Government vide the said Circular without any justifiable rationale and basis,

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erroneously lays down age criteria for non-plan admissions in Government Schools, seeking direct admission, in all classes upto to Class XII for the academic session 2020-21. The said Circular *inter alia* provides that only those students will be granted direct admission in Class XI who have completed the age of 15 years but are less than 17 years. The said Circular further provides that the age criteria laid down therein is not applicable to Plan Admissions i.e. the existing students of Government Schools. It is to be noted that petitioner case is of non plan admission and he has no gap.

A true copy of the impugned Circular dated 19.09.2016 bearing no. DE. 23(363)/Sch.Br./2016/1553 is annexed hereto and marked as **ANNEXURE P-1**

3. The facts of the case, so far as relevant for the purposes of the present writ petition, are given in brief as under.
4. That Shekh Habibul date of birth is 18.09.2001 and accordingly on 31.03.2020 Shekh Habibul was 18 years 06 month and 13 days old.
5. That petitioner belongs to poor family.
6. It is submitted that petitioner has been studying in K.D. Model School, Bawana Road, Barwala, Delhi-110039 since class 2nd and while studying there he appeared and

successfully passed class X CBSE Examination 2020 (Roll No. 26110658).

True copies of the petitioner Marks sheet and Transfer Certificate are annexed hereto and marked as **ANNEXURE P-2 (Colly)**

7. It is submitted that during this ongoing pandemic and lockdown petitioner family have critically suffered financial loss due to which they cannot afford to pay for the petitioner school fees.
8. It is submitted that from September first week itself petitioner has been trying to get admission in Delhi Government School, namely, Government SarvodayaBalVidyalaya, PrahaladPur Delhi- 110042 under non-plan admission. It is also submitted that petitioner has personally visited school several times and has also applied for admission in class XI through online mode under non-plan admission for academic session 2020-21 which was not accepted by the website due to reason not known.
9. That petitioner submits that when respondent school denied admission to him, he visited Directorate of Education office and wrote mail to Chief Minister also but all in vein as petitioner has been suggested to opt for admission in correspondence/ Patrachar by the officers due. It is also submitted that the respondent school as well Directorate of

Education office has verbally informed the petitioner that petitioner cannot be granted admission in class XI in any of the respondent Government school on the ground of ineligibility of overage in terms of the Circular dated 19.09.2016 issued by the respondent Government impugned herein.

True copies of the representation are annexed hereto and marked as **ANNEXURE P-3**

10. It is submitted that there is no justification on part of respondent Government school to deny admission to petitioner on alleged ground of over age. It is also submitted that petitioner has no gap in his studies and mere him getting admitted from private school to government school cannot be ground of differentiation from students those studying in Government school and are overage.
11. It is submitted that after failing to persuade the respondent school to grant admission, petitioner approached All India Parents Association (AIPA) and then AIPA wrote a representation dated 09.10.2020 to Hon'ble Delhi Chief Minister as well as copy thereto to respondent school so to ensure admission of petitioner in the respondent school.

A true copy of letter dated 09.10.2020 is attached hereto and marked as **ANNEXURE P-4**

12.The petitioner submits that in a similar W.P (C) No. 4551/2019 entitled Master Rahul Through his Next Friend and Natural Mother Smt. Meera Rani versus Government of NCT of Delhi and Anr, the petitioner therein was granted admission by respondent No. 1. It is submitted that Master Rahul was denied admission in class IX in 2019-20 on alleged ground that he was over-aged by 1 year.

True copies of orders dated 30.04.2019 and 08.05.2019 are attached herewith and marked as **ANNEXURE P-5** **(Colly)**

13.The petitioner submits that in another similar W.P (C) No. 10833/2019 entitled Gulsher versus Government of NCT of Delhi and Anr, the petitioner wards therein were granted admission by respondent No. 1. It is submitted that three wards of Gulsher was denied admission in Government school on alleged ground that they were over-age.

True copies of orders dated 11.10.2019 and 17.10.2019 are attached herewith and marked as **ANNEXURE P-6** **(Colly)**

14. The aforesaid action on the part of the respondent school is totally arbitrary, discriminatory, unjust, unethical, violative of Fundamental and human right to Education as guaranteed under Articles 21 and 21A of the Constitution of India read with the provisions of Delhi School Education Act, 1973

15. That the edifice of the impugned action of the respondent school is the Circular dated 19.09.2016 issued by the respondent Government. Vide the said Circular the respondent Government has without any rationale and intelligible differentia, truncated the educational journey of thousands of children suffering from myriad of impairments in their conquests for knowledge and education. As such the validity thereof ought to be examined in the instant matter and is being assailed by the petitioner on the following amongst other grounds:

GROUND

A. Because the impugned Circular is an antithesis to the Constitutional entitlements bestowed upon citizens of this nation vide Articles 21 and 21A of the Constitution of India. The Courts have time and again declared that right to education will be meaningful only and only if all the levels of education reach to all sections of people, otherwise it will

fail to achieve the target set out by the Founding Fathers, who intended to make the Indian society an egalitarian society.

- B. Because the respondent Government under the guise of Section 4 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), has mechanically straight-jacketed the student community without reflecting on the *raison d'être* of the RTE Act in the first place, which is to bring to reality the Constitutional promise enshrined in Articles 21 and 21A also translated in the provisions of Delhi School Education Act, 1973 and Rules framed thereunder.
- C. Because the impugned Circular is utterly violative of Article 14 of the Constitution of India for being devoid of any justifiable rationale to classify between children seeking admission to same standard. It is submitted that respondent Government vide the said Circular has fixed the age criteria for admission to various classes, however differently for students who seek admission in its schools after leaving the previous private schools where they were earlier studying *inter alia* on account of inability to pay hiked fees, migration to Delhi from other states etc. referred to as Non-Plan Admissions as opposed to Plan Admissions i.e. the students already studying in the schools of the Respondent No.1.

- D. Because under the impugned Circular, the students of latter category are entitled to admission/promotion in the next class despite not fulfilling the said age criteria but no student of former category can get direct admission if they do not satisfy the age criteria fixed in the said Circular. The impugned Circular is, therefore, unreasonable and unconstitutional and violative of the Article 14 of the Constitution of India in as much as it causes discrimination among similarly placed students equally entitled to the Fundamental and human right to education as guaranteed by the Constitution of India.
- E. Because the respondent Governemnt has erroneously misconstrued Section 4 of the RTE Act and read a restriction in the said Section which does not exist. Section 4 or any other provision of the RTE Act does not prescribe any maximum age to be admitted in any class. There is no provision in the Delhi School Education Act, 1973 and the Rules framed thereunder stipulating any maximum age for admission to school. It is submitted that the Respondent No. 1 has gravely erred in pigeonholing the 'age-class' relation contemplated in Section 4 of the RTE Act the spirit behind which is to prevent any child from being deprived of learning merely because the child could not gain knowledge in the years his counterparts do. Thus, the restriction on

admission imposed by the Respondent No.1 merely because of the age of a child is above the age of children who have already received such education is completely irreconcilable with the object sought to be achieved by the insertion of Article 21A in Constitution of India and enforcement of the RTE Act.

F. Because even otherwise the artificial classification created by the respondent Government vide the impugned Circular bereft of in any reasonable nexus with the objective sought to be achieved by Section 4 of the RTE Act. There is no justifiable rationale for distinguishing between students who are overage but already studying in a particular Government School in contrast to students who seek direct admission in that school but have crossed the age limit so prescribed by the impugned Circular. It is submitted that thus the impugned Circular being wanting in any intelligible differentia is utterly violative of Article 14 of the Constitution of India and ought to be struck down on this ground alone.

G. Because the expression 'in a class appropriate to his or her age' in Section 4 of the RTE Act does not mean a class in which same age counterparts are studying but is a subjective question that would need to be answered differently for different children seeking admission. This is the reason why

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the RTE Act or none other statute governing admissions has stipulated any maximum age for school admissions.

- H. Because the premise employed by the respondent Government to fix maximum age limits vide the impugned Circular is of concerns relating to “peer learning and pedagogical point of view”. It is submitted that whereas the students already studying in a particular school are exempted from the age limits, such concerns of peer disparity and teacher-student relations are ill-founded. The resources being utilized for overage students already studying in the school could be well deployed for the training of students seeking non-plan admissions as well. As such, the impugned Circular being devoid of any valid rationale deserves to be quashed.
- I. Because the respondent Government in an attempt to wash its hands off the mandate to provide education to each and every child and enable the continuation and completion thereof, has extended PatracharVidyalayas option to students being denied admission based on the impugned Circular. It is submitted that PatracharVidyalayas are a departure from mainstream schooling providing diluted tuition and availment thereof would inevitably be irreversible. Moreover, students who study diluted subjects would not only be deprived of an opportunity to employ their intellect to full potential but also would in the future find it difficult

to pursue professions that they could have had they been admitted to mainstream schools.

- J. Because the impugned Circular is also in direct conflict with the provisions of the Delhi School Education Act and Rules framed thereunder
- K. Because the impugned Circular is bad in law for want of jurisdiction as the respondent Government has issued the Circular impinging upon the Fundamental Right to education without any source of authority to prescribe such restrictions based on age of children.
- L. Because the said Circular is blatantly violative of Article 21 of the Constitution of India read with law laid down repeatedly by the Hon'ble Supreme Court numerous decisions holding that right to continue and complete education is a Fundamental Right of every citizen of the country which in absence of any reasonable law, can not be curtailed much less denied.
- M. Because the petitioner has passed Class X from a private school in the academic year 2019-20 and is seeking admission in Class XI as part of continuous process of education and therefore the respondent school by refusing him admission taking shelter under the impugned Circular is depriving the petitioner his right to continue his education.

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- N. Because the impugned action of the respondents is also otherwise illegal and bad in law being against Constitutional mandate provided under Articles 41, 45, 46, 21A, 51-A(k).
16. That the petitioner has no other equally efficacious or alternative remedy available to him except to approach the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.
17. That the petitioner has not filed any other similar writ against the impugned actions in any Hon'ble High Court or in the Hon'ble Supreme Court of India.
18. That this Hon'ble Court has the requisite jurisdiction to adjudicate upon the issue in dispute and grant the Petitioners the reliefs as prayed for in as much as the subject matter is situated within the territorial jurisdiction of this Hon'ble Court.
19. That the annexures enclosed herewith are true and correct copies of their respective originals.

PRAYER

In the premise aforesaid, the petitioner most humbly pray that this Hon'ble Court may be pleased to:

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- i) quashing the Circular dated 19.09.2016 bearing no. DE. 23(363)/Sch.Br./2016/1553 issued by Respondent No. 1 as arbitrary, discriminatory, illegal and violative of Articles 14, 21 and 21A of the Constitution of India and for being in conflict with the provisions of Delhi School Education Act, 1973;
- ii) passing a writ of mandamus and certiorari or any other appropriate writ or directions thereby directing the respondents to grant admission to the petitioner, namely, Shekh Habibulin Class XI in the academic year 2020-21 in Respondent No. 2 School or in any of the respondent Government schools nearby his residence; and
- iii) pass any other, order or direction or such further orders or directions as this Hon'ble Court may deem fit and proper in the interest of justice.

Ashok Agarwal & Kumar Utkarsh

Advocates for the Petitioner

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New Delhi

Dated: 09.10.2020