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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd December 2023

+ W.P.(C) 3041/2022 & CM APPL. 8955/2023

HARE KRISHNA PATHAK

..... Petitioner

Through: Mr. Aayush Agarwala with Mr. Siddham Nahata and Mr. Auritro Mukherjee, Advocates.

versus

KENDRIYA VIDYALAYA SANGATHAN & ANR.

..... Respondents

Through: Mr. N. K. Bhatnagar, Advocate for R1/KVS.

Mr. Utkarsh Singh, Advocate for Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) for R2/GNCTD.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks a direction to respondent No.1/Kendriya Vidyalaya Sangathan (Delhi Region) ('KVS') to grant to the petitioner's son – **Harsh Pathak** – admission in Kendriya Vidyalaya in Delhi under the EWS Category, by quashing communication dated 03.01.2022 issued by the KVS, declining admission to the petitioner's son in such school on the ground that only an EWS Certificate issued from Delhi is recognised for that purpose. The petitioner further seeks a direction to strike-



down the Guidelines for Admission in Kendriya Vidyalayas ('KVS Admission Guidelines'), insofar as they mandate that for seeking admission in a State, an EWS Certificate *only* from that State in a must.

2. Notice on this petition was issued *vide* order dated 18.02.2022; whereupon counter-affidavit dated 21.03.2022 has been filed by KVS; and rejoinder dated 04.05.2022 thereto has been filed by the petitioner.
3. Written submissions have also been filed on behalf of the petitioner and KVS.
4. After hearing brief arguments in the matter, *vide* order dated 12.07.2023, this court had directed respondent No. 1 to 'reserve' a seat for the petitioner's son in Class-III under the EWS Category for the Academic Sessions 2023-2024 in Kendriya Vidyalaya, Narela, Delhi ('KV Narela').

BRIEF FACTS

5. The petitioner is a native of Azamgarh in the State of Uttar Pradesh, where his family resides. The petitioner says that since he secured a job in Delhi, he moved his residence to Narela, Delhi. Intending that his wife and child should also move to Delhi, on 17.04.2021 the petitioner applied for admission of his son to KV, Narela; and in a draw of lots conducted by way of RTE Lottery by KVS, the petitioner's son was allotted a seat in Class-I for the Academic Session 2021-2022 in KV Narela.



6. Upon being successful in the draw of lots, in order to process his admission, the petitioner produced an Income & Asset Certificate dated 30.06.2021 bearing Certificate No. 698, which was required to be produced by an applicant under the EWS Category. The EWS certificate was issued by the Tehsildar, Azamgarh, Uttar Pradesh.
7. The certificate recorded that it was valid for the year 2021-2022, and certified that the petitioner's son "*..... belongs to Economically Weaker Sections, since the gross annual income* of his/her "family" is below Rs. 8 Lakh (Rupees Eight Lakh Only) for the financial year 2020-21.....*"; and also that he does not own or possess immovable assets of the description as detailed in the certificate.
8. Despite being allotted a seat, it transpired however, that subsequently when the petitioner approached the school for completing the formalities for his son's admission, the school declined to grant admission. After much follow-up, on 06.09.2021 the petitioner received an e-mail from KV Narela giving a cryptic response stating :

"..... that the EWS certificate provided by you is issue (sic) from UP Govt. rather it must be issued from Govt. of Delhi according to KVS Guidelines as per attachment with this mail....."
9. When the petitioner raised a grievance in this behalf, the petitioner received another communication dated 03.01.2022 from KVS reiterating the position, and drawing his attention to Part C, Paragraph 4, Note-1B of the KVS Admission Guidelines, to say that only an EWS Certificate issued from Delhi is recognised for admission to a Kendriya Vidyalaya situate in Delhi.



10. For completeness it must be noted, that as recorded in order dated 17.05.2023, on being queried the petitioner says that he did attempt to obtain an EWS Certificate from the Govt. of NCT of Delhi but

“ they were denied the EWS Certificate on the ground that all the documents of the ward of the petitioner, i.e., Adhaar Card, etc. are from the State of UP.”

11. The court has heard Mr. Aayush Agarwala, learned counsel appearing for the petitioner and Mr. N. K. Bhatnagar learned counsel appearing for respondents No. 1. Though respondent No.2/Govt. of NCT of Delhi was not the contesting respondent, as recorded in order dated 12.07.2023, the GNCTD does not controvert the petitioner's case.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Mr. Agarwala submits that the only ground on which the petitioner's son has been refused admission by KVS, despite a seat having been allotted to him, is that the EWS Certificate furnished by the petitioner was issued from the State of Uttar Pradesh and not from the State of Delhi.
13. Mr. Agarwala submits that as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009 ('RTE Act'), in particular section 2(a) read with section 2(e) thereof, the "appropriate government" for prescribing the criteria as to who would qualify to fall in the EWS Category for *a school established and controlled by the Central Government, is the Central Government; and not the concerned State Government* where the school happens to be located.



14. Learned counsel further argues that since KVs are fully financed by the Ministry of Education, Government of India, it is the Central Government that is to determine the eligibility criteria for applicants in the EWS Category; and KVS cannot insist that for admission to a KV in Delhi, the EWS Certificate must have been issued from Delhi. To support the submission, attention is drawn to the decision of the High Court of Andhra Pradesh in *Thota Sneha Kiran vs. Dr. NTR University of Health Sciences*¹, wherein a similar issue has been decided.
15. Mr. Agarwala further submits that the insistence by an institution run by the Central Government, to produce an EWS Certificate from a particular State Government also falls foul of the guarantee under Article 15 of the Constitution of India, which prohibits discrimination *inter-alia* on the basis of place of birth; and of Article 19(1)(e), which protects the right of a citizen to reside in any part of the country.
16. It is also argued that even the Delhi School Education (Free Seats for Students belonging to Economically Weaker Sections and Disadvantaged Groups) Order 2011, framed under the Delhi School Education Act, 1973 and the RTE Act, which provides the criteria for admission in the EWS Category in Delhi, does not mandate that an income certificate must necessarily be issued by a revenue official of the State of Delhi. It is further pointed-out that even the requirement

¹ 2021 SCC OnLine AP 3151



of 'domicile' within Delhi for last 03 years was struck-down by a Co-ordinate Bench of this court in *Himangi vs. GNCT of Delhi*².

17. Mr. Agarwala has also cited in support of his case, the observation of the Supreme Court in *Neil Aurelio Nunes & Ors. vs. Union of India & Ors.*³, wherein the Supreme Court has observed that it is advisable and desirable to have uniform criteria for determining EWS candidates, since having separate criteria for different regions will create complications. It is pointed-out that in the said case, the Supreme Court has observed that uniform criteria would also take-care of the large-scale migration that happens from rural areas to urban areas in a country such as India.
18. It is argued that the petitioner has already lost the entire Academic Session 2022-2023 and is on the verge of losing another academic year, if he is not allowed to attend school in the Academic Session 2023-2024 based on the EWS Certificate issued from outside of Delhi.
19. To support his contention that this court has the power to grant admission to a candidate even beyond the cut-off date for admissions in a given academic year, Mr. Agarwala places reliance on 02 decisions of the Supreme Court in *S. Krishna Sradha vs. State of Andhra Pradesh & Ors.*⁴ and *National Medical Commission vs. Mothukuru Sriyah Koumudi & Ors.*⁵

² 2013 (138) DRJ 330

³ (2022) 4 SCC 64

⁴ (2020) 17 SCC 465 at para 13.3

⁵ (2021) 14 SCC 805



SUBMISSIONS ON BEHALF OF KVS

20. On the other hand, opposing the grant of relief prayed-for in the petition, Mr. Bhatnagar argues that the petitioner has made dishonest attempts to avail the benefit of the EWS quota by producing documents which make the petitioner's son ineligible for such admission, since he does not fulfill some of the essential conditions.
21. Mr. Bhatnagar argues that the petitioner's son has been denied admission not only on the ground that the petitioner had produced an Income Certificate/EWS Certificate from the State of Uttar Pradesh but also because there were other 'glaring' irregularities in the application.
22. It is submitted that at the time of making the application on 17.04.2021, the petitioner did not have any supporting eligibility documents; and yet he claimed EWS quota by stating in the application that he possesses Income Certificate bearing No. 1136 issued on 07.02.2020. A copy of the application form is appended as Annexure R-3 to the counter-affidavit filed by respondent No.1.
23. Furthermore, it is pointed-out that after the results of the RTE Lottery were declared, the petitioner furnished Income Certificate bearing No.698 dated 30.06.2021 issued from Azamgarh, Uttar Pradesh. It is accordingly argued that no income certificate was available with the petitioner at the time of making the application; and Income Certificate dated 30.06.2021 has been obtained by the petitioner only *after* declaration of results of the RTE Lottery on 23.06.2021.



24. It is further submitted that even the birth certificate of the petitioner's son, produced for processing admission is dated 26.06.2021; and the child's Aadhaar Card enrolment is also dated 01.07.2021 *i.e.* after the declaration of the results of the lottery. Mr. Bhatnagar further argues that the rent agreement produced by the petitioner as proof of residence, has also been executed on 29.06.2021, claiming that the tenancy commenced *w.e.f.* 01.06.2021. Counsel points-out that it is therefore suspect as to how the petitioner filled the address reflected in the rent agreement executed on 29.06.2021, which tenancy is effective 01.06.2021, in the application form which was submitted in April 2021.
25. In this background, it is submitted that by reason of 'grave suspicion' entertained by KVS in relation to the documents furnished by the petitioner, they gave several opportunities to the petitioner, *inter alia vide* letter dated 23.09.2021, to satisfy the required criteria; but such letter never got delivered to the petitioner and was returned with a noting that the petitioner's address is not traceable.
26. Mr. Bhatnagar also submits that they have grave suspicion that the petitioner is also mis-declaring his income; inasmuch as on enquires made by them, it is their understanding that the petitioner works for a private employer in Sonipat, Haryana and draws a monthly remuneration of Rs.18,000/- per month; which is above than the prescribed EWS income limit of Rs. 1.00 lac per annum in Delhi.
27. It is accordingly urged on behalf of KVS that the petitioner cannot be granted admission on the basis of *suspect documents* that were issued *after* the declaration RTE Lottery results.



28. Mr. Bhatnagar further submits that upon conclusion of the RTE Lottery for the Academic Session 2021-2022 on 23.06.2021, 20 candidates were declared successful in the draw, while another 66 candidates were placed in the 'waiting-list'. It is submitted that the petitioner's son's name appeared at serial No. 12 in the confirmed list of candidates; however, since the petitioner could not produce the required documents in support of his application, as referred to above, and did not fulfil the essential eligibility conditions, his application was rejected and the seat was offered to the next selected candidate as per the 'waiting-list'.
29. In its counter-affidavit filed before this court, KVS have also raised certain other objections based on which they have refused admission to the petitioner's son. These objections have been dealt with, to the extent they are of relevance or consequence, for purposes of the present judgment.

DISCUSSION & CONCLUSIONS

30. Though, in the pleadings as well as in the course of arguments, learned counsel appearing for the KVS has pointed-out various discrepancies in the rent agreement, birth certificate, Aadhar card and the EWS Certificate submitted by the petitioner in support of the application for admission, there are three reasons why the court need not delve into any such discrepancies :

30.1. *Firstly*, in *Himangi* (supra)⁶, a Co-ordinate Bench of this court has ruled that the Government of NCT of Delhi cannot impose

⁶ 2012 (138) DRJ 330 at para 7



any *domicile criterion* as an eligibility condition for admission to a school in Delhi under the EWS Category. The court has so held based upon the definition of “*child belonging to weaker section*” under section 2(e) of the RTE Act, observing that under the said provision, the ‘appropriate government’ is only entitled to lay down the *threshold of annual income* below which a child would qualify as belonging to the *weaker section*. It has been held that the statute does not empower the appropriate government to “..... *further sub-classify the children belonging to weaker sections by excluding from its purview the children who are staying in Delhi for a particular time period*”; and that therefore the appropriate government lacks competence to restrict admission in the EWS Category to only those children who are domiciled in Delhi for a particular period. Ergo, for purposes of the present matter, the discrepancies in the rent agreement, birth certificate and Aadhaar Card, which create doubt as to whether the petitioner or his son are residents of Delhi or not, are irrelevant *to the child’s admission in a KVS school in Delhi in the EWS category*.

30.2. *Secondly*, the argument now sought to be raised that KVS now believes that the petitioner is declaring mis-declaring his income, which is about ₹18,000/- per month, and is therefore above the EWS income threshold of ₹1,00,00/- per annum, also requires no further consideration, since this belief on the part of



KVS is not substantiated in any way, and is merely its *ipse dixit*.

30.3. *Thirdly*, and most importantly, the only ground cited for rejecting the petitioner's application by KV, Narela in its e-mail dated 06.09.2021 is "..... *that the EWS certificate provided by you is issue (sic) from U.P. Govt. rather it must be issued by the Govt. of Delhi according to KVS guidelines*". Furthermore, the same ground has been cited by KVS in reply dated 03.01.2022 given in response to the Grievance dated 22.12.2021 registered on behalf of the petitioner, wherein KVS has cited Part C, Paragraph 4, Note-1B (Page 16) of the KVS Admission Guidelines, extracting thereunder the following :

"Child belonging to weaker section means a child belonging to such a parent or guardian (declared by a Court or a Statute) whose annual income is lower than the minimum limit specified by the appropriate government, by notification (Section 2(e)). The income limit regarding economically weaker sections will be applicable as notified by the State Govt. concerned."

This guideline has been interpreted by KVS to mean that for admission to any KV situate in Delhi, only an EWS Certificate issued from Delhi shall be recognised.

31. Reference in this behalf may be made to the following observations of the Supreme Court in *State of Punjab v. Banddeep Singh*⁷ :

"4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which

⁷ (2016) 1 SCC 724



*prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405 : (1978) 2 SCR 272] of which the following paragraph deserves extraction: (SCC p. 417, para 8)*

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16 : 1952 SCR 135] : (AIR p. 18, para 9)**

‘9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’

Orders are not like old wine becoming better as they grow older.”

(emphasis supplied)

32. Now therefore, dealing with the *only* ground cited by KVS for denial of admission, *viz.* that the EWS certificate furnished by the petitioner



was from the State of Uttar Pradesh, attention must be paid to the following statutory provisions :

The petitioner's claim for seeking admission in the EWS Category is under section 12(1)(c) of the RTE Act, which reads as under :

12. Extent of school's responsibility for free and compulsory education.—(1) For the purposes of this Act, a school,—

* * * * *

*(c) **specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class,** children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:*

* * * * *

(emphasis supplied)

The phrase “*children belonging to weaker section*” finds its meaning from the definition contained in section 2(e) of the RTE Act, which reads as under :

2. Definitions.—In this Act, unless the context otherwise requires,—

* * * * *

*(e) “child belonging to weaker section” means a child belonging to such parent or guardian whose annual income is lower than **the minimum limit specified by the appropriate Government,** by notification;*

* * * * *

(emphasis supplied)



Now which is the “*appropriate government*” is explained in the definition of that phrase in section 2(a) of the RTE Act, which reads as follows :

2. *Definitions.*—*In this Act, unless the context otherwise requires,—*

(a) “*appropriate Government*” means—

(i) in relation to a school **established, owned or controlled by the Central Government**, or the administrator of the Union territory, having no legislature, **the Central Government**;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

* * * * *

(emphasis supplied)

33. Accordingly, if a school is *established, owned or controlled by the Central Government*, the appropriate government in relation to such school, *is the Central Government*.
34. Upon a close reading of Part-C, Paragraph 4, Note-1(B) of the KVS Admission Guidelines titled “*Definition of Weaker Section*” cited by KVS in the rejection letter, it is clear that the part of the guideline which reads : “..... *The income limit regarding economically weaker sections will be applicable as notified by the State Govt. concerned*” is in the teeth of section 2(e) read with section 2(a) of the RTE Act, which says that the ‘appropriate government’ for prescribing the income limit for EWS Category for a KVS, which is fully financed by



the Government of India (Ministry of Education),⁸ is the Central Government and *not* the concerned State Government.

35. It is also important to note that KVs are not schools recognised under the Delhi School Education Act, 1973 or the rules made there under; and these schools are not bound to follow local Acts and Regulations of every State. A brief reference in this behalf can be made to the decision of a Co-ordinate Bench of this court in *Neeti Singh Malik vs. Union of India*⁹, wherein it has been held that subjecting KVS to local Acts and Regulations would lead to an asymmetrical managerial structure, staffing patterns and standards of education. The relevant portion of the decision is reproduced as follows :

“9. The Kendriya Vidyalaya Sangathan itself is a body constituted so as to set and implement standards in schools initially set up by the Ministry of Education, Government of India. They have been enforcing uniformity in standards across India. Subjecting them to local regulations would defeat the objective of the Sangathan. If the Petitioner's contentions are to be favored, the schools of the Sangathan would have to comply with local State Acts and Regulations, and also subject themselves to asymmetrical managerial structure, staffing patterns and standards of education. In these circumstances, having regard to the decision of the Supreme Court, the standards for promotion under Article 106 of the Sangathan's Code have to prevail. Since the petitioner could not score the minimum prescribed marks, she cannot claim a right to promotion to Class XII.”

(emphasis supplied)

36. As a sequitur to the above, Guideline B appearing under Note-1 of Paragraph 4 of Part-C, to the extent that it says that the income limit for deciding economically weaker sections will be as notified by the

⁸ para 2 of counter-affidavit dated 21.03.2022 filed by the KVS

⁹ MANU/DE/8939/2007



concerned State Government, is *ultra-vires* the provisions of section 2(e) read with section 2(a) of the RTE Act and also of the law as enunciated in *Neeti Singh Malik* (supra); and is accordingly struck down.

37. Though not cited by either of the parties, some independent research shows that *vide* Office Memorandum F.No. 20013/01/2018-BC-II dated 17.01.2019 issued by the Ministry of Social Justice and Empowerment, Government of India, the Central Government has, for purposes of “ *civil posts and services in the Government of India and admission in Educational Institutions*” (without qualifying the latter as institutions of higher learning or schools or both), prescribed Rs.8 lacs as the threshold of the gross annual family income, below which a person is identified as belonging to the EWS category for the benefit of EWS reservations. In the opinion of this court, Office Memorandum dated 17.01.2019 issued by the Central Government in the context of Article 15(6) and 16(6) of the Constitution¹⁰, will be applicable to *all educational institutions* whether they be schools or institutions of higher learning.
38. This Office Memorandum also factors-in certain assets that a family may own or possess, clarifying that a person whose family owns or possesses the following assets *shall be excluded* from being identified as belonging to the EWS irrespective of family income, the assets being :
- i. 05 acres or more of agricultural land;
 - ii. Residential flat of 1000 sq. ft. or more;

¹⁰ inserted *vide* Constitution (One Hundred and Third Amendment) Act, 2019



- iii. Residential plot of 100 sq. yards or more in notified municipalities;
 - iv. Residential plot of 200 sq. yards or more in areas of a notified municipality.
39. Importantly, in para 3, the aforesaid Office Memorandum states the following :
- “3. The income and assets of the families as mentioned in para 2 would be required to **be certified by an officer not below the rank of Tehsildar in the State/UTs.** The officer who issues the certificate would do the same **after carefully verifying all relevant documents following due process as prescribed by the respective State/UTs**”*
- (emphasis supplied)
40. The aforesaid Office Memorandum therefore clearly enunciates as to who is required to certify the economic status of a person, to say that the income and the assets of the family would be required to be certified by an officer “..... in the States/UTs”; and further that the officer issuing certificate would do so “..... after carefully verifying all the relevant documents following due process as prescribed by the respective State/UT.”
41. In view of the aforesaid, it would be impossible for a Tehsildar/other official in Delhi to verify the income and assets of a person, including whether or not a person owns or possesses immovable assets as referred to above, for a person whose native place is not Delhi to be able to issue the requisite certificate required for being placed in the EWS Category.
42. On a reasonable and rational interpretation, reference to “*an officer not below the rank of Tehsildar in the State/UTs*” in the aforesaid



Office Memorandum would mean an officer of the State where the person has his permanent residence. In the present case, that would be the State of Uttar Pradesh.

43. As a sequitur to the above discussion, in the opinion of this court, the following position emerges :

43.1. The ground on which KVS has rejected the petitioner's ward for admission, *viz* that the EWS certificate has been obtained from the State of Uttar Pradesh and *not* from the Government of NCT Delhi, is untenable;

43.2. Being an institution established, owned and/or controlled by the Central Government, insofar as KVs are concerned, the 'appropriate government' for notifying the annual income threshold to decide whether a child belongs to the EWS Category is the Central Government¹¹;

43.3. The Central Government has notified the gross annual family income threshold for purposes of determining EWS Category as being below Rs. 8 lacs; and has further notified that a certificate for that purpose is to be issued by an officer not below the rank of Tehsildar *in the State*, after carefully verifying all relevant documents, following due process as prescribed by the respective State Governments. This implies that for a candidate applying for admission to a KV school anywhere in the country under the EWS Category, they need not furnish a certificate issued from the State Government *where the school is situate* but such certificate is required to be furnished by an officer of

¹¹ Section 2(e) read with section 2(a) of the RTE Act.



the specified rank *in the State where such verification is possible.*

44. In the above view of the matter, the present petition is allowed.
45. Considering that the petitioner's ward was denied admission despite the initial allotment made for Academic Session 2021–2022 in Class-I, it is deemed appropriate to mould the relief sought in the present petition, directing KVS to grant regular admission to the petitioner's ward – **Harsh Pathak** – in **Kendriya Vidyalaya, Narela in Class-I** for the **Academic Session 2023-2024** *forthwith.*
46. The petition stands disposed-of in the above terms.
47. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 22, 2023

ds/uj