

ITEM NO.7

COURT NO.7

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 32237/2014

(Arising out of impugned final judgment and order dated 09-06-2014 in WPC No. 13900/2013 passed by the High Court Of Kerala At Ernakulam)

KENDRIYA VIDYALAYA
PARENTS ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 26-11-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s) Mr. C.N. Sreekumar, Sr. Adv.
Mr. Amit Sharma, Adv.
Ms. Anupama Kumar, Adv.
Mr. Prakash Ranjan Nayak, AOR

For Respondent(s) Mr. Sanjay Jain, ASG
Mr. A. Kumar, Adv.
Mr. Padmesh Mishra, Adv.
Mr. R. Gowrishankar, Adv.
Mr. S. Rajappa, AOR

Mr. Mohan Prasad Gupta, Adv.
Mr. Gopal Jha, Adv.
Mr. Mahabir Singh, Adv.
Mr. G.S. Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard counsel for the parties.

We broadly agree with the opinion recorded
by the High Court in making distinction about the
dispensation applicable to the Kendriya Vidyalaya
in terms of Section 12(1)(c) read with Sections

2(n)(iii) and 2(p) of the Right to Children to Free and Compulsory Education Act, 2009.

Therefore, we are not inclined to interfere in this special leave petition. The special leave petition and pending application(s), if any, are accordingly dismissed.

However, the dismissal of the special leave petition will not come in the way of the petitioner to make representation to the Management to waive the difference of charges/amount payable including to provide suitable instalment. That representation be decided on its own merits and in accordance with law.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

Asstt Shankar
Asstt Amizha

C.A.

dh
oleath

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.M. JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K. JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF JUNE 2014/19TH JYAISHTA, 1936

WP(C).No. 13900 of 2013 (J)

PETITIONER(S)/PETITIONER:

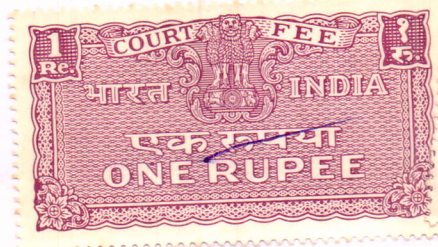
KENDRIYA VIDYALAYA PARENTS ASSOCIATION,
REPRESENTED BY ITS SECRETARY GEORGE FELIX ANTONY C.A
6/1313, PANAYAPPALLY, KOCHI-682005.

BY ADVS. SRI.N. NAGARESH
SRI. SHAJI THOMAS
SRI. BINU PAUL
SRI. T.V. VINU
SRI. PRAKASH KESAVAN

RESPONDENT(S)/RESPONDENTS:

1. UNION OF INDIA,
REPRESENTED BY SECRETARY
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
GOVERNMENT OF INDIA, NEW INDIA-110 001.
 2. KENDRIYA VIDYALAYA SANGATHAN,
REPRESENTED BY ITS COMMISSIONER, 18
INSTITUTIONAL AREA, SHAHEED JEET SINGH MARG
NEW DELHI-110016.
 3. JOINT COMMISSIONER(FIN),
KENDRIYA VIDYALAYA SANGATHAN, 18, INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG, NEW DELHI-110016.
- R1 BY ADV. SHRI. GEORGE ZACHARIA, CGC
R2 & 3 BY ADV. SRI. V.V. ASOKAN
ADV. SRI. JAJU BABU (SR)
R BY SRI. P. PARAMESWARAN NAIR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-06-2014 ALONG WITH W.A.NO.1353/2013, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



C.R.

**K.M.JOSEPH
&
A.K.JAYASANKARAN NAMBIAR, JJ.**

**W.P.(C).No.13900 OF 2013
&
W.A.NO.1353 OF 2013 ()**

Dated this the 9th day of June, 2014

J U D G M E N T

K.M.JOSEPH, J.

The writ petition and the writ appeal are connected and we dispose the same by a common judgment.

2. The writ petition is filed by the Parents Association of the Kendriya Vidyalaya. It is the case of the writ petitioner that in view of Article 21A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009, hereinafter referred to as the 'Act', the respondents 2 and 3 are not entitled to levy any fee from the students. However, according to them, the mandate of the Constitution and also the Act is violated in the action of the respondents collecting a monthly fee of Rs.160/- from the students. The prayer sought for is to quash Ext.P3 and further to declare that respondents are not entitled to collect any amount from the students in Kendriya Vidyalayas, as Tuition fee, Vidyalaya Vikas


Nidhi or under any other name. A statement has been filed by respondents 2 and 3 producing Annexures A to F. It is their contention that the hike which is challenged in the writ petition is very reasonable and there is no scope for any judicial review. As per Ext.P1, upto 31.03.1999, it would appear that the Kendriya Vidyalaya Sangathan which is in control of Kendriya Vidyalayas was charging money under three different heads:

- (1) Pupil Fund
- (2) Science Fund and
- (3) Maintenance and Development Fund

Thereafter, they decided to merge money collected under three heads to a single fund, namely, "Vidyalaya Vikas Nidhi", hereinafter referred to as 'VVN' and contribution towards VVN was collected from the students on quarterly basis. There was a hike effected in the said amount vide Ext.P3 dated 19.03.2013. We notice that as far as Class I to VIII is concerned, tuition fees is nil but they were collecting for Class III and above Computer Fund at the rate of Rs.50/- and VVN contribution at the rate of Rs.240/-. By the hike effected vide Ext.P3, Computer Fund has been enhanced from Rs.50/- to Rs.100/- whereas VVN contribution has been enhanced to Rs.500/- from Rs.240/-.

3. In the statement filed, it is stated that Kendriya Vidyalayas are maintaining School Fund account to which all the moneys received in the form of Government grants and Tuition Fees received from the students are credited. The VVN which is constituted has merged Pupil Fund, Science Fund and Maintenance and Development Fund. Collection towards Computer Fund is also credited into the VVN which is to be spent exclusively for purchasing computer education consumables, remuneration of Computer Instructors etc. It is further stated that at present Government employees whose wards constitute approximately 73% of total students enrolment are entitled for reimbursement of fees at the rate of Rs.1,250/- per month per child. Therefore there will be no burden on the parents as the entire amount of revised fee will be reimbursable to them from their Office/Department concerned. Remaining 27% of the school children are stated to fall under other categories.

4. It is further stated that with effect from 01.04.2011 in pursuance to the implementation of the Right to Education (RTE) Act in the Kendriya Vidyalaya Sangathan, students admitted under



the provisions of the RTE Act are totally exempted from payment of fees and provided reimbursement of expenditure incurred towards text books, note book, uniform and transportation. Annexure C Circular is issued to extend financial assistance to children who are in distress.

5. Learned Single Judge passed an interim order in the writ petition, by which, subject to result of the writ petition, a direction was given to stay the operation of Ext.P3. It is against the same, W.A.No.1353/2013 is filed.

6. We heard the learned senior counsel Sri.K.Jaju Babu for the petitioner and also the learned senior counsel Sri.V.V.Asokan for respondents 2 and 3 in the writ petition.

7. The learned counsel for the petitioner no doubt would point out Section 3 of the Act besides Article 21A of the Constitution. He would submit that the enhanced VVN contribution was earlier quashed by the Orissa High Court and the judgment of the Orissa High Court is produced as Ext.P2. According to him, after the advent of the Act, respondents 2 and 3 Kendriya Vidyalaya

Sangathan are bound to provide free and compulsory elementary education. Instead it is flouting the mandate contained in the Constitution read with the provisions of the Act. Without charging any tuition fee, they are resorting to collection of other fees in the form of Computer Fund and VVN contribution.

8. Per contra, the learned senior counsel appearing on behalf of respondents 2 and 3 drew our attention to Section 12 of the Act and he would contend that the obligation of answering respondents 2 and 3 is confined to what is provided under Section 12(1)(c) of the Act. He placed before us the judgment of the Delhi High Court reported in W.P.(C).No.2993/2013 in support of his contention.

9. The Apex Court in Unni Krishnan J.P. and Others v. State of Andhra Pradesh and Others (AIR 1993 SC 2178) had taken a view that the child upto the age of 14 has the fundamental right to be effected. The Apex Court acted on Article 45 of the Constitution. The Apex Court also took the view that there is a fundamental right even after a child attains 14 years but it is subject to the State showing that financial resources cannot permit the exercise of such right. Article 21A of the Constitution is the

response of Parliament to the judicial interpretation placed on Article 21 and it inserted Article 21A with effect from 01.04.2010, which reads as follows:-

[21A. Right to education:- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

The Right of Children to Free and Compulsory Education Act was framed in the year 2009 to give effect to and fulfill the mandate of Article 21A of the Constitution. This is for the reason that though Article 21A declares a Right to Education, the content and limits of the right were to be as provided by law and it is accordingly the Parliament enacted the Act in the year 2009. The salient features of the Act are as follows:

Section 2(n) of the Act defines 'School' as follows:

"(n) "school" means any recognised school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses

from the appropriate Government or the local authority;"

Section 2(p) relied on by the respondents reads as follows:

"(p) "specified category", in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government."

Section 3 reads as follows:

"3. Right to child to free and compulsory education:-(1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

Provided that a child suffering from disability, as defined in Clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (1 to 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act."

Section 6 reads as follows:

"6. Duty of appropriate Government and local authority to establish school:- For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a

school, where it is not so established, within a period of three years from the commencement of this Act."

Section 8 provides duties of the appropriate Government while Section 9 provides the duties of the local authority. Chapter IV has the main heading "Responsibilities of Schools and Teachers". Section 12, being of crucial importance, we extract the same as follows:

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

- (a) specified in sub-clause (i) of Clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;
- (b) specified in sub-clause (ii) of Clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;
- (c) specified in sub-clause (iii) 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:

Provided further that where a school specified in Clause (n) of Section 2 imparts pre-school education, the provisions of Clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of Clause (n) of Section 2 providing free

and compulsory elementary education as specified in Clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of Clause (n) of Section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be."

Section 13 of Chapter IV prohibits any School or person while admitting a child from collecting any capitation fee. Section 2(b) defines "capitation fee" as follows:

"(b) "capitation fee" means any kind of donation or contribution or payment other than the fee notified by the school;"

Section 15 provides *inter alia* that a child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed. It also provides that no child shall be denied admission if such admission is sought subsequent to the extended period. Under Section 16, no child

admitted in a school shall be held back in any class or expelled from school till the completion of elementary education. Elementary education is in turn defined in Section 2(f), which is extracted as follows:

(f) "elementary education" means the education from first class to eighth class;


Section 17 prohibits physical punishment or mental harassment to a child. Section 18 provides for the imperative need to procure recognition in respect of a school which is established after the commencement of the Act. A school cannot function without getting certificate of recognition. Section 24 provides for the duties of teachers and redressal of grievances. Section 25 provides that the appropriate Government and the local authority shall ensure that there is a Pupil-Teacher ratio to be maintained in each school.

10. The 2nd respondent is a Kendriya Vidyalaya. Therefore, it would clearly answer the definition of the term "specific category" under Section 2(p) of the Act which we have extracted above. The definition of the word "school" shows that it means a recognised school imparting elementary education. It includes categories (i) to (iv). As far as category (i), which is mentioned earlier, it is the

school established, owned or controlled by the appropriate Government or a local authority. The word "appropriate Government" is defined under Section 2(a) of the Act which reads as follows:

"(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;"

11. The contention of the learned senior counsel for the 2nd and 3rd respondents is that being a school belonging to the 'specified category', there is no obligation to provide free education for all the students who are admitted in the School. It has the obligation no doubt to comply with Section 12(1)(c) which we have referred to above. That is to say, its obligation is fulfilled if it were to provide for reservation and admits in class I, to the extent of atleast 25% of the strength of that class, the children belonging to the weaker section and disadvantaged group in the neighbourhood



and it provides free and compulsory elementary education. The word "child" as belonging to the age of six to fourteen years is defined under Section 2(c) of the Act. "Child belonging to disadvantaged group" is defined under Section 2(d) of the Act as follows:-

(d) "child belonging to disadvantaged group" means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;"

Section 2(e) defines the "child belonging to weaker section" as follows:-


"(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;"

12. It is the contention of the school as appellants that it is honouring the said statutory obligation and there its duty ends. He would submit that the judgment of the Orissa High Court does not address the effect of Section 12(1)(c) of the Act. The dichotomy that is projected by the learned senior counsel for the petitioner is that if the 2nd respondent school is left free to only admit 25%

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students, it will be at liberty to not follow the mandate under Section 3 of the Act. As far as Article 21A of the Constitution is concerned, as we have already noticed, the fundamental right which declared free education is not an absolute right. The content of the right and the limitations of the right are to be provided by law. Therefore, it may not be open to the petitioner to contend that Article 21A of the Constitution entitles them to contend that there will be compulsory and free elementary education in the 2nd respondent school.

13. Next, we would have to examine the contention of the learned senior counsel for the petitioner that the petitioner is entitled to contend that the 2nd respondent is obliged to provide free and compulsory education by virtue of Section 3 of the Act. It is no doubt true that Section 3 provides that every child at the age of six to fourteen years will have the right to free and compulsory education. The institution in which such right is vouchsafed is a neighbourhood school. Next, we have also to consider the effect of sub section (2) of Section 3 of the Act. It provides that for the purpose of sub section (1), no child shall be liable to pay any kind of fee or charges or expenses which would prevent him or her from



pursuing and completing the elementary education. In this context, as we have noticed, the right of compulsory and free education is given in a neighbourhood school. The word "neighbourhood school" is not defined in the Act. It is also not defined in the Rules as such. But we find that in the Right of Children to Free and Compulsory Education Rules, 2010, which was enforced with effect from 09.04.2010, it *inter alia* provides as follows:-

"6. Area or limits of neighbourhood:-

(1) The area or limits of neighbourhood within which a school has to be established by the appropriate Government or the local authority shall be,-

(a) in respect of children in classes from I to V, a school shall be established within a walking distance of one km of the neighbourhood;

(b) in respect of children in classes from VI to VIII, a school shall be established within a walking distance of three km of the neighbourhood.


(2) Wherever required, the appropriate Government or the local authority shall upgrade existing schools with classes from I to V to include classes from VI to VIII and in respect of schools which start from class VI onwards, the appropriate Government or the local authority shall endeavour to add classes from I to V, wherever required."

There are other areas with which we are not concerned as they relate to different places with different terrain, risk of landslides, floods, lack of roads and high population density etc. In fact,

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Section 6 of the Act, as we have noticed, provides that it is the duty of the appropriate Government and the local authority to establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of the Act.

14. We are of the view that on a consideration of the provisions, the 2nd respondent appears to be correct in pointing out that it does not have an obligation to provide free education except to the extent provided in Section 12(1)(c) of the Act. Even though Section 3 appears to provide for a right to the child, we must notice that as far as the obligation of the schools which falls in various categories as defined in Section 2(n) is concerned, it is specifically and expressly set out in Section 12 of the Act. As far as a school run by a State or a local authority, in respect of all the students admitted in such schools, these students are entitled to compulsory free education. This is in keeping the mandate under Section 3 and there is no conflict between the said two provisions. The child has an absolute right and the duty is cast on the State and the local body which would anyway answer the description of 'State' in Article 12 of the Constitution also. As far as the aided schools are



concerned, Section 12(1)(b) describes its obligations and as we have seen, it is limited to providing free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, for a minimum of 25%. What this means is that even if the ratio of annual recurring aid or grants so received and its proportion to the annual recurring expenses does not justify such free and compulsory education, it is still obliged to provide a minimum of 25%. As far as further obligations are concerned, it is made depending upon the fulfillment of the statutory criteria. When it comes to institutions and schools which are covered by Section 2(n)(iii) and (iv), in the first of which category, the 2nd respondent in this case would fall, and unaided school under clause (iv) of Section 2(n), their obligation would appear to be covered by what is provided in Section 12(1)(c) of the Act which we have set out. It is necessary in this context to notice that unlike the duty cast on the Government Schools and those run by the local bodies, which is to provide free and compulsory elementary education to all students who are admitted or even in respect of the duty which is cast on aided schools falling under clause (ii) of Section 2(n) which also essentially amounts to the

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same, but as limited thereunder, in respect of the schools falling in the specific categories and unaided institutions, they are charged with the specific duty of admitting atleast 25% strength of the class from among the children belonging to the weaker sections, in the neighbourhood. Not only that they must be provided with free and compulsory education till its completion. Thus, the nature and content of the obligation for the three different categories of schools which are covered by Section 12 of the Act are different. Their responsibilities have been spelt out by the Legislature in unambiguous terms. Therefore we would think that this petition cannot be maintained either relying on Article 21A or upon Section 3 to carve out an absolute right in favour of the students aged between six and fourteen to demand education without payment of any fees as such.

15. Another contention was raised by the petitioner that the Kendriya Vidyalaya is a school which is controlled by the appropriate government, namely, the Central Government and, therefore, it would come under class (i) of Section 2(n) of the Act. It is contended that it has a dual capacity, namely, it would be a specified category school coming under Section 2(n)(iii) read with



Section 2(n)(p) and at the same time an institution covered by Section 2(n)(i). Therefore, it is contended that not only should the Kendriya Vidyalaya fulfill the mandate of Section 12(1)(c) which is to admit students as provided in the ratio to the extent of 25% but it is also to provide free and compulsory education in regard to the balance 75% having regard to its position as a school controlled by the Central Government. In this regard, again reliance is placed on clause (1) and (2) of Section 3 of the Act besides Article 21A.

16. To appreciate the arguments, it is necessary to consider as to what is the obligation which is to be discharged by the schools run by the Government and the local bodies. Section 8 delineates the duties of the appropriate Government. It *inter alia* provides that the Government shall provide free and compulsory elementary education to every child. Section 8(c) of the Act reads as follows:

8. Duties of appropriate Government:

The appropriate Government shall -

(a)

(b)

(c) ensure that the child belonging to weaker section and the child belonging to the disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

A similar provision is contained in Section 9(c) of the Act in regard



to the duties of the local authority. This would mean that as far as the Government and the local authority are concerned, they are expected not to discriminate against a child belonging to a weaker section and the child belonging to the disadvantaged section and the child is not to be prevented from pursuing and completing elementary education on any ground, but there is no positive mandate that it shall admit students belonging to the weaker sections or the disadvantaged groups. The Legislature has mandated that the schools run under the specified category including the 2nd respondent herein must fulfill that mandate and it is that role which has to be discharged by the said schools vide the provisions contained in Section 12(1)(c) of the Act. Schools not only provide admission to an extent of 25% of the total strength but for them they shall also be bound to provide free and compulsory education. In this context, it is also noteworthy that in the definition of the word "school" though Kendriya Vidyalayas would fall under clause (i) of Section 2(n), they have also carved out a differential category by declaring a specific category under Section 2(n)(iii) for the purpose namely to delineate their statutory duty vide Section 12(1)(c) of the Act. We would think that in such a scenario, if we were to accept the arguments of the petitioner that

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there is a dual role to be played by the 2nd respondent, then we must also ask the question how the State Government and local bodies need only provide education free to all and yet the 2nd respondent would be obliged not only to provide compulsory education to all but it would also have to reserve 25% of the total strength in the first standard for children belonging to the groups. This would also pave the way for a criticism that the 2nd respondent school would be in a position to choose between two roles which are allegedly reserved for them under Section 12 of the Act. We also take notice of Section 5 of the Act which provides for right of transfer to other school. Sub section (2) of Section 5 reads as follows:

5. Right to transfer to other school:-

(1).....

(2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of Clause (n) of Section 2, for completing his or her elementary education.

17. We notice that as far as the right of student to get transfer is concerned, he cannot seek a transfer to a school specified in sub clauses (iii) besides sub clause (iv).

18. There is another aspect which must detain us and we must consider and answer. Section 3(2) provides that no child shall be liable to pay any kind of fee or charges which would prevent him from completing elementary education. In the writ petition, there is no case that the fees which are prescribed are such that it would prevent the children from pursuing the elementary education. It is only stated that there is violation of Section 3(2) of the Act. As far as Sections 3(1) and 3(2) are concerned, it is noticed that the right is given to the child between the age of six to fourteen for free education in the neighbourhood school. There is no case for the petitioner that the 2nd respondent school is treated as a neighbourhood school and therefore we need not probe that aspect further. As far as the mandate of Section 3 (2) is concerned, we would give life to it even in respect of the Kendriya Vidyalayas by holding that in respect of the fees to be charged by it, even in regard to 75% of the strength or a child which is admitted not only to first standard but directly in any other higher standard upto the eighth standard, it cannot be such as would prevent him or her from pursuing and completing the elementary education. This interpretation, we would think, would

harmonize the various provisions. In this context, we also bear in mind the definition of 'capitation fee', which we have referred above and which fee is prohibited under Section 13 of the Act.

With these observations, the writ petition is dismissed. As far as the writ appeal is concerned, we set aside the interim order and allow the writ appeal.

sdl
K.M.JOSEPH
JUDGE

sdl
A.K.JAYASANKARAN NAMBIAR
JUDGE

prp

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WP(C).No. 13900 of 2013 (J)

APPENDIX

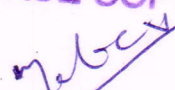
PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE OFFICE MEMORANDUM NO:F-6-7/2005-06/KVS (BUDGET)DATED 31.03.2006 OF THE 3RD RESPONDENT ALONGWITH REVISED CHAPTER 21 APPROVED BY THE CHAIRMAN OF THE KVS-ON 30.03.2006.
- EXHIBIT-P2: TRUE COPY OF THE JUDGMENT DATED 19.12.2012 OF THE HON'BLE HIGH COURT OF ORISSA,REPORTED IN 2013(D)ILR-CUT-507.
- EXHIBIT-P3: TRUE COPY OF THE LETTER NO.F.110240/04/2013/KVS (BUDGET) DATED 19.03.2013 OF THE 3RD RESPONDENT
- EXHIBIT-P4: TRUE COPY OF LETTER NO.F.110116(1)10/KVS HQ/VVN/A/C DATED 01.03.2012,OF THE JOINT COMMISSIONER(FIN)
- EXHIBIT-P5: TRUE COPY OF LETTER F.NO.110240/(3)FC/2010-KVS(HQ)/BUDGET DATED 18.02.2011 OF THE DEPUTY COMMISSIONER(FIN).
- EXHIBIT-P6: TRUE COPY OF THE MASS PETITION DATED 03.05.2013 SUBMITTED BY THE PETITIONER TO THE IST RESPONDENT
- EXHIBIT-P7: TRUE COPY OF THE INTERIM ORDER DATED 17.04.2013 IN WP(C) 7898 OF 2013 OF THE HONOURABLE HIGH COURT OF ORISSA,OBTAINED FROM THE WEB SITE.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY


P.S. TO JUDGE

TRUE COPY

EXAMINER