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M. Meenakshi and Another Vs Principal, Kendriya Vidyalaya, NTPC (R) and Others

SP No. 7758 of 2001 and 7589 of 2002

Court: Andhra Pradesh High Court

Date of Decision: Aug. 14, 2003

Acts Referred:
Constitution of India, 1950 â€" Article 14, 15(1), 21

Citation: (2004) 1 ALD 132

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: A. Rajasekhar Reddy, in WP Nos. 7758, 17167, 19065, 19787, 20336, 21919, 7589 of 2001 and 24699 of 2002, A. Ravi Babu, in WP Nos. 24453 and 24697 of 2001, P. Naveen Rao, in WP No. 25866 of 2001, B. Visayasen Reddy, in WP No. 8599 of 2001, S. Pradeep Kumar, in WP No. 13285 of 2001, P. Rajender Reddy, in WP No. 22456 of 2002 and A. Sekhar Reddy, in WP No. 17006 of 2001, for the Appellant; T. Suryakaram Reddy, SC for Central Government, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.
In this batch of writ petitions, an interesting question as to the power and jurisdiction of Kendriya Vidyalaya sponsored by

National Thermal Power Corporation Ltd., (NTPC), Jyothi Nagar, Ramagundam, to collect different tuition fee from the children of persons who

are not employees of NTPC, but employees of other Central Government Organisations and are not posted at NTPC, would arise for

consideration in the background facts noticed hereunder.

Background facts

2. In 1959, Second Central Pay Commission recommended to establish higher secondary schools with a common syllabus and medium of

instruction for the benefit of the children of the Central Government Employees who are liable to frequent transfers as well as other floating

population. This was done having regard to the difficulty of Central Government Employees in having uniform education for their children owing to

differences in syllabus and medium of instruction in different linguistic areas and varying standards of education. Though such schools existed by

that time, the Second Pay Commission considered their number and distribution to be inadequate and the cost of education high. Therefore, the

Commission recommended, inter alia, as a measure of educational assistance, provision of more residential and day schools with modest fees and

affiliated to an All-India body. The Central Government, pursuant thereto, formulated a scheme for implementing the recommendations of the Pay

Revision Commission. Proposal of the Ministry of Education mainly consisted of steps to be taken for establishing schools with common medium

of instruction, immediate steps for establishment by the Central Government of about 100 schools and a general policy for encouraging the

establishment by the Central Government and private authorities of schools with common syllabus and medium of instruction. The Union Cabinet

approved the scheme on 20-11-1962. The objects of the scheme as approved by the Central Cabinet are as under:

(i) The schools are established at places having sizeable concentration of Central Government employees including Defence personnel.

(ii) The schools cater to the needs of Defence personnel, Central Government Employees, All India Service officers and other floating population;

(iii) The medium of instruction is Hindi and English and a common syllabus and text books are followed by all the schools.

(iv) Students are prepared for the All India Secondary School (Class X) and All India Senior School Certificate (Class XII) Examinations

conducted by the Central Board of Secondary Education, New Delhi.

(v) The schools are intended to be partly residential in character, having some good features of a public school without raising the cost of

education.

(vi) The quality of teaching is kept reasonably high by an appropriate teacher-pupil ratio and provision of a suitable proportion of teachers with

high qualifications.

(vii) The schools are expected to have their own building, and for this, existing suitable buildings, wherever available, are secured, and new

buildings, where essential, are constructed on austerity standards.

(viii) The management and property of the schools vests in an autonomous Central Schools Organisation set up for running and administering the

Scheme.

Education up to Class VIII is free in the Central Schools. In Classes, IX, X, XI and XII, tuition fee at varying rates based on the income of the

parent is charged from the students.

Three important salient features of the Scheme as can be culled out from the objects of the scheme are--

(i) Schools are to cater to the needs of Defence personnel, Central Government Employees, All India Services Staff and other floating population;

(ii) Schools are intended to have good features of public school without raising the cost of education; and

(iii) Education of all schools up to Class VIII is free in Central Schools and in Classes IX to XII tuition fees at varying rates based on the income of

the parents has to be charged from the students.

The Scheme also envisaged to entrust the management of all the Central Schools to autonomous Central Schools Organisation set up for running

and administering the Scheme. Accordingly, the management and property of the Central Schools were transferred to autonomous body which will

receive grant from the Government of India. A central organization known as Central Schools Organisation was registered as autonomous body

under the Societies Registration Act, 1860. On 5-12-1965, the said organization was re-named as Kendriya Vidyalaya Sangathan (KVS). As on

30-4-1997, KVS established 871 schools in almost all the States and some of the Union Territories. In the State of Andhra Pradesh, there are 45

schools. KVS also established a few schools outside India e.g., at Kathmandu in Nepal and at Moscow in Russia.

3. KVS administers and controls distinctly four types of schools. They are Kendriya Vidyalayas in civil sector which are set up and which are run

by KVS under the aegis of Ministry of Human Resources Development; Kendriya Vidyalayas in defence sector which are located in different

Army cantonments which are meant for the wards of Army people; third category of schools are those Kendriya Vidyalayas which are institutions

of higher learning which are not concerned with the education up to Senior Secondary level; fourth category of schools are Kendriya Vidyalayas in

the public sector. The last category of schools known as project sponsored Kendriya Vidyalayas are established in/at different project sites of

public sector undertakings as sponsored by the concerned public sector undertaking. The sponsorship requires making available land, bearing cost

of construction of school building and bearing the recurring and non-recurring expenditure in running and maintaining the schools from time to time.

So to say, the expenditure and finance of project sponsored Kendriya Vidyalayas are to be entirely borne by public sector undertaking and KVS

will only provide necessary human resources and also controls day-to-day administration, management and organization of Kendriya Vidyalayas.

4. NTPC is a fully owned Government of India Enterprise. It was established to set up thermal power stations all over India to give a phillip for

rapid industrialization. It also undertook to set up four super thermal power projects; one such project at Ramagundam in Karimnagar District of

Andhra Pradesh some time in early eighties. At that juncture, Board of Directors of NTPC passed a resolution for establishment of Central

Schools at Korba, Ramagundam, Farakka, Badarpur and decided to provide land, other facilities and entire recurring and non-recurring

expenditure including accommodation and future development charges for proposed Kendriya Vidyalayas. Whenever a public sector undertaking

desires to establish a sponsored Kendriya Vidyalaya, they have to undertake to abide certain norms and conditions of KVS, which are as under.

1. That the Public Sector Undertaking shall bear all the recurring and non-recurring expenditure on the proposed Kendriya Vidyalaya.

2. That the Undertaking shall provide free of cost suitable land and building for housing the Vidyalaya.

3. That the Undertaking shall provide free of cost land and building for the future development of the Vidyalaya.

4. That the Undertaking shall provide all equipment free of cost to the Vidyalaya.

5. That the Undertaking shall provide suitable residential accommodation to the teaching and non-teaching staff on the same basis and at the same

rates as prescribed by it for its own employees.

6. That the proposed Kendriya Vidyalaya shall be administered and governed in accordance with the rules of the Sangathan.

7. That the Sangathan shall not admit any liability towards the staff and students of any existing school running inside the campus of the

undertakings.

8. The children of the employees of the Undertaking will get first priority in matters of admission. However, the children belonging to other eligible

categories will be considered against seats available after accommodating the children of the employees of the Undertaking.

5. After resolution was passed by the Board of Directors, NTPC addressed a letter dated 26-4-1979 as well as 11-1-1980 requesting to grant

approval for opening Kendriya Vidyalaya at the project site of Ramagundam Super Thermal Power Station. It appears, the Assistant

Commissioner for KVS, Bombay visited the project office of NTPC, Jyothi Nagar, Ramagundam and held discussions with the officials of the

latter. Thereafter, by a letter dated 24-2-1980, NTPC impressed upon KVS that if the school is not set up, there is likelihood of many executives

not joining the project and implementation of the project would be delayed. It was also brought to the notice of KVS some other aspects like

health facilities, transport, staff quarters, furniture and number of students to be admitted initially from Class I to VIII in the academic year 1981-

82. NTPC requested for approval to set up Kendriya Vidyalaya immediately. After having considered the report of the Assistant Commissioner,

KVS, Bombay and also survey report sent by NTPC dated 24-2-1980, KVS granted approval to NTPC to open a school at Jyothi Nagar,

Ramagundam.

6. Kendriya Vidyalaya, NTPC, Jyothi Nagar, respondent in all the writ petitions, issues annual student calendar (hereafter called "prospectus")

which contains general information, admission procedure, promotion rules, fee structure etc. As per the general information, Kendriya Vidyalayas

established by public sector undertakings to facilitate education of children of their employees and Vidyalaya is affiliated to Central Board of

Secondary Education (CBSE) and prepare students for All India Secondary School (Class X) examination and All India Senior School Certificate

(Class XII) examination of CBSE. The admission procedure followed by the first respondent also gives priorities in admission asunder.

Priorities in admission:

The following priorities shall be followed in granting admission;

(a) In Kendriya Vidyalayas under Civil/ Defence Sector:

(i) Children of transferable Central Government Employees including ex-servicemen.

(ii) Children of non-transferable Central Government Employees including ex-servicemen.

(iii) Children of transferable and non-transferable employees of Autonomous Bodies/Public Sector Undertakings/Institutions of Higher Learning of

the Government of India.

(iv) Children of transferable State Government Employees.

(v) Children of non-transferable employees of State Government.

(vi) Children of transferable and non-transferable employees of Autonomous Bodies/Public Sector Undertakings/Institutions of Higher Learning of

State Government.

(vii) Children from any other category.

(b) Kendriya Vidyalayas under Public Sector Undertakings/Institutions of Higher Learning:

(i) Children of employees of the Undertaking/Institute of Higher

Learning which finances the Kendriya Vidyalaya fully.

(ii) The priorities given for Kendriya Vidyalayas under Civil/Defence Sector will follow in the same sequence thereafter.

7. The first respondent in its prospectus also notified revised fee structure. As per this, no tuition fee is charged from the students of Class I to VIII

and girl students of all classes are exempted from payment of tuition fee. Students belonging to Scheduled Castes and Scheduled Tribes are also

given fee waiver/exemption/ concession. The revised fee structure followed by the first respondent as per the letter of KVS bearing No. F.6-1/

1999-2000/KVS (Budget), dated 6-12-1999 which came into effect from 1-4-2000 is as under.

Sl. Nature of Fee/Fund Fees Per

No. Month

1. Admission Fee 25.00

2. Tuition Fee for Boys

(a) Class I-VIII Nill

(b) Class IX &X 40.00

(c) Class XI & XII 50.00

3. Tuition Fee for Girls (Class I-XII) Nill

4. Vidyalaya Vikas Nidhi

(a) IX and Non-Science students of Class IX & XII 100.00

(b) Science students of Class XI & XII 125.00

6. Computer Fund (from classes VI onwards except in schools covered by 20.00

Computer Class Project

6. Computer Fund (for those who offer Informatics Practices at + 2 stage) 40.00

7. Cost of prospectus/Admission Form 10.00

2. No tuition fee is charged from students of Classes I to VIII. Girl students of all classes are also exempted from the payment of tuition fees.

Existing waiver/exemption concession in fee as per existing orders of the K.V.S. in favour of (i) students up to Class VIII and (ii) girl/ SC/ST

students, shall continue.

8. The petitioners in W.P. Nos. 7758, 17167, 19065, 20336 of 2001 and 24699 of 2002 are children of security staff belonging to Central

Industrial Security Force (CISF) posted in Singareni Collieries Co., Ltd., Ramagundam. In all these, petitioners are girl students studying in

Kendriya Vidyalaya, Jyothi Nagar, sponsored by NTPC in different Classes I to XII. The petitioners in W.P.Nos. 19787 of 2001, 7589 and

17006 of 2002 are children of ex-servicemen and posted at Singareni Collieries Co., Ltd. In other writ petitions, the petitioners are wards of

private employees not connected with NTPC, CISF or Singareni Collieries. They have been paying the tuition fee and other fee as indicated

hereinabove.

Cause of Action for these cases

9. The Principal of Kendriya Vidyalaya, NTPC sent a notice to parents of the petitioners informing that Vidyalaya Management Committee

(VMC) and executive committee decided different fee structure in NTPC project sector Kendriya Vidyalayas vide their letter dated 12-11-1999

and that different fee structure adopted by the Kendriya Vidyalaya will come into force with effect from 4-4-2001 i.e., from the academic year

2001-02. The different fee structure envisages tuition fee and other fee at nominal or reduced rates in case of children of employees of NTPC,

CISF at NTPC, Kendriya Vidyalaya Staff and children of SC/ST employees, whereas a fee structure at higher rates for the children of non-NTPC

personnel, other Central and State Government Employees, CISF personnel posted elsewhere and for the children of private employees. It is

necessary to extract the different fee structure as under.

NTPC, CISF NTPC, KV AND SC/ST EMPLOYEES CHILDREN

Fee per month

Class V.V.Nidhi Tuition fees Comp. Fee SCI. Fee

ItoV Rs. 100/- Nil Nil Nil

VI to VIII Rs.100/- Mil Rs.20/- Nil

IX &X Rs.100/- Rs.40/- Rs.20/- Nil

XI & XII Rs.100/- Rs.50/- Rs.20/- Rs.25/-

NON-NTPC, CISF AND CENTRAL/STATE GOVERNMENT/OTHER EMPLOYEES

WARDS (Bovs and Girls)

Class V.V. Nidhi Tuition Fees Comp. Fee SCI. Fee

I to V Rs.100/- Rs.200/- Nil Nil

VI to VIII Rs.100/- Rs.250/- Rs.20/- Nil

IX & X Rs.100/- Rs.300/- Rs.20/- Nil

XI & XII Rs.100/- Rs.350/- Rs.20/- Rs.25/-

This will be with effect from 4-4-2001 from

the next academic year i.e., 2001-2002.

10. All these writ petitions are filed assailing the notice dated 1-2-2001 issued by the first respondent school mainly on the ground that the same is

unconstitutional and violates Article 14 of the Constitution of India. It is also challenged on the ground that under the Constitution, free and

compulsory education up to the age of 14 years is a fundamental right and the same cannot be allowed to be infringed by adopting a different fee

structure for the children of NTPC employees and for the children of non-NTPC employees by collecting tuition fee even from the children from

Classes I to VIII (up to the age of 14 years). It is also challenged on the ground that all the Central Government Employees and all the girl students

belong to one class and there cannot be any discrimination and that equals cannot be treated unequal.

11. The third respondent has filed a counter-affidavit opposing the writ petition. A reference is made to the letter dated 12-11-1999 issued by the

KVS, New Delhi communicating their decision to permit the sponsoring authorities of project sector Kendriya Vidyalayas to adopt a fee structure

and charge such scale of fee from such class of students. It is farther stated that by reason of the decision of the KVS, sponsoring agencies are

competent to fix fee structure keeping in view the financial requirements. It is also averred that NTPC is not under obligation to provide education

facilities at subsidised rates to the children of all CISF employees. It is further stated that recurring and nonrecurring expenditure of the school is

being met by NTPC as the school is a sponsored school and that NTPC is entitled to fix different fee structure to the children of non-NTPC

employees.

Rival submissions

12. Learned Counsel for the petitioners, Sri A. Rajasekhara Reddy, who appeared in majority of the cases raised three contentions. He submits

that education for girls from Class I to XII is free as per the policy adopted by the Government of India and, therefore, all the girl students are one

class and there cannot be any discrimination among them. According to the learned Counsel, providing free education to girl students who are

children of NTPC, CISF (NTPC) and denying the same benefit to the girl students who are children of non-NTPC employees is vilolative of

Articles 14 and 21 of the Constitution of India. Secondly, he submits that after the decisions of the Constitution Bench of the Supreme Court in

Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , and T.M.A. Pai Foundation and Others Vs. State of Karnataka

and Others, , right to free education up to the age of 14 years is a fundamental right of every child. The same cannot be denied to a child based on

the employment status of the parents. Thirdly, learned Counsel would submit that as per the Kendriya Vidyalaya Scheme and as per the

prospectus of Kendriya Vidyalaya, the admission in school is open to the children of all Central Government employees and the petitioners being

the children of Central Government employees were admitted following the priority prescribed in the prospectus and, therefore, there cannot be

any discrimination among the employees of the Central Government.

13. Learned Counsel for respondents 2 to 4, Sri B. Narasimha Sarma, learned Standing Counsel for Kendriya Vidyalaya, NTPC, Sri B. Srinivas,

opposing the writ petition, submit that as NTPC is sponsoring the school, it is open to the school to adopt a different fee structure in accordance

with the policy decision taken by the KVS. A sponsored school should be made viable and there is no illegality if a part of recurring and non-

recurring expenditure is realised from the students, by way of fees, who are not children of NTPC employees. They would like this Court to take

into consideration the fact that Kendriya Vidyalaya, NTPC is essentially meant for the children of NTPC employees and the petitioners have no

right to seek admission. Having taken admission, they are bound by the fee structure prescribed by the VMC. They also relied on an un-reported

judgment of the High Court of Kerala in O.P.No. 17994 of 2000, dated 27-7-2000 and the decision of a Division Bench of the Delhi High Court

in N.R. Choudhary Vs. Ministry of Human Resource Development and Others, in support of the contention that the policy decision of KVS as

contained in the communication dated 12-11-1999 permitting different fee structure in project sponsored Kendriya Vidyalayas has been upheld.

Points for consideration

14. The background facts and the rival submissions require the consideration of--

(i) the right of a child up to the age of 14 years to have free education?

(ii) the right of a girl student to have free education from Class I to XII?

(iii) the question of discrimination among Central Government Employees?

Right of a child to free education

15. There cannot be any doubt that Constitution affords special protection to a child. Article 39 prohibits exploitation of children and mandates the

State for providing opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children cannot be

abused and cannot be forced by economic necessity to enter avocations unsuited to their age or strength. It is the constitutional aspiration. How

this can be achieved? Directive Principles of State Policy show a way by providing in Article 45 that the State shall endeavour to provide for free

and compulsory education for all children until they complete the age of 14 years. Article 45 reads as under:

45. Provision for free and compulsory education for children :--The State shall endeavour to provide, within a period of ten years from the

commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years,

16. Article 14 of the Constitution lays down that ""the State shall not deny to any person equality before the law or the equal protection of the laws

within the territory of India."" Reading Articles 14 and 45 together, it is possible to conclude that the State shall not deny to any child free and

compulsory education whether a child is a ward of public sector employee or private sector employee or just a citizen. The rights of a child do not

depend on the social, economic and political status of the parent nor such rights depend on the employment status of the parent. Race, religion,

caste, place of birth or any reason cannot discriminate the children insofar as providing free and compulsory education up to the age of 14 years.

The right to free education up to 14 years is an inviolable right of every child to be enjoyed by the child and cannot be denied by the adult society

for economic conditions.

17. The Convention on the Rights of the Child ("CRC" for brevity) was adopted by United Nations General Assembly on 20-11-1989 and

acceded by India on 11-12-1992. Article 2 of the CRC is relevant and reads as under;

Article 2:(i) States shall respect and ensure the rights set forth in the present CRC to reach each child within their jurisdiction without discrimination

of any kind, irrespective of race, colour, sex, language, religion, political or other opinion, ethnic or social origin, property, disability, birth or other

status.

(ii) State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the

basis of the status, activities, expressed opinions, or beliefs of the child''s parents, legal guardians, or family members,

18. In Unni Krishnan J.P. v. State of A.P. (supra), a Constitution Bench of the Supreme Court inter alia considered the question whether

Constitution of India guarantees fundamental right to education to the children. After referring to the landmark decisions of the Supreme Court in

Kharak Singh Vs. The State of U.P. and Others, , Rustom Cavasjee Cooper Vs. Union of India (UOI), , Mrs. Maneka Gandhi Vs. Union of India

(UOI) and Another, , D.S. Nakara and Others Vs. Union of India (UOI), , Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, , Olga

Tellis and Others Vs. Bombay Municipal Corporation and Others, , and A.R. Antulay v. R.S. Nayak, AIR 1992 SCW 1872 the Supreme Court

observed that fundamental rights are means to achieve the goal set forth in Part IV (Directive Principles of State Policy) and that fundamental rights

must be construed in the light of the Directive Principles. After referring to Articles 14, 21 and 45, the Court came to the conclusion that the right

to education is implicit in the right to life and personal liberty guaranteed by Article 21. Therefore, the right to education must be construed in the

light of various Directive Principles of State Policy in Articles 41, 45 and 46. The Supreme Court laid down as under:

..... A true democracy is one where education is universal, where people understand what is good for them and the nation and know how

to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the

content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41,

means, (a) every child/ citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen

completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.....

The Apex Court also laid down as under:

The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its

economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part in. We are merely relying upon Article

41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide

education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity

are, ordinarily speaking, matters within the subjective satisfaction of the State.....In the light of the above enunciation, the apprehension expressed

by the Counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this

country to approach the Courts to compel the State to provide him such education as he chooses must be held to be unfounded. The right to free

education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject

to the limits of its economic capacity and development.

19. In T.M.A. Pai Foundation v. State of Karnataka (supra), a Constitution Bench of eleven Hon''ble Judges of the Supreme Court considered the

correctness of the decision in Unni Krishnan J.P. v. State of A.P. (supra). The majority affirmed the ratio in Unni Krishnan''s case insofar as the

same declared that every child has a fundamental right to free education up to the age of 14 years. It is apposite to refer to the following from the

majority judgment delivered by Hon''ble the Chief Justice of India, Sri Justice Kirpal.

In view of the discussion hereinabove, we hold that the decision in Unni Krishnan case insofar as it framed the scheme relating to the grant of

admission and the fixing of tile fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, the

Medical Council of India, the Central and State Governments etc., are overruled.

20. Though right to education is not declared expressly as a fundamental right under Article 21 of the Constitution, as per the law declared by the

Supreme Court in Unni Krishnan J.P. v. State of A.P. (supra), every child has a fundamental right to free education up to the age of 14 years

(roughly from Class I to VIII) and citizens cannot be denied by the State or State agencies or other organisations the same. The said right cannot

be denied even by those private or quasi governmental organisations and by running educational institutions they are only carrying on the activity

supplemental to the State activity of providing education. A child whether his parent is working in NTPC or not is a child and citizen of the country.

It is the duty of this Court to see that all children enjoy the fundamental right without let or hindrance from any quarter. Indeed, as per Article 2(ii)

of the CRC, no child can be discriminated on the basis of the status of his parents, legal guardians or family members.

21. It is well settled principle of law by reason of the judgments of the Supreme Court in Jolly George Varghese and Another Vs. The Bank of

Cochin, , Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, , R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu

and Others, , People''s Union for Civil Liberties Vs. Union of India and another, , and D.K. Basu Vs. State of West Bengal, , that while

interpreting any municipal law, the interpretation should be in conformity with the international law.

22. As admitted by the respondents in this case, children of employees of non-CISF are asked to pay the different tuition fee only on the ground

that their parents are not employees of NTPC. The same would be violative of Article 2(ii) of the CRC read with Articles 14 and 21 of the

Constitution of India. The action of the respondents is invalid and cannot be sustained in law. Therefore, on point No. 1, I hold that all the children

up to the age of 14 years are entitled to free education whatever be the nature of the school. Whatever be the employment status of the parents, an

educational agency is bound to provide free education to all children up to the age of 14 years. No educational agency can collect tuition fees

which is constitutionally impermissible. It is otherwise made clear that it is permissible for the educational agency to collect nominal fee for

providing education, but they cannot collect higher fee.

Right of girl student to free education

23. As per the school prospectus, no tuition fee is charged from the students of Class I to VIII and girl students of all classes are exempted from

payment of tuition fee. It appears that KVS had taken a policy decision not to collect tuition fee from girl students up to Class XII in tune with the

Government of India policy. Be it also noted, even in the State of Andhra Pradesh, State Government ordered not to collect any tuition fee from

girl students up to Class XII. That is a right conferred by the State on all girl students in furtherance of Directive Principles of State Policy to uplift

the women and encourage women to join educational institutions. If the female children of non-NTPC and other private persons who are studying

in Kendriya Vidyalaya are denied the benefit, it must be held as unreasonable. Such denial has no nexus to the object sought to be achieved in the

constitutional scheme of exempting girl students from payment of tuition fee. Again, discrimination sought to be made based on the status of the

parents is not permissible as held by me under point No. 1. Learned Counsel for the respondents have not effectively justified the discrimination

except reiterating the policy of KVS as contained in their communication dated 12-11-1999 where they permitted different fee structure even for

the female children of non-NTPC employees, whereas the female children of employees of NTPC are exempted from payment of tuition fee,

which cannot be sustained. Therefore, on point No. ii I hold that all the girl students from Class I to XII studying in Kendriya Vidyalaya, NTPC,

Jyothi Nagar, Ramagundam, are entitled to free education and Kendriya Vidyalaya cannot charge any tuition fee though they are entitled to charge

other ancillary items of fees like admission fees, Vidya Vikas Nidhi, Computer Fund etc.

The question of discrimination among Central Government Employees

24. The reasons for permitting project sector Kendriya Vidyalayas to adopt a different fee structure from such classes as they may consider

appropriate, are mentioned in the communication dated 12-11-1999 as under:

Project Kendriya Vidyalayas were opened on request from Public Sector Undertakings etc., with a clear understanding that the sponsoring

agencies would meet the entire recurring and non-recurring expenditure for running and maintenance of the Kendriya Vidyalayas opened under

their sponsorship. These Kendriya Vidyalayas are thus schools of the concerned Public Sector Undertakings for all practical purposes. Some of

the projects have become sick and are increasingly finding it difficult to discharge their liabilities in respect of the Kendriya Vidyalayas under their

sponsorship. Some of these projects have approached the Sangathan to be permitted to prescribe a fee structure that could generate enough

internal resources to run the school. Keeping in view the above, it has been decided to authorise the project authorities to prescribe/ charge such a

scale of fees from the students as they deem fit.

25. In paragraph 3 of the said communication, the modalities to be followed in fixing scales of fees have also been formulated. Be that as it is, the

reasons for having different fee structure are that some projects have become sick and are increasingly finding it difficult to discharge their liability in

respect of the Kendriya Vidyalayas under their sponsorship and that these projects sought permission to have different fee structure so that they

could generate enough internal resources to run the school. On the basis of this, the learned Counsel sought to justify the action of the respondents

in having different fee structure. The statements showing the enrolment of students from the academic year 1998-99 to 2000-2001 have been

placed before me by the first respondent. These would show that there has been no drastic decrease of strength in the school till 2001. A

statement showing the enrolment of students as on 4-5-2001 is also placed before me which would show that there are 522 wards of employees

of NTPC and all others put together there are 308. It is not within the purview of this Court to delicately balance the budgetary aspects of the

Kendriya Vidyalaya to justify the action of the respondents. The Court cannot adopt ""financial justification"" approach to validate State action as

violating Article 14 of the Constitution. The question of discrimination can only be decided with reference to the object sought to be achieved and

the reasonableness of its classification.

26. In Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , it was held that Article 14 does not forbid reasonable classification for

the purpose of legislation. In order to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification

must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and

(ii) that differentia must have a rational basis to the object sought to be achieved by the statute in question. A classification may be founded on

different bases namely, geographical, or according to the objects or occupations or the like. What is necessary is that there must be a nexus

between the basis of classification and the objects of the Act under consideration. The principle in Ram Krishna Dalmia v. Justice Tendolkar

(supra) was subsequently followed in a number of cases.

27. Apart from satisfying the twin tests of classification i.e., rationality test and nexus test, a classification must not be arbitrary and capricious. That

was so held In In Re: The Special Courts Bill, 1978, , wherein while summarizing the proposition applicable to cases arising under Article 14, the

Supreme Court inter alia laid down:

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian

territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons

similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the

same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their

position if substantially the same.....

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be baled on tome qualities or characteristics which

are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable

relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded

on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation

to the object sought to be achieved by the Act.

28. Therefore, we have to examine (i) whether treating the Central Government Employees not working in NTPC differently is justified? and (ii)

whether treating other persons who are neither employees of NTPC nor Central Government differently is justified?

29. In the earlier paragraphs of this order, I have traced the history of establishment of Kendriya Vidyalayas and project sponsored Kendriya

Vidyalayas. The Union Cabinet approved the scheme for establishment of large number of Kendriya Vidyalayas and the Cabinet also approved

the objects of the scheme (See the objects supra). The schools were to be established where there is sizeable concentration of Central

Government Employees. These schools have to cater to the needs of Defence personnel, Central Government Employees, All India Services

Officers and other Central Government Employees. The schools must have the features of public schools without raising the cost of education and

education up to Class VIII is free to all the children. However, in Class IX to XII tuition fee at varying rates is charged based on the income of the

parent. These are some of the relevant salient features of the scheme approved by the Cabinet.

30. The petitioners in majority of the writ petitions are girl students and their parents are working in CISF, but posted at different organisations. By

mere posting which is a fortuitous circumstance and which is not in the hands of the employee, those persons do not claim to be Central

Government Employees, or CISF Employees. Therefore, if those children are asked to pay higher amount of tuition fee, that would offend the

object of Kendriya Vidyalaya scheme itself. It may be reiterated that all the Kendriya Vidyalayas are established to cater to the needs of the

children of Central Government Employees and indeed they have to be established only where there is concentration of Central Government

Employees and quality education has to be provided without raising the cost.

31. A submission is made by the learned Counsel for the respondents that the first respondent school is a project sponsored Kendriya Vidyalaya

and, therefore, it is entitled to have its own fee structure.

This Court is not able to countenance the submission. By merely being a project sponsored Kendriya Vidyalaya, it cannot ignore the object for

which it is established. Indeed, the submission ignores the school prospectus as well.

32. As noticed earlier, the school prospectus contains priorities in admission. It stipulates that in Kendriya Vidyalayas sponsored by public sector

undertaking, children of the employees of such undertaking will have priority in admission. Therefore, the priorities of admission followed in other

Kendriya Vidyalayas are to be followed. In the earlier portion of the order, such priorities have already been noticed. A look at this would show

that all the children of eligible Central Government Employees including ex-servicemen are eligible to seek admission even in the project sponsored

Kendriya Vidyalayas. Eligibility to seek admission is also eligibility to have the benefits offered by the Kendriya Vidyalaya including in the matter of

tuition fee and there cannot be discrimination on that ground. Indeed, there is no discernible reason to classify the Central Government Employees

posted in NTPC and other Central Government Employees posted in other organisations. KVS itself has prescribed priorities for admission in

Kendriya Vidyalayas which are also equally applicable to project sponsored Kendriya Vidyalayas. Be it noted, as long as the parent continued to

be the Central Government Employee, he is entitled to the benefits offered by Kendriya Vidyalaya and also claim admission in accordance with the

priorities fixed by the Kendriya Vidyalaya . Therefore, the classification sought to be made by the first respondent school is unreasonable.

33. The classification of Central Government Employees for implementing different fee structure has no relation to the main object sought to be

achieved namely, generation of enough internal resources. To start with, all the Kendriya Vidyalayas are founded for Central Government

Employees and all the sponsored Kendriya Vidyalayas are mainly founded for the children of the employees of the Undertaking. As per the

priorities in admission, first priority in admission programme is for the children of the NTPC employees. In a given case, if NTPC employees are

admitted to all the seats available, the Undertaking cannot be heard to say that they would charge higher fees on the ground that their financial

position is not sound. Every Undertaking, as a condition of service, has to provide educational facilities for the children of its employees. This was

accepted by NTPC itself in one of their communications dated 24-2-1980. Secondly, assuming that 95% of the seats available are taken by the

children of NTPC employees, can it be said by throwing open 5% of the seats to other categories in the priority, the Kendriya Vidyalaya would be

able to generate internal resources? The liability of NTPC still continued whether or not Kendriya Vidyalaya is able to generate internal resources.

Be it noted that all the Kendriya Vidyalayas are given grant-in-aid by the Central Government, spending of which is controlled by KVS. The only

difference in a sponsored school is that the funds are provided by the Undertaking as a part of execution and working of the project like Super

Thermal Power Project. As long as the power plant exists and continues to have its employees for operation, maintenance, administration and

management, it is the duty of NTPC to provide for education to the children of its employees. The classification, therefore, has no nexus to the

object sought to be achieved.

34. Insofar as the children of private persons and non-NTPC and non-Central Government Employees are concerned, they are shown in the last

category in the priorities in admission. Their cases stand on a different footing. As held by the Supreme Court in Ram Krishna Dalmia v. Justice

Tendolkar (supra), there could be a valid classification founded on different bases inter alia on the basis of occupations. There cannot be any doubt

that a private person stands altogether on a different footing when compared with the employees of the Central Government. A Central

Government Employee is salaried person and his resources presumptively are limited whereas a private person may be in a higher income group.

Further, the object of establishment of Kendriya Vidyalayas as can be seen from the recommendation of the Second Pay Revision Commission is

to provide secondary schools with common syllabus and medium of instruction for the purpose of children of the Central Government Employees

who are holding transferable posts. Therefore, private persons cannot claim the same privileges and benefits offered by Kendriya Vidyalayas.

From them it is always open to collect a higher fees. This view also gets support from the observations made by the majority judgment in T.M.A.

Pai Foundation v. State of Karnataka (supra) wherein it was held that if one desires excellent education, payment of little extra money is

imperative. Therefore, it is always open to the first respondent to charge extra fees from the children of those parents who are neither Central

Government Employees nor NTPC employees. However, the children of any Central Government Employee when once admitted to Kendriya

Vidyalaya cannot be discriminated on the ground that they are not NTPC employees or on the ground that they are not posted at NTPC. Such

classification in the face of Articles 14 and 15(1) of the Constitution is wholly arbitrary and capricious.

35. Learned Counsel for the respondents placed strong reliance on the judgment of the High Court of Kerala in O.P. No. 17994 of 2000, dated

27-7-2000. After perusing the brief judgment thoroughly, I am not able to bring myself up to accept the view taken by the Kerala High Court. I

have referred to the relevant passages from the Constitution Bench judgment in Unni Krishnan J.P. v. State of A.P. and T.M.A. Pai Foundation v.

State of Karnataka (supra). I have also referred to the entire history of establishing Kendriya Vidyalayas and in that background the action of

NTPC or KVS cannot be held to be illegal. The Kerala High Court did not apply the dicta in Unni Krishnan J.P. v. State of A.P. (supra) on the

ground that the different fee structure was introduced to recoup the expenses incurred by the project sponsored school and on the ground that the

employees of Hindustan Paper Corporation and CISF posted there were asked to pay less fees. Learned Counsel for the respondents also relied

on the judgment of a Division Bench of the Delhi High Court in N.R. Choudhary v. Ministry of Human Resource Development (supra). Again, with

great respect and humility, I am not able to agree with the reasoning adopted by the Delhi High Court having regard to the two Constitution Bench

judgments relied on by me. Though the dicta in Unni Krishnan J.P. v. State of A.P. (supra) that every child has a fundamental right to free

education up to the age of 14 years, was specifically affirmed by another Constitution Bench in T.M.A. Pai Foundation v. State of Karnataka

(supra), the same was not noticed by the Delhi High Court. Indeed, the Delhi High Court gave liberty to the petitioners therein to approach fee

anomaly committee set up by the Director of Education and to seek redressal of their grievance.

36. In the result, for the above reasons, Writ Petition Nos. 7758, 17167, 19065, 19787 and 20336 of 2001 and 7589, 17006 and 24699 of

2002 are allowed as under:

(i) All the students of Kendriya Vidyalaya, NTPC, Jyothi Nagar, Ramagundam, first respondent herein, from Class I to VIII whether they are

wards of NTPC employees or wards of non-NTPC employees must be provided education free without charging any tuition fee. It is however

open to the Kendriya Vidyalaya to charge other ancillary items of fees other than tuition fee;

(ii) All the girl students studying in Kendriya Vidyalaya from Class I to XII cannot be charged any tuition fee though the Kendriya Vidyalaya can

charge other ancillary items of fees;

(iii) All the children of Central Government Employees whether or not they are not posted at NTPC cannot be charged any tuition fee higher than

the tuition fee charged from the children of employees of NTPC, CISF (NTPC), children of Kendriya Vidyalaya staff and children of SC/ST

employees.

(iv) There shall be a direction to respondents in terms of Clauses (i) to (iii) above.

(v) Writ Petition Nos. 21919, 24453, 24697 and 25866 of 2001 and 8599, 13285 and 22456 of 2002 are disposed of in terms of the above

directions; and

(vi) There shall be no order as to costs.