

Neutral Citation No. - 2024:AHC:157585-DB

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 445 of 2024

Appellant :- Km Sakshi

Respondent :- Govt Of India And 3 Others

Counsel for Appellant :- Ashutosh Diljun

Counsel for Respondent :- A.S.G.I., Rajesh Tripathi

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. Heard learned counsel for the parties.
2. This appeal is directed against the order dated 12.03.2024 passed by learned Single Judge in Writ-C No. 36343 of 2022, whereby the writ petition, filed by the appellant, has been dismissed.
3. The writ petition was filed on 23.11.2022 seeking direction to the respondents no. 2 to 4 to admit the petitioner in Class-VI, academic session 2022-23 to Jawahar Navodaya Vidyalaya, Jagdishpur Gaura, Sant Kabir Nagar and consider the candidature of the petitioner for admission in Class-VI of academic session 2022-23 to the said School.
4. It was, *inter alia*, indicated that petitioner applied for admission in Class-VI in the School claiming her date of birth to be 25.01.2011, which was supported by date of birth certificate, aadhar card and vaccination certificate. The petitioner was selected in the merit list and placed at sl.no. 39 and was admitted to the institution. However, the Principal of the institution, suspecting the age of the petitioner, sent the petitioner for medical examination. Chief Medical officer, submitted a report dated 10.08.2022 giving his opinion that the age of the petitioner was above 15 years, i.e., two years more than the maximum age limit prescribed for admission to Navodaya Vidyalaya. On the basis of the aforesaid opinion of the Chief Medical Officer, the petitioner was denied admission to the School leading to filing of the petition.
5. Submissions have been made that in terms of provisions of Section 14 of the Right of Children to Free and Compulsory Education

Act, 2009 (hereinafter referred to as 'the Act') and Rule 13 of Right of Children to Free and Compulsory Education. Rules, 2010, the petitioner was entitled to admission on the basis of age recorded in her date of birth certificate and medical certificate was not relevant. Submissions were made that there was no reason to suspect the entries in the documents produced to be fictitious or erroneous. Submissions were made that even though the academic session for Class-VI is over and the academic session 2023-24 of Class-VII is almost over, the cause of action for the petitioner still survives and the petitioner is entitled to be admitted to Class-VIII or in the alternative may be permitted to appear in Class-VII examinations.

6. The submissions made were opposed on the ground that in view of the brochure of the School, respondents were empowered to get the age of the petitioner examined by a medical board and the declaration given by the medical board is final and, therefore, the petition deserves dismissal.

7. Learned Single Judge, relying on the judgment in Writ-C No. 36988 of 2022 decided on 05.12.2022, dismissed the writ petition.

8. In Writ-C No. 36988 of 2022, learned Single Judge had dismissed the writ petition in relation to a certificate issued by one private hospital, which did not bear signature of any doctor or any responsible officer of the hospital and also did not indicate the date on which the certificate was issued. Based on the said facts, the Court came to the conclusion that no mandamus, as prayed, can be issued.

9. During the pendency of the present appeal, on 02.08.2024, it was observed by the Court that appellant had relied on a birth certificate issued by the Gram Panchayat, Hanisar Bazar, Tehsil Dhanghata, District Sant Kabir Nagar and that the authenticity of the said document has not been examined and based on appearance of the appellant, she was subjected to medical examination wherein she was found to be overage and, therefore, the Standing Counsel was directed to get a

report pertaining to the authenticity of the said birth certificate from the concerned Gram Panchayat.

10. Pursuant to the aforesaid direction, the Government Counsel produced the report which, *inter alia*, indicated that birth certificate produced by the petitioner indicating her date of birth as 25.01.2011 was genuine and documents have been produced, including the family register, indicating the same date of birth.

11. On the said date, it was also noticed that the petitioner had applied for admission in Class-VI for academic session 2022-23 and already session 2024-25 is in progress, time was granted to counsel for petitioner to complete instructions whether the petitioner has studied Class-VI and VII during the sessions 2022-23 and 2023-24 i.e. by taking admission at some other school.

12. Learned counsel for the appellant, on instructions, informed that the appellant has not studied in any school after her admission has been cancelled by the respondents.

13. Learned counsel for the appellant made submissions that as now it is established that the birth certificate produced by the appellant is genuine and her date of birth, as indicated by her, was correct, the entire action of the respondents was wholly unjustified and, therefore, the respondents be directed to accord admission to the appellant. Submissions have been made that in terms of provisions of Section of the 4 of the Act, where a child has not been admitted in any school or though admitted could not complete his or her elementary education, she shall be admitted in a class appropriate to her age and in terms of the said provision, as the petitioner has wrongly been denied admission by the respondents, it is now incumbent on them to grant admission to the petitioner to her age appropriate class, i.e., Class-VIII irrespective of the fact that she has not studied in Classes-VI and VII, as it is claimed that she was studying at home. Reliance has been placed on judgment of Bombay High Court in **Pritam Vijay Anuse and others Vs.**

The Navodaya Vidyalaya Samiti and others : Writ Petition No. 10553 of 2022, decided on 17.01.2023.

14. Learned counsel for the respondents vehemently opposed the submissions. It was submitted that the denial of the admission is based on the brochure and once the medical board has found the appellant to be overage, the denial of admission was justified. Further submissions have been made that once the petitioner has not studied Classes-VI and VII and is now grossly overage qua Class-VI, she is not entitled to be granted any relief and in fact the petition has been rendered infructuous.

15. We have considered the submissions made by counsel for the parties and have perused the material available on record.

16. The provisions of Section 14 of the Act, which deal with proof of age for admission, clearly provides that for the purpose of admission to elementary education, the age of child shall be determined on the basis of birth certificate issued in accordance with the provision of Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed.

17. In the present case, admittedly, a birth certificate issued by the Gram Panchayat along with aadhar card and vaccination certificate was produced based on which the admission was granted to the petitioner, however, based on visual appearance, she was subjected to medical examination by the medical board constituted by Chief Medical Officer, wherein the age of the petitioner was determined as about 15 years.

18. The respondents have relied on Clause 4.2 of the brochure for the purpose of subjecting the petitioner to medical examination, which reads as under:

“4.2 प्रवेश चाहने वाले अभ्यर्थी का जन्म 1.5.2009 से पहले तथा 30.4.2013 (दोनों तिथियाँ सम्मिलित) के बाद का नहीं होना चाहिए। यह अनुसूचित जाति, अनुसूचित जनजाति एवं अन्य पिछड़ा वर्ग समेत सभी अभ्यर्थियों पर

समान रूप से लागू होगा। अभ्यर्थी के प्रमाण पत्र में दर्ज आयु एवं अधिक उम्र के सन्देह होने पर उन्हें आयु की प्रमाणिकता हेतु मेडिकल बोर्ड भेजा जा सकता है। मेडिकल बोर्ड का निर्णय अन्तिम होगा।”

19. A perusal of the above would reveal that on doubt about the age indicated in the certificate, the student can be sent to medical board for examination and decision of the medical board would be final. The said provision may be relevant and applicable in case the proof is other than what is provided under Section 14 of the Act wherein, as noticed hereinbefore, it has been specifically provided that the age of the child shall be determined on the basis of birth certificate issued in accordance with the Act of 1886. The School at best could get the authenticity of the certificate checked.

20. For the purpose of getting the said aspect authenticated, the birth certificate produced by the petitioner was got examined by this Court through independent agency of the Government counsel who has produced the report, as noticed hereinbefore, authenticating the certificate and has produced further material like family register supporting the date of birth of the petitioner.

21. Besides the above, the opinion of the medical board is also not accurate and is always given as an estimation only.

22. In view thereof, apparently, the action of the respondent in subjecting the petitioner to medical examination was wholly unjustified and in fact high handed and, therefore, the same cannot be sustained.

23. The learned Single Judge, without dealing with any of the aspects raised and based on a judgment, wherein the certificate produced did not bear signatures of any doctor or date, had rejected the writ petition whereas the certificate, which was subject matter of the present writ petition, was not having any such deficiencies. The petitioner had approached the Court in time, i.e., within one month of passing of the order by the respondents on 20.10.2022 and, therefore, she cannot be made to suffer on account of delay in decision of the writ petition and the present special appeal.

24. In **Pritam Vijay Anuse (supra)**, wherein Class-VI admission was cancelled, a Division Bench of Bombay High Court, with reference to provision of the Act, had directed grant of admission to Class-VII.

25. In view of the above discussion, the appeal filed by the petitioner is allowed. The judgment impugned dated 12.03.2024 passed by learned Single Judge is set aside. The writ petition filed by the petitioner is allowed. The action of the respondents in denying admission to the petitioner, treating her overage, is quashed and set aside. Respondents are directed to accord admission to the petitioner in a class appropriate to her age in terms of Section 4 of the Act.

26. Needful shall be done within a period of two weeks from the date of this order.

Order Date :- 24.9.2024

P.Sri.

(Vikas Budhwar, J) (Arun Bhansali, CJ)