



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CIVIL APPLICATION NO. 6181 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6197 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6240 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6205 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6189 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6209 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6212 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6214 of 2023
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With
R/SPECIAL CIVIL APPLICATION NO. 6238 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6206 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6213 of 2023**



**With
R/SPECIAL CIVIL APPLICATION NO. 6216 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6185 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6241 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6220 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 6201 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 6195 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6187 of 2023**



With
R/SPECIAL CIVIL APPLICATION NO. 6191 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 6224 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 6222 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 6202 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 6223 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 6235 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 7505 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 10092 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 10904 of 2023

FOR APPROVAL AND SIGNATURE:

**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL** Sd/-

and

HONOURABLE MR. JUSTICE N.V.ANJARIA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO



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SHUBHRA HITESHBHAI GUPTA
Versus
STATE OF GUJARAT

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Appearance:

MR ASHISH M DAGLI(2203) for the Petitioner(s) No. 1
MR NAYAN L GUPTA & MR HITESH GUPTA for the Petitioner(s) No. 1 in
SCA No.6181 of 2023 and allied matter
MR DILIPKUMAR PRAJAPATI for petitioner in SCA No.7505/2023
MR AMIT CHAUDHARY for Petitioner in SCA No.10092/2023
MR SAMIR GOHEL for Petitioner in SCA No.10904/2023
MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MR KM ANTANI,
AGP assisted by MS ANKEETA RAJPUT, Advocate for Respondent No.1
NOTICE SERVED BY DS for the Respondent(s) No. 2,3,4

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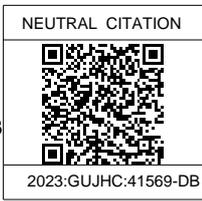
CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**
and
HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 11/08/2023

COMMON CAV JUDGMENT

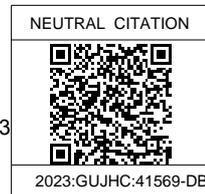
**(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL)**

1. Heard Mr. Hitesh Gupta, Mr. D.U. Prajapati, Mr. Amit Chaudhary and Mr. Samir Gohel, learned counsels appearing for the petitioners in their respective petitions and Mr. Kamal Trivedi, learned Advocate General assisted by Mr. K. M. Antani, learned Assistant Government Pleader with Ms. Ankeeta Rajput, learned advocate for the respondent State.



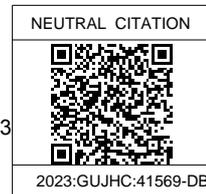
2. In the instant group of writ petitions, parents of children of the State of Gujarat, who were below 6 years of age as on 1.6.2023 and have completed or would complete 6 years of age during the Academic Year 2023-24, seek to challenge the Notification dated 31.1.2020, prescribing the age limit of 6 years of age as on 1st June of the academic year 2023-24 for admission of a child in 1st standard.

3. The petitioners (parents) contend that their children, who are not above 6 years of age, have taken admission in elementary schools in the Academic Session 2020-21 and have completed elementary education and, thus, are entitled to admission in 1st standard in the Academic Session 2023-24. They have, however, been excluded from the zone of consideration because of the Notification dated 31.1.2020, whereby amendments have been brought in the Right of Children to Free and Compulsory Education Rules, 2012 (**‘the RTE Rules, 2012’** for short), framed by the Government of Gujarat in exercise of powers conferred under sub-section (1) of Section 38



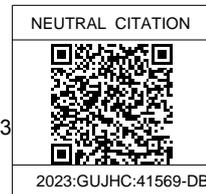
of the Right of Children to Free and Compulsory Education Act, 2009 (**'the RTE Act, 2009'** for short) to give effect to the object of the said Act. With the amendment of sub-rule (1) of Rule 3 of the RTE Rules, 2012, the elementary schools in the State of Gujarat have been prohibited from taking admission of children in 1st standard who have not completed 6th year of age on the first day of the academic year. By another Notification dated 4.8.2020, Joint Secretary, Education Department directed for implementation of the amendments brought by the Notification dated 31.1.2020, wherein it was categorically stated that for the Academic Session 2023-24, it shall be ensured that children who intend to take admission in 1st standard must complete 6th year on 1st June.

4. The challenge to the Notifications dated 31.1.2020 and 4.8.2020, insofar as they relate to the admission in 1st standard prescribing the cut-off date as 1st June for the academic year for attaining the age of 6 years, are on the ground of being unjust, improper, illegal and



unconstitutional. The prayer has been made for quashing of both the above notifications issuing directions to the concerned school to process and grant admission to the children of the writ petitioners (parents) in 1st standard in the Academic Session 2023-24 by granting relaxation in the cut-off date.

5. It was argued by the learned counsel appearing for the petitioners that the fixation of cut-off date prescribing the age limit for admission in 1st standard is hit by Article 21A of the Constitution, which mandates the State to provide free and compulsory education to all children of the age of 6 to 14 years. The provisions of Sections 4 and 15 of the RTE Act, 2009 have been pressed into service to assert that the said provisions have been enacted by the Parliament in order to fulfill the mandate of Article 21A of the Constitution. Section 4 of the RTE Act, 2009 mandates that if a child above 6 years of age has not been admitted in any school or though admitted could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.



Section 15 of the RTE Act, 2009 mandates that every child above the age of 6 years shall be admitted in a school at the commencement of the academic year or within the extended period as may be prescribed. Proviso to Section 15 prohibits the State from denying admission to a child even if admission is sought subsequent to the extended period. The word 'child' has been defined in Section 2(c) of the RTE Act, 2009 to mean a male or female child of the age of 6 to 14 years. The RTE Act, 2009, thus, casts obligation on the State to ensure that every child, who is above 6 years of age, is admitted in a school appropriate to his or her age and no child is denied admission for the fact that he or she could not be admitted in a school at the commencement of the academic year. The contention is that no child, thus, can be denied admission in a school on the ground that he or she has not completed the age of 6 years at the commencement of the academic year, in the instant case, the Academic Session 2023-24 commenced from 1st June, 2023.



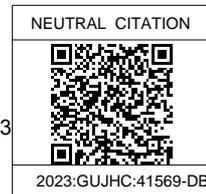
6. The provisions of the RTE Rules, 2012 framed by the Government of Gujarat have been placed before us to submit that even sub-rule (3) of Rule 3 of the RTE Rules, 2012 prescribes the extended period of six months from the date of commencement of the academic year of a school for admission of a child, in conformity with the Proviso to Section 15 of the RTE Act, 2009. Sub-rule (3) of Rule 3 further provides that a child who is admitted in a school after extended period, he or she shall be eligible to complete study with the help of special training as determined by the head of the school.

7. The submission is that even the rules framed by the Government of Gujarat provide for the extended period for admission to ensure that all children in the State of Gujarat receive education without any rider. Sub-rule 9(1) of Rule 3 of the RTE Rules, 2012 has further been placed before us to submit that in the unamended rules, the criterion for completion of 6 years of age was with reference to the 'date of admission'. The requirement

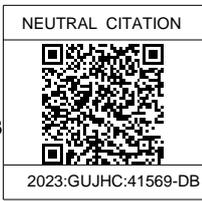


therein was that a child who has completed 5 years of age shall be admitted, provided he or she has completed the said age as on 1st June of the year of admission. The original Rule 3 of the RTE Act, 2010 was in conformity with the mandate of the RTE Act framed in order to achieve the object of Article 21A of the Constitution. There was no occasion for the State to bring any amendment in sub-rule (1) of Rule 3 of the RTE Rules, 2012 denying admission to those children who have completed the age of 6 years during the Academic Session 2023-24, after the commencement of the said academic year.

8. It is further argued that all those children who are before this Court, in this bunch of petitions, through their parents, have completed their elementary education upto the class Upper K. G. and are eligible for admission in 1st standard. In case, they are denied admission in the current Academic Session 2023-24, their right to receive education at an appropriate age, ensured by the Constitution of India, would be infringed. More than 9

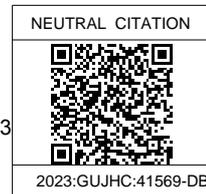


lakhs children of the State who have completed or about to complete age of 6 years during the Academic Year 2023-24 would be deprived of their right to receive education because of the decision of the State Government to implement National Education Policy, 2020, by bringing amendment in the Rules framed by it. The attention of the Court is invited to the decisions taken by the States of Jammu & Kashmir, Kerala, Haryana, wherein the State Governments have decided to gradually implement the National Education Policy and relaxed the age criteria for admission to 1st standard in the Academic Session 2023-24, treating the current year as the transition period. The submission is that in similar line, the Government of Gujarat was also required to take a decision to grant relaxation and the criteria for admission in elementary schools as prescribed in sub-rule (1) of Rule 3 of the RTE Rules, 2012 and the requirement of completion of age of 6 years on 1st June of the academic year may be insisted after the year 2025 as has been decided by the other States, such as State of



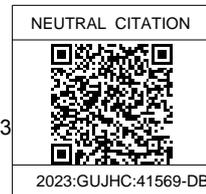
Karnataka.

9. It was lastly argued that there was no justification for implementation of the Notification dated 31.1.2020 bringing amendment in sub-rule (1) of Rule 3 of RTE Rules, 2012 with effect from Academic Session 2023-24, inasmuch as, the said notification has not been properly circulated. The petitioners (parents), who are before this Court and other similarly situated persons, had no knowledge of the amendments in the age limit prescribed in the sub-rule (1) of Rule 3 of the RTE Rules, 2012. The notifications were actually issued after the Academic Session 2020-21 had commenced and as such, the implementation of the notifications cannot be made prior to the Academic Session 2024-25. The Circulars dated 23.12.2020 and 16.3.2022 enclosed with the leading petitions have been placed before us to assert that there was no proper publication of the notifications by the government offices. The result is that the children of the present petitioner, who possess all requisite qualifications including the age limit, have either to repeat the same



class in the current academic session or drop one year. The situation can be easily addressed with the relaxation in the age limit for the current Academic Session 2023-24.

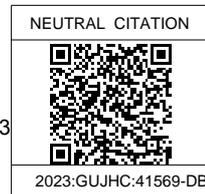
10. It was further argued that the Rules framed by the State have to align with the provisions of the RTE Act, 2009 framed by the Parliament, to achieve object of Article 21A of the Constitution. There is no rationale for cut-off date as in view of the language of Section 4 read with Section 15 of the RTE Act, 2009, there can be no cut-off date for admission of the child in 1st standard. The submission is that the cut-off date has rationale and can be co-related only to the last date of admission in a course, which is not prescribed in the RTE Act, 2009. The mandate of the Act that no child can be denied admission even after commencement of the academic session or even beyond the extended period of admission, shows that there is no last date of admission in the 1st standard in a school for a child who has completed 6 years of age. The classification of prescribing completion of 6 years of



age as on 1st June of the academic year has no rationale with the laudable object of the RTE Act, 2009 and the RTE Rules, 2012 framed in exercise of powers conferred thereunder.

11. Reference has been made to the decision of the Apex Court in the case of ***D. S. Nakara & Ors. vs. Union of India***, reported in ***AIR 1983 SC 130*** to submit that Article 14 forbids class legislation and a classification, if any, must satisfy the twin tests of classification of being found on an intelligible differentia which distinguishes persons that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. It is argued that such rationale cannot be found in the classification being made by the RTE Rules, 2012.

12. The decision of the Apex Court in the case of ***Society for Unaided Private Schools of Rajasthan vs. Union of India & Anr.***, reported in ***(2012) 6 SCC 1*** has been placed to assert that challenge to the validity of the



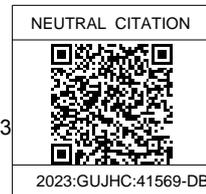
RTE Act, 2009 has been upheld by the Apex Court therein. It is held therein that though the State has a liberty to decide by law to provide free and compulsory education to all children of the specified age through its own schools or through government aided schools or through unaided schools, to fulfill the obligation under Article 21A of the Constitution, but the courts are required to decide whether such law infringes a fundamental right within the limits justified by the directive principles or whether it goes beyond them to provide for the right to access education, Article 21A was enacted to give effect to Article 45. The RTE Act, 2009 enacted under Article 21A is child-centric and not institution-centric. It has been enacted primarily to remove all barriers (including financial barriers) which impede access to education. The contention is that in light of the above contentions, the insistence of the Government of Gujarat to implement the amended sub-rule (1) of Rule 3 of the RTE Rules, 2012 cannot be said to be justified rather it is contrary to the mandate of the



RTE Act, 2009.

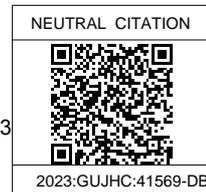
13. A decision of the Division Bench of this Court in the case of ***Prakash Kapadia vs. State of Gujarat***, reported in **(2016) 3 GLR 2566** has been placed before us to assert that it was mandatory for the State Government, through the State Commission as well as local authorities, to give wide publication of the amended provisions of the RTE Rules, 2012 through all channels of communication, more particularly during the end of and in the beginning of the academic session. As this has not been done, the cut-off date cannot be insisted for the current Academic Session 2023-24 to exclude children from getting admission in 1st standard, who are otherwise qualified.

14. Mr. Kamal Trivedi, learned Advocate General, in rebuttal, would submit that the policy of prescribing 6 years of age for admission to 1st standard in the elementary schools in the State of Gujarat is in line with the National Education Policy, 2020 approved by the Ministry of Education, Government of India, which seeks



to overhaul the framework of the education system in the country by providing quality education which fosters foundational capacities, cognitive capacities such as thinking and problem solving as well as aethical, social and emotional capacities. The ultimate object being growth of children as well-rounded individuals whereby educational institution would focus on nurturing unique abilities of each and every student. With a view to achieve the above object, the education structure was revamped whereby the existing 10+12 structure was modified to 5+3+4 structure catering to children of ages 3 to 18. This was with a view to cover children of ages 3 to 6 who were not covered under 10+2 structure.

15. With a view to build a strong foundational base of learning and development, the new 5+3+3+4 structure also takes into account children of 3 years of age, in order to promote the concept of 'Early Childhood Care and Education'. The purpose is that with the overall development and education, a child would be cared from very beginning of his/her education. The relevant extract



of the National Education Policy, 2020 narrating the concept of 'Early Childhood Care and Education', which has been placed before us, which is noted hereinunder:

"1. Early Childhood Care and Education: The Foundation of Learning

1.1 Over 85% of a child's cumulative brain development occurs prior to the age of 6, indicating the critical importance of appropriate care and stimulation of the brain in the early years in order to ensure healthy brain development and growth. Presently, quality ECCE is not available to crores of young children, particularly children from socio-economically disadvantaged backgrounds. Strong investment in ECCE has the potential to give all young children such access, enabling them to participate and flourish in the educational system throughout their lives. Universal provisioning of quality early childhood development, care, and education must thus be achieved as soon as possible, and no later than 2030, to ensure that all students entering Grade 1 are school ready.

1.2 ECCE ideally consists of flexible, multi-faceted, multi-level, play-based, activity-based, and inquiry-based learning, comprising of alphabets, languages, numbers, counting, colours, shapes, indoor and outdoor play, puzzles and logical thinking, problem-solving, drawing, painting and other visual art, craft, drama and puppetry, music and movement. It also includes a focus on developing social capacities, sensitivity, good behaviour, courtesy, ethics, personal and public cleanliness, teamwork, and cooperation. The overall aim of ECCE will be to attain optimal outcomes in the domains of: physical and motor development, cognitive development, socio-emotional-ethical development, cultural/artistic development, and the development of communication and early language, literacy, and

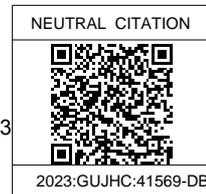


numeracy.”

16. Keeping in mind the above object, the curricular structure has been delineated as under:

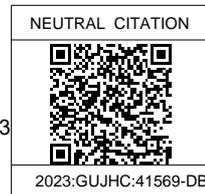
- “(i) 5 years of Foundational learning comprising of 2 years of Anganwadi/Junior K.G. and Sr. K.G. and 1 year of Balvatika, for ages 3 to 6 and thereafter, two years in Class 1 and 2 for ages 6 to 8.*
- (ii) 3 years of Preparatory learning in classes 3 to 5 for children of ages 8 to 11.*
- (iii) 3 years of Middle school in classes 6 to 8 for children of ages 11 to 14.*
- (iv) 4 years of Secondary education in classes 9 to 12 for children of ages 14 to 18.”*

17. Sections 3 and 4 of the RTE Act, 2009 have been placed before us to submit that reading of these provisions in juxtaposition to each other would bring the object of RTE Act, 2009. The right to receive a formal education of every child of the age of 6 to 14 begins after completion of the age of 6 years. The mandate of the RTE Act, 2009 is that every child, who has attained the age of 6 years, shall be admitted in a neighbourhood school till the completion of his or her elementary education. The



mandate of Section 4 prescribing special provisions, such as right to receive special training for children, who are not admitted or who have not completed elementary education, is to be examined in this prospective. The children below the age of 6 years would fall in the age of early childhood development and hence classification of the children who have attained the age of 6 years with those who are about to complete 6 years, cannot be said to be discriminatory or arbitrary.

18. As regards the implementation of the amended policy prescribing a cut-off date for completion of age of 6 years for admission in 1st standard, it is submitted that the Notification dated 31.1.2020 itself provided for a grace period to accommodate children for the first 3 years with a view to not take the children and their parents surprised. Various communications were addressed to schools to getting the parents informed about the change in the policy vide Notification dated 31.1.2020. The said notification was in public domain for the last 3 years and hence the petitioners who are



parents, cannot contend that the requirement of age criteria has been enforced without notice. The policy was implemented having regard to the interest of children so as to ensure their foundational development.

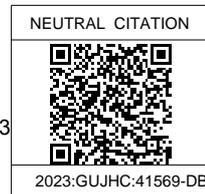
19. The attention of the Court is invited to the circular issued by the Ministry of Education, Department of Schools and Literacy, New Delhi dated 31.3.2021, wherein on the representations received from the parents and media, reporting anomaly in age criteria prescribed for admission in various classes in schools in different States and UTs, it was insisted that in view of the provisions of any National Education Policy, 2020 and the RTE Act, 2009, all the States and UTs may align the age of admission with the National Education Policy, 2020 and provide for admission to 1st standard in age 6 + years, in order to bring uniformity in the age of admission throughout the country. The State wise road map to ensure smooth transition over 2 to 3 years was requested.

20. Similar request was made by the Under Secretary,



Government of India, Ministry of Education, Department of School Education and Literacy in the communication dated 8.6.2023, in reply to the demand raised by the parents residing in the State of Gujarat. The previous circular dated 31.3.2021 was reiterated therein with the direction that in order to bring uniformity in the age of admission throughout the country, the States and Union Territories are the appropriate government, in relation to a school established within the territory of a State or a UT having legislature, they have been advised to prepare State wise road map to ensure smooth transition over 2 to 3 years.

21. It was argued that the State of Gujarat has been proactive in bringing the amendments by Notification dated 31.1.2020 prescribing a grace period of three academic years in implementation of the policy. The parents have been duly informed through publication by different modes that the policy of fixation cut-off date as 1st June for completion of 6th year of age to admit a child in 1st standard would be implemented from the Academic Year



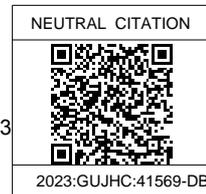
2023-24. No plausible objection can be taken by the petitioners (who are parents) on the premise that they were unaware of the decision.

22. Various communications were issued by the Joint Director of Education to District Primary Education Officers, Administrative Officers and District Education Officers of every district. The communications issued by the District Education Officers to the Principals and Administrators of all schools in the State of Gujarat have been placed before us to assert that the prayer of the petitioners to grant relaxation in age for the current academic session for admission of their children in 1st standard cannot be accepted. The cut-off date of 1st June which has been fixed in line with the commencement of the academic session in schools in the State of Gujarat cannot be said to be whimsical or arbitrary or being hit by Article 21A of the Constitution of India. It was argued that the right to receive formal education as recognised under Article 21A of the Constitution read with the RTE Act, 2009 begins from the age of 6+ years and under the

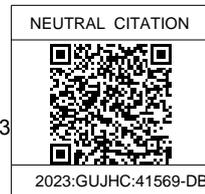


National Education Policy, 2020, the age below or upto 6 years is of early childhood development.

23. As regards the extended period for admission prescribed in sub-rule (3) of Rule 3 of the RTE Rules, 2012, framed in line of Section 15 of the RTE Act, 2009, it was argued by the learned Advocate General that the extended period for admission of 6 months from the date of commencement of the academic year of a school and the requirement of providing a specialised training to the children who are admitted late in the school, cannot be read to mean that the children, who have not completed 6th year of age as on 1st June of the academic year, can be admitted within the extended period. This argument, if accepted, would lead to absurdity, inasmuch as, the admission in a school would continue throughout the academic year as the children below the age of 6 years would be completing the 6th year of age over the period of 12 months in an academic session which commenced on 1st June of that year. The rule cannot be read in a manner which would lead to absurdity.



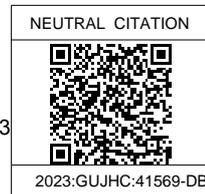
24. Learned Advocate General relied on the decision of the Division Bench of this Court in the case of **Vyas Abhisekh Prashantkumar & 88 Ors. vs. State of Gujarat & Ors. in Special Civil Application No. 588 of 2014**, wherein the challenge to the requirement of the unamended rule of completion of 5 years of age as on 1st June of the year of admission, in a school in the State of Gujarat, has been turned down. While dismissing the writ petition, it was held by the Coordinate Bench of this Court that Rule 8 of RTE Rules, 2012 which prescribes the condition of admission in a pre-school of a child who has not completed 3 years of age as on 1st June of the year, has been upheld by another Division Bench in Special Civil Application No.9879 of 2013 by the judgment and order dated 3.7.2013. The Constitution Bench of the Apex Court in the case of **Bihari Lal Batra vs. Chief Settlement Commissioner, (Rural) Punjab, Chandigarh & Ors.**, reported in **AIR 1965 SC 134** was noted therein to hold that the cut-off date prescribed in a provision which seeks to change the law cannot be held



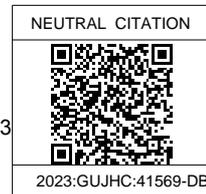
invalid for the mere reason that it effects an alteration in the law. The cut-off date of 1st June 2012 brought by Rules 2012 for admission to the 1st standard of a child who has completed 5 years of age has been upheld.

25. The decision of the Division Bench of this Court in Special Civil Application No.9879 of 2013 has also been placed before us, wherein it was noted that with the publication of Rule 2 of Rules 2012, it was the duty of those schools which admitted students in advance, to return the admission fees to those students who had been admitted in violation of the Rules. The schools which admitted students below the prescribed age and the guardians were to be blamed for sending their children to pursue studies in Junior K.G. in clear violation of the new restriction imposed.

26. The judgment of the High Court of Delhi in the case of ***Aarin through her next friend and Natural father Sh. Pawan Kumars & Ors. vs. Kendriya Vidyalaya Sangathan & Ors., in W.P. (C) No.3667 of 2022***



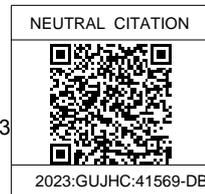
dated 11.4.2022 challenging the guidelines for admission to schools of Kendriya Vidyalaya Sangathan enforced with effect from Academic Year 2022-23, prescribing cut-off date of 31st March of the academic year for completion of 6 years of age in the relevant academic year to apply for admission to Class-I, has been placed to assert that the allegation of plea of prejudice having been caused to the children of losing one full academic year because of the change in the policy, was turned down therein. It was noted that the petitioners therein neither assailed the National Education Policy nor its implementation thereof by the respondent but were only restricting their challenge to the belated changes in the admission criteria. The admission criteria of Kendriya Vidyalaya Sangathan being in harmony with the RTE Act, 2009 in order to implement the National Education Policy cannot be said to be belated, arbitrary or illegal. It was held that in case 5 years old children are permitted to join Class I, it would lead to huge imbalance in the class making the situation almost unworkable, inasmuch as,



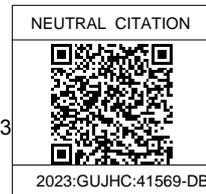
the entire syllabus have to be re-worked and even otherwise, admission of 5 years old child with the children who could be almost 7 years old, would be a highly undesirable situation. The aforesaid judgment of the learned Single Judge of the High Court of Delhi had been upheld in a Letters Patent Appeal and finally with the dismissal of Special Leave to Appeal No. 7374 of 2022 arising out of the decision of the Division Bench in Letters Patent Appeal, vide judgment and order dated 25.4.2022. All the above noted decisions have been placed before us to assert that the writ petitions deserves to be dismissed being devoid of merits.

27. In rejoinder, the learned counsel appearing for the petitioners reiterated the requirement of Sections 4 and 15 of the RTE Act, 2009 and the provisions of extended period of admission so as to ensure that no child is denied admission in a school.

28. Having heard learned counsels appearing for the parties and perused the record, we may note that during

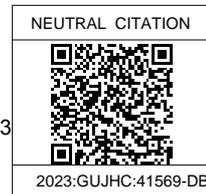


the course of arguments, on a repeated query made by the Court, the learned counsels appearing for the parties admit that they cannot raise any challenge to the requirement of completion of 6th year of age for admission to 1st standard. The challenge is to fixation of cut-off date as 1st June of the academic year, for the current academic year, i.e. 2023-24 only, that too on the premise that approximately 9 lakhs children in the State (including the children of the petitioners therein) would be deprived of their right to education in the current academic session, inasmuch as, they have been denied admission in 1st standard. The contention is that the children, who have already been admitted in a pre-school in the Academic Session 2020-21 and who have completed 3 years of pre-schooling, are required to be accommodated for the current academic session by granting relaxation this year only. This submission is based on the assertion that since the policy of prescribing age of 6+ years as on 1st June of the academic year, came into force only on 31.1.2020, the parents who have already got admission of their children



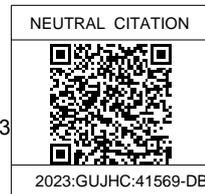
in a pre-school in the Academic Session 2020-21 were taken by surprise. It was vehemently argued that denial of admission in the 1st standard in the current academic session to such children who are otherwise qualified for admission in a formal school in 1st standard, would result in infringement of their right to education recognised by Article 21A of the Constitution and implemented and enforced through RTE Act, 2009.

29. Dealing with this submission, we are required to note that in view of the definition of child in Section 2(c) of the RTE Act, 2009, a male or female child of the age of 6 years is eligible to admission in a neighbourhood school to exercise his right to free and compulsory education till the completion of his/her elementary education. The right conferred upon a child by the constitutional provision of Article 21A and Section 3 of the RTE Act, 2009 begins after completion of age of 6 years. The provision of extension of time in admission to ensure that no child of 6+ years of age is denied admission in a school is also to be read and understood in that context.



30. A conjoint reading of Sections 2(c), 3, 4, 14 and 15 of the RTE Act, 2009 makes it clear that a child above the age of 6 years cannot be denied in a formal school and the State is mandated to take all necessary measures that such a child who falls within the definition of 'child' under the RTE Act, 2009, completes his or her elementary education without any rider.

31. As regards the age of education below 6 years, the same has been recognised by the National Education Policy, 2020, framed by the experts in the field of elementary education, as the age of 'early childhood care and education'. A perusal of the excerpts from the National Education Policy, 2020 extracted hereinabove shows the result of the studies that over 85% of a child's cumulative brain development occurs prior to the age of 6, indicating the critical importance of appropriate care and stimulation of the brain in the early years in order to ensure healthy brain development and growth. It was noted that quality of early childhood care and education



is not available to crores of young children, particularly children from socio-economically disadvantaged backgrounds. Strong investment in early childhood care and education has the potential to give all young children such access, enabling them to participate and flourish in the educational system throughout their lives. It was resolved that universal provisioning of quality early childhood development, care, and education must, thus, be achieved as soon as possible, and no later than 2030, to ensure that all students entering Grade 1 are school ready. Rule 8 of the RTE Rules, 2012 which deals with admission procedure in a pre-school prescribes as under:

“8. Admission Procedure:

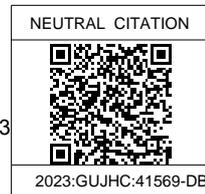
(1) No pre-school shall admit a child who has not completed 3 years of age as on 1st June of the year. The extended period of admission shall be six months from the date of commencement of the academic year of the school.

(2) No school shall take donations for admission, or shall take interview of parents and/or take test of the children.”

32. A bare perusal of Rule 8 shows that there is a prohibition for admission of a child in a pre-school who



has not completed 3 years of age as on 1st June of the academic year. Three years' 'early childhood care and education' in a pre-school prepares a child to take admission in 1st standard in a formal school. The children who are before us, have been admitted in a pre-school by their parents before completion of age of 3 years, prescribed minimum age for admission in a pre-school in the RTE Rules, 2012, which has been enforced in the State of Gujarat w.e.f. 18.2.2012. The challenge to Rule 8 of the Rules, 2012 has already been turned down by the Coordinate Bench of this Court in Special Civil Application No. 9879 of 2013, as noted above. The petitioner - parents of children, who have not attained the age of 6 years as on 1st June of the year 2023, cannot seek any leniency or indulgence, as they are guilty of violation of the mandate of RTE Rules, 2012, which is in line with the RTE Act, 2009. Forcing children to go to a pre-school below the age of 3 years is an illegal act on the part of the parents who are petitioners before us. The contention that the children are school-ready as they have



completed 3 years of elementary education in a pre-school having been admitted in the Academic Session 2020-21, therefore, does not impress us at all.

33. As regards the cut-off date, there is no challenge to the rule fixing 1st June of the academic year for completion of 6th year of age to seek admission in 1st standard. The only argument is to grant leverage / leniency to those children who were admitted in pre-schools in the Academic Session 2020-21 and have completed 3 years of elementary education to be school-ready.

34. Moreover, the cut-off date for completion of 6 years of age for admission in 1st standard has a rationale as it is prescribed to achieve the object of RTE Act, 2009, which is to provide education to children at an appropriate age. Under the National Education Policy, 2020, the children below the age of 6 years are not school ready as it is the age of 'early childhood care and development'.

35. In ***State of Punjab & Ors. vs. Amar Nath Goyal &***



Ors., reported in **(2005) 6 SCC 754**, in the challenge to the cut-off date on the alleged violation of Article 14 of the Constitution placing reliance on the judgment of the Apex Court in *D.S. Nakara (supra)*, it was observed that the refrain of *D.S. Nakara (supra)* has been played too often to retain its initial charm, which has been worn thin by subsequent dicta. It was noted that possible hardship to be endured by a person as a result did not make the cut-off dates violative of Article 14. It can neither be held to be arbitrary or unreasonable for this reason.

36. For the above discussion, we do not find any merit in the challenge to the Notifications dated 31.1.2020 and 4.8.2020. All the writ petitions, in this bunch, are found to be devoid of merits and hence dismissed.

Sd/-
(SUNITA AGARWAL, CJ)

Sd/-
(N.V.ANJARIA, J)

Bharat