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W.P.No.12893 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2023

Pronounced on : 09.10.2023

CORAM: JUSTICE N.SESHASAYEE

WP.No.12893 of 2023
& WMP.Nos.12684 & 16329 of 2023

Shreya Bhattacharya,
Rep by her father/Natural guardian
Satrajit Bhattacharya

...Petitioner

-Vs-

1.Kendriya Vidyalaya Sangathan
Rep by its Chairman,
Regional Office, IIT Campus,
Chennai – 600 036.

2.The Principal
Kendriya Vidyalaya No.1,
Air Force Station, Madambakkam Camp,
Post Selaiyur, Tambaram,
Chennai – 600 073.

3.The Principal,
Kendriya Vidyalaya No.2,
Air Force Station, Madambakkam Camp,
Post Selaiyur, Tambaram,
Chennai – 600 073.

...Respondents



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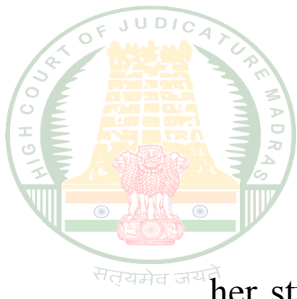
Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Declaration, to declare the maximum age limit prescribed by the Respondents in paragraph – 4 of their Guidelines for Admission in Kendriya Vidyalayas (2022-2023 & Onwards) for class 8th as 14 years is arbitrary, and contrary to the spirit of the Right to Education Act, and against the Article 21 A of the Constitution of India.

For Petitioner : Mr.D.Muthukumar

For R1 to R3 : Mr.M.Vaidhiyanathan

ORDER

Shreya Bhattacharya is the daughter of a non-commissioned Air Force officer, who seeks a seat in Class VIII in the Kendriya Vidyalaya, the second respondent school, located at the Air Force Campus, Tambaram. Her entry into the Kendriya Vidyalaya is resisted on the ground that she should have been between 12 and 14 years old on the relevant cut-off date as prescribed in the Guidelines, but the petitioner was aged 14 years and 2 months and was, therefore, ineligible. Shreya is now prosecuting



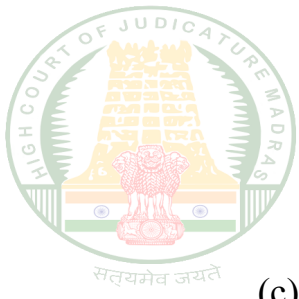
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her studies in Army Public School, which is about 30 km. from the Air Force Campus. It is in these circumstances, the petitioner now challenges the Guidelines of Kendriya Vidyalaya, principally on the ground that it violates Article 21A of the Constitution and Sec. 3 of the Right of Children to Free & Compulsory Education Act, 2009, (hereinafter will be referred to as the Right to Education Act) besides going against the policy of automatic admission of the children of service men.

2. In the counter-affidavit filed by the Deputy Commissioner of the first respondent, it is averred:

- (a) The first respondent is a Society registered under the Societies Registration Act, 1860, and is fully financed by the Ministry of Education, GOI, for catering to the needs of children of the central government employees who are in transferable postings. It runs 1250 schools across the country and another three schools abroad.
- (b) The Admission guidelines of KV for the academic year 2022-2023 are in line with the Right to Education Act, 2009. These guidelines prescribe an age restriction for admission to every class. It is not arbitrary.



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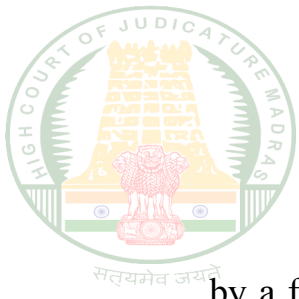
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(c) The petitioner's younger brother Shreyank was given admission to Class – I, as he met the age criterion as prescribed in the guidelines for the academic year 2021-2022, but since the petitioner did not satisfy it, she could not be accommodated in Class VI.

(d) The personal inconvenience of the petitioner in travelling 30 km a day to her school cannot be a criterion for challenging the Guidelines.

3. The learned counsel for the petitioner submitted that the petitioner earlier studied in Army Public School and in terms of the admission guidelines, wards of the service men in armed forces are entitled to automatic admission on the basis of the transfer certificate issued by the CBSE affiliated schools. He also relied on Article 21 A of the Constitution.

4.1 The learned counsel for the respondent brought to the notice of the Court the Admission Guidelines in Chapter XI of the Education Code of the Kendriya Vidyalaya. It states that the upper age limit for admission is a minimum age plus two years, and that this upper limit can be relaxed



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by a further two years if the child is physically challenged, and where a student seeks admission to Class XII, there is no upper age limit except that there should have been no break in studies before that. He added that inasmuch as the petitioner's child is 14 years and two months, he/she cannot be admitted. Fixing the age limit for admitting a child in the Kendriya Vidyalaya is a policy decision, and it may not be interfered with in judicial review. Reliance was placed on the ratio in ***Maharashtra State Board of Secondary and Higher Secondary Education Vs Paritosh Bhupeshkumar Sheth*** [(1984) 4 SCC 27].

4.2 This apart, there is no vacancy in the said school for the present, and the student strength cannot be expanded.

5.1 The Core plank of the petitioner's case is that the Admission Guidelines of KV prescribing age-limit violates Art.21-A of the Constitution, and also the Right to Education Act, 2009. Art.21A of the Constitution reads:

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the



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State may, by law, determine.

Article 21A finds a place in Part III of the Constitution, in essence, has created a duty on the State to provide free and compulsory education to children in the age group of 6 to 14 years. Jurisprudentially, where a duty is created, there ought to be a corresponding right.

5.2 To achieve this Constitutional command, the Parliament has enacted the Right to Education Act. Sec.3 read with Sec.2(f) of the Act cumulatively provides that a child in the age group of six and fourteen years has the right to free education till the completion of class I to Class VIII, and it states no more.

5.3 If the Admission Guidelines of KV is now tested for its validity on the plane of these provisions, it must be said that they do not run tangential to any of them, since the age limit it prescribes for admission to class I is from 6 years to 8 years, and has accordingly prescribed 12 years to 14 years for class VIII, depending on when the student joins Class I.



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5.4 Where young Shreya was caught is that the Guideline on age for admission has set 31st March of the academic year in which the admission is sought as the determinative date for reckoning the age. Shreya was born on 20.01.1999, and on 31st March, 2023, she was 14 years and 2 months old. In terms of the guideline she should have been born on, or after March 31st, if only she were to meet the age criterion as has been prescribed.

5.6 Should Shreya's parents be blamed, or the Admission Guideline? Shreya cannot understand this. She is puzzled why she should travel 30 km a day for her schooling when she has a school within her campus where she lives. She is dismayed why the KV should refuse to admit her and require her to travel 30 km distance every day, unmindful of the energy drain on her little physique and mind. And she cannot accept the plea of KV that travelling 30 km a day for schooling is her problem, and not that of the school. This Court is puzzled and dismayed as much. The child looks to this Court for a solution. Should this Court now hold that



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the Admission Guidelines are edicts etched in stone, and its inflexibility as understood by its makers is worthy of respect, or, should it find a way within the legal framework for young Shreya to enjoy schooling with lesser strain?

6. This Court intends to remind the first respondent, the framer of the guideline in question, that on 24th January every year, this nation celebrates National Girl Child Day. Four days prior to that on 20th January Shreya Bhattacharya celebrates her birthday. The National Girl Child Day is not for holding a function for a photo session for a souvenir to be published later in the year by the school, but for engraving the theme of the girl child, her growth, in the collective consciousness of society, and the need for respecting the rights of a girl child of which her right to education is a part. This Court would have appreciated the first respondent, a registered society, funded entirely by the Government, to have approached the issue with reasonable sensitivity to the difficulties which an adolescent girl of 14 years is put to owing to daily commutation of 30 km for her schooling merely because she is over age by two



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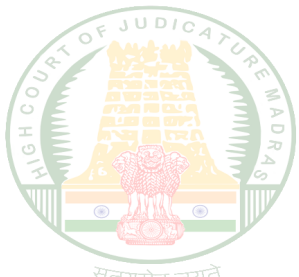
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months. The problem is not with the Guidelines *per se*, but in the failure of its framers to mollify the rigour of its provisions by reserving a residuary power in them to relax the age criterion in appropriate cases.

7.1 This Court appreciates the value of an Admission Guideline as it provides a certain degree of clarity, consistency and uniformity in admission to KV schools across the country. However, where working the guideline produces results which are manifestly unjust and incongruent to reason which a rational mind struggles to accommodate with ease, this Court is under a compulsion to act. It must be remembered that the power of this Court under Article 226 is intended to reach and remedy injustice wherever it may be found. As the Supreme Court reminds us in *Air India Statutory Corpn. v. United Labour Union*, [(1997) 9 SCC 377]:

“59.The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts.”

The aforesaid power of this Court to remedy injustice in a given case is



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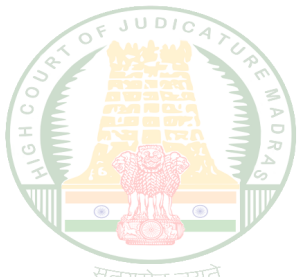
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directly traceable to its constitutional duty to uphold and enforce the rule of law. In *Union of India v. Tania Construction (P) Ltd.*, [(2011) 5 SCC 697], the Supreme Court said:

“33..... Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.”

7.2 An Admission Guideline on age limit is only intended to be a guideline and cannot have the force of a statute. A guideline means what it says: it is a guideline, nothing more nothing less. A guideline cannot be elevated to the commandments of Solomon. It must be construed reasonably more so when the hardship its strict compliance produces is disproportionate, or even unjust absurd results, it seeks to achieve.

8.1 If the Admission Guideline on the age of the student as provided in the KV Guidelines is closely read, they do make an exception to physically challenged students and those in Class XII. This signifies that the age limit is not inflexible but can be relaxed for addressing special situations. However, according to the respondents, this can be done only if the exceptions are part of the Guidelines. And the irony is that in terms of the



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Guidelines, Shreya can join class XII in this school, but not class VIII.

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8.2 Children are national assets, and when they are in tender age, they need greater care and support, but here is a set of Guidelines that attempts at the opposite: No support for a child if it suffers age-bar, even by a couple of months as in the case of young Shreya, from Class I to XI, but when the child reaches near adulthood and ready to enter Class XII, the school lifts the age-bar with an offer of immediate support. It baffles and disturbs the conscience of the Court.

9. Shreya, to this Court is a test case. There may be, and surely there will be innumerable Shreyas in this country who may find themselves in identical situations. And, each of them is a national asset, which this country needs to protect, preserve and promote. Is it not necessary, that KV as an institution, funded by We, the People, should share this national concern for protecting these young and blossoming assets? Set in the context, can the first respondent continue to plead that its guideline on age is a kind of Ten Commandments worthy of worship? This Court is constrained to hold a mirror for the first respondent to realise that it



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wastes no time to revisit its guideline on age and resolve the paradox that it has created for itself.

10. This Court will act against its Constitutional obligation if it shares the same sentiments that the first respondent currently has towards its guideline on age for admission to KV. The concern of Shreya, or to make it broad-based, the Shreyas across the country for whose benefit KV is established deserves to be addressed by this Court. Having stated thus, this Court is not keen to rewrite the existing guidelines, nor it is the best judge to pronounce on how an ideal guideline ought to be. The respondents here presses into service the ratio in *Maharashtra State Board of Secondary and Higher Secondary Education Vs Paritosh Bhupeshkumar Sheth* [(1984) 4 SCC 27], where the Hon'ble Supreme Court has held that the Court cannot examine the reasonableness of the by-laws in judicial review, but laid its ratio while dealing with the bylaw relating to re-valuation of answer papers in examinations. It is well settled that principle laid in a case is an authority for what it decides. Equating the re-valuation of answer scripts to admissions would be equating chalk with cheese.



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11. The case of Shreya is not completely within the ken of Article 21A, but it is also a case under Article 21. Between upholding the inflexibility of a bunch of printed papers that pass by the name, the 'guideline on age', and the life of young Shreya, this court considers that Shreya's right to life, her right to easy and hassle-free education is supreme. The conscience of this Court rooted in Constitutional consciousness, therefore, prods it to read into the guidelines a space for an exception, to deal with an exceptional case such as this.

12. The issue is about KV treating two months as over-age for admission to elementary education within the meaning of Sec.2(f) of the Right to Education Act, and right to hassle-free education within the meaning of right to life under Article 21. Humanism is spelt through pragmatism, which logic may not understand. And, the soul of Article 21 is humanism and respect for life, not logic and rhetoric. It is hence this Court, without meddling with the guideline now available, only sneaks



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into it to create an exception to deal with the larger right of the petitioner.

The KV is now required to relax + two months that keeps the petitioner away from its school, and require to admit her, if other conditions are satisfied.

13. This Court now allows this petition, and directs the second respondent to admit the petitioner to Class VIII, relaxing the age-criterion alone, but not other criteria required for admission. It is clarified that the exception to age-criterion as provided in the Guidelines may be made only to meet exceptional situations such as this, and the ratio of this order will have validity only till the first respondent makes suitable amendments to its Admission Guidelines. No costs.

09.10.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

tsg/ds



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- 1.The Chairman
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VERDICTUM.IN



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N.SESHASAYEE.J.,

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Pre-delivery order in
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