

HIGH COURT OF MADHYA PRADESH AT JABALPUR

WRIT APPEAL No.1716 OF 2018

APPELLANT : **KENDRIYA VIDYALAYA NO.1, REWA**

Vs.

RESPONDENTS : **AYAN ABDULLAH USMANI & OTHERS**

Bench Constituted : Hon'ble Shri Justice Ravi Shankar Jha
& Hon'ble Shri Justice Sanjay Dwivedi.

Judgment passed by : **Hon'ble Shri Justice Ravi Shankar
Jha**

**Whether approved for
reporting** : Yes/No

**Name of counsel for
parties** : **For Appellant:** Pankaj Dubey,
Advocate

For respondents: Shri Aditya Sanghi,
Advocate

Law laid down :

**Significant paragraph
numbers** :

J U D G M E N T
(01/02/2019)

Per: R.S. Jha, J.

This appeal has been filed by the appellant under Section 2(1) of the Madhya Pradesh Unchcha Nyalaya (Khand Nyapeeth Ko Appeal) Adhinyam, 2005 being aggrieved by the order dated 13.11.2018 passed by the learned single Judge of this court in W.P. No. 9785/2018 whereby the petition filed by the respondents no. 1 and 2 seeking admission in Class III has been allowed.

2. The facts leading to filing of this appeal are that the respondent No.1 & 2 after passing Class-II from respondent

No.4 Jyoti Senior Secondary School, Rewa, obtained a transfer certificate as they were desirous of obtaining admission and pursuing further study in the appellant school namely; Kendriya Vidyalaya No.1, Rewa. Admittedly and undisputedly as per Clause (4) of the guidelines for admission in Kendriya Vidyalaya issued by the Kendriya Vidyalaya Sangathan, New Delhi, which deals with the eligible age for admission, the minimum age for obtaining admission in Class-III has been prescribed as seven years as on 31st March of the year in which the admission is sought and as the date of birth of both two respondents who are twins is 03.04.2011, they were admittedly and undisputedly short by three days, out of which one day is relaxable, for obtaining admission in Class-III.

3. As the respondent Nos. 1 & 2 in this appeal did not fulfill the eligibility age criteria prescribed in the guidelines, the respondent Nos. 1 & 2 through their natural guardian and mother, voluntarily and on their own, applied for and obtained admission in the Class-II in the appellant school on 06.04.2018. The fact that the respondent Nos. 1 & 2 applied for and obtained admission in Class-II is evident from the letter of request dated 06.04.2018 (Annexure A/3) and is also clearly established from a perusal of the record of the appellant school which has been placed before us during hearing. It is also an undisputed fact that subsequent to obtaining admission in

Class-II, the natural guardian of respondent Nos. 1 & 2 filed an application before the authorities of the appellant for granting admission to the respondent Nos. 1 & 2 in Class-III requesting the Principal of the appellant school to exercise his extraordinary power to relax the age criteria.

4. As the Principal did not possess any such powers, the criteria was not relaxed. The respondents thereafter filed a writ petition before this Court which was registered as W.P.No.9785/2018, in which, an interim order was passed by this Court on 07.05.2018 permitting the respondent Nos. 1 & 2 to attend the classes (without specifying the class) with a rider that merely attending the classes would not create any equity in favour of the petitioners and would be subject to the final outcome of the petition. This order was subsequently modified on 20.08.2018 by permitting the respondent Nos. 1 & 2 to attend Class-III.

5. The petition filed by the respondent Nos. 1 & 2 has been allowed by the impugned order dated 13.11.2018 by the learned Single Judge on the ground that the respondents were only two days short of the age criteria and that they had been attending the class-III pursuant to the interim order passed by this Court, wherein, they had demonstrated their merit and had also passed the half yearly examination with good marks and, therefore, it would be unjust, unreasonable and harsh and

would amount to waste of one full academic year, if they would be asked to repeat Class-II.

6. The learned counsel appearing for the appellant has assailed the order passed by the learned Single Judge on the ground that the admission was obtained by the respondent Nos. 1 & 2 by applying for admission in Class-II as per the norms and criteria laid down by the Kendriya Vidyalaya Sanghathan, New Delhi which were known to all including the respondents and no relaxation in these guidelines is permissible, except to the extent mentioned therein. It is submitted that this eligibility criteria regarding the age has been applied and enforced uniformly for all students all over the country in all the Kendriya Vidhyalayas with a view to not just bring about uniformity and to prevent arbitrary exercise of discretion by the individual schools, but also to provide similar and equal right to students all over the country to obtain admission in accordance these pre-notified criteria.

7. It is submitted that once the petitioner had obtained admission in Class-II in accordance with the eligibility age criteria, they could not have been permitted to claim and assert a right to pursue class-III and that no order in their favour could have been issued by the learned Single Judge on equitable ground, as such a relaxation by the Court in exercise of extraordinary powers has resulted in discrimination to other

students and giving undue favour to the respondent Nos. 1 & 2, who admittedly lack the necessary eligibility age qualification for obtaining admission in Class-III.

8. It is further contended that in view of the law laid down by the Supreme Court in the case of **Regional Officer, CBSE vs. Ku. Sheena Peethambaran and others**, (2003) 7 SCC 719 as well as in the case of **Principal, King George's Medical College, Lucknow vs. Dr. Vishan Kumar Agarwal and another**, (1984) 1 SCC 416, the admission criteria laid down could not have been relaxed and that an interim order granting admission during the pendency of the petition on the ground of misplaced sympathy which has resulted in creating an awkward and difficult situation, would not confer any right on the respondents, as granting relief on the basis of an interim arrangement would tantamounts of subversion of law as held by the Supreme Court in paragraph 6 in the case of **Regional Officer, CBSE** (supra).

9. It is stated that in such circumstances, the learned Single Judge has committed perversity in relaxing the eligibility criteria relating to age and granting relief to the respondents merely on account of the interim order passed by this Court, which was even otherwise subject to the condition that no equity would be created in favour of the respondents and would be subject to the final outcome of the petition. It is

submitted that the learned Single Judge has erred in granting relief on the basis of the fact that the respondents on the basis of the interim order was studying in Class-III and has passed the half yearly examination with good marks.

10. The learned counsel appearing for the respondent Nos. 1 & 2 submits that the respondent Nos. 1 & 2 are meritorious students and had passed Class-II with flying colours from respondent No.4 - Jyoti Senior Secondary School, Rewa and had been duly promoted to Class-III. It is submitted that as the respondent Nos. 1 & 2 had passed Class-II and have been promoted to Class-III and as the respondent No.4 school as well as the appellant are both governed by the C.B.S.E. guidelines, the respondent Nos. 1 & 2 ought to have been granted admission in Class-III by the appellant school, instead of which they were granted admission in Class-II by the appellant by taking aid of the eligibility criteria relating to age. It is submitted that the respondents being meritorious and having already passed Class-II could not have been forced to pursue the same class again, more so, as they have duly attended the classes of Class-III on account of the interim order passed by this Court and have passed the half yearly examination with flying colours i.e. with 80% marks. It is submitted that in such circumstances, the learned Single Judge taking note of the aforesaid aspects has allowed the petition filed by the

respondent Nos. 1 & 2 directing the appellant to relax the eligibility criteria by two days and permit the respondent Nos. 1 & 2 to study in Class-III, which cannot be found fault with.

11. The learned counsel appearing for the respondent Nos. 1 & 2 by relying on the decision of the Supreme Court rendered in the case of **Kashmi Bhagtani vs. The State of Madhya Pradesh and others**, Special Leave Petition (Civil) No.D13016/2018 decided on 25.04.2018 submits that as the respondents Nos. 1 & 2 have already perused Class-III on account of the interim order passed by this Court and have already appeared in the half yearly examination, the admission in Class-III has rightly been regularised on that count.

12. We have heard the learned counsel for the parties at length.

13. The eligible age for admission that has been mentioned in paragraph 4 of the guidelines for admission in Kendriya Vidyalaya is as under:-

"4. ELIGIBLE AGE FOR ADMISSION

A child must be 5 years old as on 31st March in the academic year in which admission is sought for Class I. (Child born on 1st April should also be considered.)

A. *The minimum and maximum age limit for admission in Kendriya Vidyalayas in various classes is given below. (Child born on 1st April should also be considered.)*

CLASS	MINIMUM AGE ON 31 st MARCH OF THE YEAR IN WHICH ADMISSION	MAXIMUM AGE ON 31 st MARCH OF THE YEAR IN WHICH ADMISSION
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	<i>IS SOUGHT</i>	<i>IS SOUGHT</i>
<i>I</i>	<i>5 years</i>	<i>7 years</i>
<i>II</i>	<i>6 years</i>	<i>8 years</i>
<i>III</i>	<i>7 years</i>	<i>9 years</i>
<i>IV</i>	<i>8 years</i>	<i>10 years</i>
<i>V</i>	<i>9 years</i>	<i>11 years</i>
<i>VI</i>	<i>10 years</i>	<i>12 years</i>
<i>VII</i>	<i>11 years</i>	<i>13 years</i>
<i>VIII</i>	<i>12 years</i>	<i>14 years</i>
<i>IX</i>	<i>13 years</i>	<i>15 years</i>
<i>X</i>	<i>14 years</i>	<i>16 years</i>

Note : *The maximum age limit can be relaxed by two years in case of Differently abled children by the Principal."*

14. A perusal of the same makes it clear that the minimum age for obtaining admission in Class-III is seven years as on 31st March of the year in which the admission is sought and that there is a provision for relaxation by one day mentioned in the Rule itself which states that a child born on 1st April should also be considered. A perusal of the note below the Clause 4 makes it clear that only the maximum age limit can be relaxed by two years in case of differently abled children by the Principal and that no other relaxation has been provided and therefore not permissible under the Rule. It is also an admitted and undisputed fact that the date of birth of both the respondent Nos. 1 & 2 who are twins is 03.04.2011 and, therefore, they do not fulfill the eligibility criteria in respect of the age prescribed in the guidelines and are short by two days.

15. A perusal of Annexure A/3 filed alongwith the appeal and

Annexure P/6 filed alongwith the petition also clearly establishes the fact that the respondents being fully aware and conversent with the guidelines relating to admission and being aware of the fact that they did not fulfill the eligibility criteria regarding age for obtaining admission in Class-III, applied for admission in Class-II in the appellant school and on the basis of the said application dated 06.04.2018 were granted admission by the appellant in Class-II. Apparently, had the respondents applied for and insisted for admission in Class-III, their claim for admission would have been rejected by the appellant at the threshold itself. It is also established from the facts on record that after they had applied for and obtained admission in Class-II, the respondent Nos. 1 & 2 thereafter immediately applied for shifting them to Class-III by requesting the Principal to exercise his extraordinary powers of relaxing age, which apparently do not exist as there is no provision in the guidelines giving powers to the Principal to relax the age criteria in such cases.

16. The facts on record further indicate that after having applied for and obtained admission in Class-II and on receiving no response on the application for up-gradation to Class-III, the respondents filed a writ petition before this Court and this Court on 07.05.2018 passed a conditional interim order permitting the respondent Nos. 1 & 2 to attend the classes

with a clear stipulation to the effect that “however, merely attending the classes would not create any equity in favour of the respondent Nos. 1 & 2 and it shall be subject to final outcome of the petition”. The record of the case indicates that this interim order was modified by the Single Bench on 20.08.2018 specifying that the stipulation regarding permission to attend the classes related to permission to the respondent Nos. 1 & 2 to attend Class-III.

17. From a perusal of the impugned order passed by the learned Single Judge, it is clear that the learned Single Judge has allowed the petition filed by the respondent Nos. 1 & 2 and has held that the age limit can be relaxed in appropriate cases taking into consideration the mental caliber and understanding of the child and that merit plays the most important role in admitting the students and, therefore, as the respondent Nos. 1 & 2 had passed Class-II with flying colours and have also passed the half yearly examination of Class-III with nearly 80% marks in all major subjects, it would not be just to send back the respondent Nos. 1 & 2 in Class-II, which they have already cleared in the respondent No.4 school and to ask them to waste one full academic year, as forcing them to do so would be unjust, unreasonable and harsh.

18. We are constrained to observe that now-a-days admission to schools have become extremely difficult and the days where

such admissions were left to the sole discretion and whims of the school authorities, are gone. The Kendriya Vidyalaya Sanghathan, New Delhi with a view to bring about uniformity and to provide a level playing field to all students desirous of obtaining admission has laid down the guidelines for admission by prescribing the necessary eligibility criteria including eligibility criteria relating to age. The very object and purpose of laying down the uniform guidelines is to prevent individual school authorities from adopting different criteria for granting admissions and preventing them from indulging in subjective discrimination in granting admissions and in such circumstances, permitting or directing the schools to relax the eligibility age criteria on their own, would defeat the very object and purpose for laying down the uniform admission guidelines. We cannot lose sight of the fact that had powers of relaxation in respect of the age criteria been conferred upon the authorities several other children though not possessing the eligible age criteria, would have applied for admission as their cases would also have been considered for relaxation of the age criteria.

19. It is worth noting that in view of the serious problem relating to admission in Delhi and the anxiety of the parents to introduce their children into the academic stream at an early age, the High Court of Delhi in W.P.(C).12490/2006, constituted

a committee for the purposes of determining the minimum age for granting admission. The Committee on “Pre-primary and Pre-school education in Delhi”, in its report after having examined the minimum age for admission, in most of the States in India as well as in several countries of the world, a report submitted by Shri Ashok Ganguly, Chairman, C.B.S.E. and after consulting several experts, has recorded a finding to the effect that most of the Asian countries have prescribed 5+ as the minimum age for a child to be admitted in Class-I as forcing the child into the academic stream before that age is detrimental for his development. The Committee has extensively examined the several aspects and recommended the minimum age and cut-off date for admission as follows:

5.02 Minimum age and Cut-off date for admission

“A child should have attained four years on or before 31st March of the year of admission to be considered eligible for gaining admission to pre-primary class. Consequently children completing five years on or before 31st March of the year of admission would progress to Class-I. Thus the cut-off date for determining the age of children for the purpose of admission shall be 31st March of the year of admission for the academic session starting from 1st April”.

From the aforesaid extensive study conducted by the Committee, it is clear that it is not in the interest of the child to

give him admission in Class-III, in case, he is below seven years, as the minimum age for granting admission in Class-I is five years and above. Quite apart from the above being required to compete with older children in their own class would have an adverse effect upon the respondents Nos. 1 & 2 in the higher classes.

20. In such circumstances, in our considered opinion, the age criteria prescribed in the guidelines cannot be relaxed and should not be relaxed by the Court, as such relaxation amounts to perpetuating discrimination as those who are aware of the guidelines and did not fulfill the criteria regarding age prescribed in the guidelines did not apply and obtain admission, whereas the respondents No.1 and 2 after having obtained admission as per the guidelines, have sought the relaxation to obtain undue advantage.

21. It is pertinent to note that the respondents No.1 and 2 were fully conversant with the admission criteria and guidelines and had therefore, themselves applied for admission in Class-II only and after having submitted an application for admission in Class-II and after having obtained admission therein, they cannot be permitted to turn around and claim admission in Class-III. The undisputed facts clearly establish that the respondents No.1 and 2 were not and have not been forced to obtain admission in Class-II as has been

observed by the learned Single Judge. Infact, had the respondents No.1 and 2 asserted their rights to obtain admission in Class-III from the very beginning itself, their claims would have been rejected at the threshold but instead of doing so, the respondents No.1 and 2 first obtained admission in Class-II and have thereafter, approached this Court which act on their part amounts to waiver of the right to claim admission in Class-III. It is also clear that the respondents No.1 and 2 having applied for and obtained admission in Class-II, are thereafter, estopped from claiming admission in Class-III.

22. We are also of the considered opinion that the respondents No.1 and 2 were fully aware of the fact that the interim arrangement made by this Court did not create any right or equity in their favour, in view of the clear stipulation mentioned in the interim order dated 7.5.2018 and therefore, mere attending Class-III in the appellant school and passing the Half yearly examination would not confer any indefeasible right in the respondents, moreso, as their admission in Class-II stood as it is.

23. The reliance placed by the learned counsel appearing for the respondents No.1 and 2 on the order passed by the Supreme Court in the case of **Kashmi Bhagtani** (supra) is totally misplaced. In the case of the **Kashmi Bhagtani**

(supra), all the students possessed the necessary eligibility qualification prescribed under the Rules and their admissions were cancelled only on account of the violation of the procedure for making admission. The Supreme Court in such circumstances, held that their admissions could not have been cancelled without giving them an opportunity of hearing and in those circumstances, upheld their admissions taking note of the fact that they had continued for about four months in perusing their studies.

24. The facts of the present case are totally different. In the instant case, the respondents No.1 and 2 do not possess the eligibility qualification and they have themselves obtained admission in accordance with the eligibility criteria in Class-II. In such circumstances, mere permission to attend the classes of Class-III by an interim order passed by this Court, does not confer any right upon them to claim admission in Class-III, moreso, as the interim arrangement made by this Court was subject to the final order passed in the writ petition and was granted with a clear stipulation that it would not create any equity in favour of the respondents No.1 and 2.

25. We are also of the considered opinion that mere mentioning that the order passed in favour of the respondents No.1 and 2 would not be treated as a precedent by the learned Single Judge, would not subserve the interest of justice

inasmuch as permitting respondents No.1 and 2 to obtain admission in Class-III inspite of first having accepted the criteria and having voluntarily obtaining admission in Class-II, would amount to giving them undue advantage on all other similarly situated students who could have and would have applied for admission, had they known that such a course, as adopted by the respondents No.1 and 2, was possible and permissible to avoid the rigour of the eligibility criteria which are uniformly applicable in all the Kendriya Vidyalayas in the country. It would amount to giving undue advantage to the respondents No.1 and 2 and would result in discrimination to other similarly placed students who did not even apply for admission, in view of the eligibility criteria in mind.

26. In view of the law laid down by the Supreme Court in the case of **Regional Officer, CBSE** (supra) as well as **Principal, King George's Medical College, Lucknow** (supra), we feel it necessary to observe that the Supreme Court in several cases and occasions, has severely deprecated the practice of permitting the students to pursue their studies and appear in examination under an interim order passed in the petitions. The Supreme Court while deprecating such a practice, has also observed that in most of such cases, the petitioners ultimately pleaded that since the course is over or the result has been declared, the matter be considered sympathetically which puts

the Court in a very awkward and difficult situation. It has been observed by the Supreme Court that granting relief in such cases on misplaced sympathy, amounts to subversion of law and violation of the provisions of law.

27. In the case of **A.P. Christians Medical Educational Society Etc. Vs. Government of Andhra Pradesh and another** 1986 SCC (2) 667, the Supreme Court has held "We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws".

28. In the case of **N.M. Nageshwaramma And Ors. vs State Of Andhra Pradesh And Anr.** 1986 (supp) SCC 166, the Supreme Court has held that "If by a fiat of the court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions".

29. The aforesaid two decisions have been considered and relied upon by the Supreme Court in the case of **Adarsh Shiksha Mahavidyalaya & Ors. Vs. Subhash Rahangdale & Ors.** 2012 (2) SCC 425, while rejecting the plea of students who though wrongly admitted, had perused their studies on account of interim orders of the Court, to declare their result.

30. The law in respect of granting interim orders in academic matters, has again been extensively considered by the Supreme Court in the case of **Dental Council of India Vs. Dr. Hedgewar Smruti Rugna Seva, Mandal, Hingoli & Ors.** 2017 (13) SCC 115, wherein the practice of granting interim orders and thereafter, to claim sympathetic considerations at the time of final hearing, has been deprecated and the respondent college in that case, was directed to deposit a sum of Rs.30 Lacs.

31. In view of the law laid down by the Supreme Court, any direction to permit the respondents who admittedly do not fulfill the eligibility criteria and had themselves obtained admission in accordance therewith in Class-II and have thereafter, taken a about-turn and challenged the same, to continue with Class-III and to treat their admission to be in Class-III, would amount to issuing a fiat directing the appellant school to disobey its own Rules and Regulations to which the appellant owes its existence and would be destructive of the Rule of law, as it would amount to issuing a direction by this Court to the appellants, to disobey their own laws.

32. In view of the explicit clear and longstanding law laid down by the Supreme Court, we are of the considered opinion that no relief could have been granted or claimed by respondent Nos. 1 & 2 on the basis of the interim arrangement

made by this Court and the impugned order cannot be upheld on this ground as well as the maxim "*actus curiae neminem gravabit*" i.e. an act of the Court shall prejudice none as permitting such a course would amount to causing serious prejudice to the appellants on account of the interim order of this Court.

33. As a result of the aforesaid discussion, the impugned order is set aside and the appeal filed by the appellants is allowed. The admission obtained by the respondents No.1 and 2 and granted by the appellants in Class-II, is hereby affirmed and confirmed. Consequently, the respondent No.1 and 2 shall be permitted to appear in the final examination of the Class-II and not the Class-III.

34. As stated above, the appeal filed by the appellant is allowed and the impugned order dated 13.11.2018 is set aside. There shall be no orders as to cost.

(R.S. Jha)
Judge

(Sanjay Dwivedi)
Judge