

Aiswariya Vs Kendriya Vidyalaya Sangathan

Court: High Court Of Kerala

Date of Decision: Oct. 24, 2014

Acts Referred: Constitution of India, 1950 " Article 21A

Right of Children to Free and Compulsory Education Act, 2009 " Section 12, 12(1)(c), 3, 3(1)

Citation: (2015) 1 KHC 407 : (2015) 1 KLJ 548 : (2015) 1 KLT 301

Hon'ble Judges: T.B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench: Division Bench

Advocate: A.G. Basil, Advocates for the Appellant; N. Nagaresh, Assistant Solicitor General of India and K.I. Mayankutty Mather, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.

We have heard the learned counsel for the appellant. Under challenge is the judgment of the learned single Judge

refusing to issue a direction in writ jurisdiction to admit the petitioner in any one of the schools under the Kendriya Vidyalaya Sangathan. The

petitioner aged around seven years applied for admission to Kendriya Vidyalaya, Cochin Port Trust. That was not acceded to.

2. Kendriya Vidyalaya Sangathan maintains a particular modality of admission in, consonance with the object sought to be achieved by the

constitution of Kendriya Vidyalaya Sangathan and establishment of schools by it. Top priority is granted to the children of Central Government and

Public Sector Undertakings employees who are likely to be transferred within a particular time frame. The remaining seats will come down

ultimately even to those children whose parents are not even Government servants.

3. The insistence of the petitioner is that in terms of Art. 21A of the Constitution of India and S. 3 of the Right of Children to Free and Compulsory

Education Act, 2009, hereinafter referred to as the "Act", the petitioner ought not to be denied admission in any school of her choice or the

parents' choice. Adv. Basil Attipetty, dilating on the scope of the right to education incorporated as a particular fundamental right as per Art. 21A

of the Constitution of India and S. 3 of the Act, argued that if establishments like Kendriya Vidyalaya Sangathan are given freedom to classify the

children on the basis that it now does, that would amount to permitting a lottery to operate in defeasance of the constitutional provision and the

statute. Reference is made by the learned counsel to the decision of the Delhi High Court in Jatin Singh Vs. Kendriya Vidyalaya Sangathan, .

4. At the outset, we may note that the question decided by the Delhi High Court in Jatin Singh (supra) was as to whether a rule of communal

reservation in favour of Scheduled Castes and Scheduled Tribes could be made from among those seats reserved for children belonging to

economically weaker sections and disadvantaged groups in terms of S. 12(1)(c) of the Act. The answer given by the Delhi High Court to that issue

has no bearing on the point arising for decision in this case.

5. Section 3(1) of the Act provides that every child of the age group of 6 to 14 years shall have a right to free and compulsory education in a

neighbourhood school till completion of elementary school. The object sought to be achieved by that provision is to effectuate Art. 21A of the

Constitution of India, thereby ensuring that a school is available in the neighbourhood and free and compulsory education in a neighbourhood

school is available to every child of the age group to which that statute applies. This provision, in no manner, gives a right to the child or parent to

pick and choose a particular school which falls under S. 12 of the Act except to the extent provisions are made in that provision. The school's

responsibility for free and compulsory education is governed by S. 12 of the Act. S. 12(1)(c) provides the extent to which provisions have to be

made in favour of the weaker sections, disadvantaged groups etc. The right to free and compulsory education in a neighbourhood school does not

include the right to insist anything beyond what is provided in S. 12 of the Act. In the aforesaid view of the matter, we do not find any illegality or

error in the judgment of the learned single Judge. This Writ Appeal, therefore, fails.

In the result, this Writ Appeal is dismissed in limine.