IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 1587/2011

% Judgment reserved on: 26th April, 2011
Judgment delivered on: 23rd May,2011

Master Mohd.Abdullah (Minor) ..... Petitioner.
Through: Ms.Deepali Gupta, Adv.

versus

Govt. of NCT of Delhi and Ors. ..... Respondents
Through: Ms.Ruchi Sindhwani with Ms.Bandana Shukla, Adv. for respondents 1 & 2 along with Ms.Suman Passi, Education Officer, in person.
Mr. Puneet Mittal, Adv. for the respondent No.3.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.
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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct

the respondents to hold a fresh draw for admission to the pre-school class for the academic session 2011-12 in the respondent No.3-school.

2. The short controversy involved in the present writ petition is as to whether the petitioner child who belongs to the weaker section of the society (EWS) is entitled to seek admission at the entry level class i.e. pre school in terms of the notification dated 7.1.2011 issued by the GNCT of Delhi even if the petitioner child was above the age of four years on the cutoff date.

3. Counsel for the petitioner, Ms. Deepali Gupta submitted that no upper limit has been fixed under the Delhi School Education Act and in case the petitioner is not considered then the child may remain without education as the petitioner belongs to a very poor family but the parents of the petitioner want to educate their child. Counsel further submitted that the Government of NCT of Delhi has issued a Notification dated 7.1.2011, in exercise of the powers conferred by sub-section (1) of Section 3 of the Delhi School

Education Act, 1973, read with Rule 43 of the Delhi School Education Rules, 1973 and under the provisions of the Right of Children to Free and Compulsory Education Act, 2009, mandating all schools to admit the children belonging to economically weaker sections and disadvantaged groups in neighbourhood and provide free and compulsory elementary education from class I to the extent of at least 25% strength of their class and to provide free and compulsory elementary education till completion. The contention of the counsel for the petitioner was that the petitioner had applied to seek admission in pre-school class which is the first class of entry under the category of economically weaker sections but the petitioner has been denied admission by the respondent school on the ground that he was not eligible for admission being over age as on the cut off date i.e. 31.3.2011. Counsel further submitted that although the petitioner was never conveyed the reasons for rejection of his admission in terms of clause 4(g) of the said notification dated 7.1.2011 but since the only reason advanced by the

respondent school is that of over age of the petitioner, therefore, the petitioner confines his case to challenge the said ground of overage raised by the respondent school. Canvassing her arguments on the said limited issue, counsel for the petitioner contended that the said scheme permits admission at the entry level and once the petitioner is denied admission at the entry level, then he would not be eligible to seek admission to any higher class. Counsel further submitted that under the said notification, no minimum or maximum age has been laid down and even under the Delhi School Education Act only minimum age of 3 years has been laid down to seek admission at the level of pre-school and therefore the respondent no.3 could not have denied the admission to the petitioner merely on the ground that he had exceeded the age of four years as on the cutoff date of 31.3.3011.

4. Mr. Puneet Mittal, counsel appearing for respondent No.3 on the other hand submitted that respondent No.3 has adopted a uniform criterion in granting

admissions to EWS category as well as the general category in the pre-school stage, i.e. those who are between the age group of 3-4 years. Counsel further submitted that none of the candidates who are above the age of 4 years have been granted admission in either EWS category or general category in the pre-school stage. Counsel also stated that there are 9 vacancies at the pre-school level in the respondent school so far EWS category is concerned for which steps are under process so as to request the Directorate of Education to start the process for filling those 9 seats. Counsel also stated that so far the case of petitioner is concerned, he can be considered at the pre primary level as he is above 4 years and below 5 years of age if any vacancy arises in the EWS category.

5. Ms.Ruchi Sindhwani, counsel appearing for the respondents No.1 & 2 submitted that the Directorate of Education vide circular dated 06.01.2011 has prescribed the minimum age of 3 years for pre-school admission as on 31st March of the relevant year in which the admission is being

sought and so far the maximum age limit is concerned, the same can be decided by the management of each school on the basis of their own policy and wisdom. Counsel also submitted that in the EWS category in pre-school classes, 9 seats are still lying vacant in the respondent-school and the respondent-school can accommodate the petitioner-child against the said unfilled seats.

6. I have heard the learned counsel for the parties at considerable length and gone through the records.

7. The petitioner in the present case had applied to seek admission at the level of pre-school for the academic year 2011-12 in the respondent no.3 school. The date of birth of the petitioner is 16.02.2007 and as on the cutoff date of 31.03.2011, the petitioner was more than 4 years of age. The respondent No.3-school is an unaided private school affiliated to Central Board of Secondary Education, Govt. of NCT of Delhi. As per the stand taken by the respondent-school, the petitioner was not eligible to seek admission in the pre-school class, as he was over age as on the cutoff date of 31.03.2011.

The respondent-school has also taken a stand that the age criteria which was set by the school for admission in pre-school was 3 years to 4 years and the said criteria adopted by the school was duly communicated by them to the Directorate of Education. The respondent-school has also taken a stand that the age criteria is the same for admission in the general category as well as in the EWS category. The respondent-school has also taken a stand that none of the students who were above four years of age were granted admission by the respondent-school at the entry level of pre-school either in the general category or in the EWS category. Counsel has also invited attention of this Court to the computerized statement placed on record to show that in the EWS category 20 students were given admission by the school who were between the age group of 3 to 4 years and even a student who was born on 31.03.2007 was denied admission by the respondent-school. As per the stand taken by the respondent-school there was complete uniformity so far the age criteria was concerned and none of the students

were given admission by the school at the entry level of pre-school who did not fulfill the said age criteria.

8. I have gone through the computerized statement placed on record by the respondent No.3-school which clearly shows that the respondent No.3-school has not granted admission to any student who was above the age of 4 years as on the cutoff date of 31.03.2011. The petitioner thus cannot claim any discrimination or any kind of arbitrariness on the part of the respondent-school in denying admission to the petitioner at the pre-school level under the EWS category. I also find merit in the contention raised by counsel No.3-school that out of the nine unfilled seats the petitioner now cannot be given any priority, as for filling the said 9 seats, the respondent-school will have to undertake the whole process again if the students above the age of 4 years are to be considered for granting admission at the pre-school level.

9. The Directorate of Education through their circular dated 06.01.2011 had given clarification in response to the various representations received by them from the school

management and the parents of the wards regarding the minimum age of the child for admission in pre-primary classes/pre-school in recognized unaided schools and it was clarified by them that every child admitted in the pre-school shall be of minimum 3 years age by 31st March of the year in which admission is being sought. As far as age for the pre-primary classes is concerned, the stand taken by the Directorate of Education is that the same will be 4 years as on 31st March of the year in which admission is being sought. In the circular dated 22.02.2011 the Directorate of Education has laid down the age of 5 years for Class-1 as on 31st March of the year in which admission is being sought.

10. From the aforesaid various circulars issued by the respondent, it is quite evident that although no maximum age has been fixed by the Government but still for various classes from pre-school level to Class-1, the minimum age criteria has been fixed, meaning thereby that a student who is not able to seek admission at the pre-school level between the age of 3-4 years will become of upper age when he seeks

admission at the pre-primary level and similarly when he seeks admission in Class-1. In Clause 2(b) of Notification dated 07.01.2011, the word 'class' has been defined to include the entry level class such as pre-school and first class as the case may be. The said notification neither defines the minimum age nor the maximum age. Pre-school admission is at the entry level and the petitioner has also sought his admission at the entry level under the EWS category in terms of the said Notification dated 07.01.2011. The Directorate of Education in the letter dated 26.04.2011 placed on record has also taken a stand that the maximum age can be decided by the management of each school in terms of their own policy and wisdom. So far the respondent No.3-school is concerned, they had taken a decision to grant admission only to those students who had completed 4 years of age as on 31st March, 2011 and, therefore, as per the policy of the respondent No.3-school the petitioner was not found entitled to get admission at the pre-school level.

11. It would be thus quite manifest that as per the criteria laid down by the respondent No.3-school, the maximum age of the child as on 31.03.2011 has been set at 4 years and the minimum age as 3 years. The Directorate of Education in their communication has also taken a stand that the Directorate of Education has fixed only minimum age as 3 years for pre-school by 31st of the year in which admission is sought and the maximum age has been left to the discretion of the management of the concerned school. The aforesaid stand of the Directorate of Education clearly shows that the Government has not laid down any specific guidelines to fix the maximum age criteria so far admissions at the pre-school or pre-primary level are concerned and only the minimum age has been prescribed.

12. From the computerized statement placed on record by the respondent No.3-school, it is also evident that the school has not given admission to any student either in the general category or in the EWS category at the pre-school level who was above the age of 4 years as on the

cutoff date of 31.03.2011. Thus it is imperative for every parent to be vigilant and watchful to seek timely admission of their children either at the pre-school level or at the pre-primary level on the fulfillment of the age criteria and any discretion by the Court in favour of one student will not only create an anomalous situation but will also disturb the entire admission system. Hence, in view of the said stand taken by the Directorate of Education, this Court does not find anything wrong in the decision taken by the respondent No.3-school in laying down the maximum age of 4 years for granting admission at the pre-school level as on the cutoff date of 31.03.2011 as the Directorate of Education has granted autonomy to the schools to set the upper age limit and thus the school cannot be said to be at fault. Hence, this Court does not find any wrongdoing in the said decision of the respondent school so as to interfere with the same in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

13. However, having said the above, it cannot also be lost sight of the fact that none of the legislations and rules governing the admission to pre school stipulate a maximum age limit. The reliance placed by counsel for the petitioner on the judgment of this Court in ***Kumari Uzma Bano & Anr. Vs. Govt. of NCT of Delhi & Anr. 172(2010) DLT 344*** where this Court fortified the same after referring to Section 4 of the RTE Act & Explanation to Rule 21 of the Recognized Schools (Admission Procedure for Pre-Primary Class) Order, 2007. It would be pertinent to reproduce the relevant para of the said judgment here:

> *"14. The counsel for the petitioners however contends that if such an interpretation is taken, the first proviso to Section 4 of RTE Act will become redundant. In my opinion, No. Even though the child may be admitted to class below that in which others of his age are studying, the child is still likely to require the special training mentioned in the said proviso. I may also add that there does not appear to be any maximum age limit for admission to any particular class and the School Act or the Rules do not provide any class in relation to age. The counsel for the petitioners has rather shown the explanation to Rule 21 of the Recognized Schools (Admission Procedure for Pre-Primary Class) Order, 2007 which only provides the minimum age for admission and expressly provides that there is no bar for older children to getting admission for Pre-school Class or Pre-primary Class or Class-I. For this reason also it cannot be said that there is any law or Rule connecting a class to age. The expression "in a class appropriate to his or her age" in Section 4 of RTE ACT cannot be read as "in a class to which others of his age are studying" and it shall remain open to the head of the School to which admission is sought to, in consultation with the Zonal*

Education Officer determine the Class to which such student should be admitted.

15. It is thus directed that qua the petitioners who are seeking admission to the respondent Schools without previously attending any recognized Schools, the Head of Schools, in exercise of powers under Rule 141(2) and in consultation with the Zonal Education Officer shall assess the child to determine the suitability for admission in a particular class and in the light of what has been laid down hereinabove."

For better appreciation of the above, Rule 21 is reproduced as under:-

"21. There shall be one year of pre-primary class in every school. A class of one year duration preceding this called pre-school may be set-up as a neighboring pre-school and the Education Department shall frame the guidelines in this regard, in consultation with experts. The schools which are already running pre-school class may continue to do so subject to the following conditions:

(a) Every child admitted to pre-school shall be of minimum three years by 31st March of the year in which admission is being sought;

(b) The schools shall frame their own guidelines for admission to pre-school class and the same criteria as for admission to the pre-primary level shall be adopted, until such time as the guidelines for pre-schools are framed;

(c) Any such school which has a pre-school class from the session commencing in April 2008, shall move those students to the pre-primary class for the session commencing in April 2009. After that, the final norms to be notified for the pre-school class shall be followed.

Explanation: - For the purposes of this clause, the ages stipulated for entry into standard one, pre-primary class and pre school class are the minimum ages and there is no bar to children

> older than the ages specified in this clause being given admission to these classes."

If we look at the aforesaid provision, it is discernable that the child should have the minimum age of 3 years by 31st March of the year in which admission is being sought for a child seeking admission in the pre-school and in the explanation it has been explicitly stated that there is no bar to the older children specified in the aforesaid clause. No upper age limit has been laid down even in the said explanation and it has been merely stated that there would be no bar for the older children to seek admission in the above classes. However, how much older children can be permitted to seek admission at the pre-school or pre-primary level is nowhere specified and the Directorate of Education has also not laid down any guidelines on this aspect.

14. Today, education is a right and not a luxury in this country, but behind this landmark achievement is a long historic struggle which started some 100 years ago by Gopal Krishna Gokhle who in 1911 proposed to the Imperial Legislative Council the right to education which was followed

by Mahatma Gandhi's call for universal education in 1937. After independence, the framers of the Constitution of India inculcated it in the Directive Principles of State Policy and it was only in 1993 in *Unni Krishnan vs. State of A.P (1993)1SCC 645* that the Supreme Court held the right to education as a fundamental right to be read into Article 21 of the Constitution of India. But it was only in the year 2002 with the 86th Constitutional amendment that Article 21 A was added which made free and compulsory education to all the children from the age of 6 to 14 years a fundamental right. The momentous event of enforcing The Right of Children to Free and Compulsory Education Act was on 1 April 2010 which has made India the 136th nation in the world to give right to education legal sanctity.

15. Basic education is a fundamental requirement of all modern societies for social equity, economic functionality and imbibing cultural values. Education is one of those rights that enable the full realization of a person's potential and inclusion in society by enabling citizenship and growth.

Negative gaps in its realization are perceptible as teething troubles in the long march for attaining the important objective of universal education. One such would be as what has arisen in the present case, which is the maximum age of the child to be admitted at the pre school level which is nowhere specified. Looking at the intendment and spirit of the passing of the historic, even though belated welfare legislation, no child can be deprived of education. India is also a signatory to the United Nations Childs Right Convention and has universally accepted the definition of child which is upto the age of 18 years which by virtue of Article 28 makes primary education free and compulsory for all. Therefore, this court is of the considered view that for attaining the non negotiable objectives of the RTE Act the Directorate of Education is the right authority and is henceforth directed to take steps to help the petitioner to see if any seat at the pre-school level or pre-primary level is available in any other aided or unaided school in the neighbourhood of the residence of the petitioner where his

case can be considered on fulfillment of laid down criteria of admission. To mend out the confusion with regard to maximum age of the child to be admitted to different classes, the Directorate of Education is also directed to take responsibility to frame specific and clear guidelines within a period of three months from the date of this order so that the object of RTE does not get mired in uncertainity.

16. At omega, this court would like to observe that in the case of RTE, the legislation has become a tool for enhancing the realization of the right but is not guaranteeing instant realization and the weaker sections of the society are approaching the courts for assuring the realization of the right to education, but the costs involved in accomplishing this right through the route of the courts are high and not everyone can afford to indulge in it. Thus, even though the country celebrates the first anniversary of the coming into force of this act coupled with the literacy rate of India in 2011 census touching a 74.04% high, the wrinkles in this legislation need to be ironed out with utmost urgency so that

the chasm between achieving the dream of education for all and reality is abridged swiftly. With the heightened awareness and consciousness of the Indian citizenry, the demand for inclusive education in the history of the country has not been as fervent as it is today and to fulfill the expectation of every common man to achieve a better tomorrow through educating his child should be the ambition of the Government of India, this world's largest and most high potential child populated country.

17. In the light of the above, the present petition is disposed of.

May 23, 2011 **KAILASH GAMBHIR, J**

Bisht/mg/dc