**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

C.W.P. No. 2104 of 2011

Decided On: 15.02.2011

Appellants: **Enakshi Pant through her father Kamal Pant and Ors.**
**Vs.**
Respondent: **Union Territory, Chandigarh and Ors.**
[Alongwith: C.W.P. Nos. 2343, 2349, 2374 and 2397 of 2011]

**Hon'ble Judges/Coram:**
Mahesh Grover, J.

**JUDGMENT**

**Mahesh Grover, J.**

1. This order will dispose of C.W.P. Nos. 2104, 2343,2349,2374 and 2397 of 2011.

It is with some anguish that this Court proceeds to decide the matter which effects the small children who, before seeing the face of the class-room, are seeing the face of the court room and have invoked the jurisdiction of this Court under Article 226 of the Constitution of India albeit (through their parents), even before they have learnt the first alphabet.

2. The process of initiation into education should have been a solemn and a joyous affair for those involved, rather it has assumed the colour of a cattle fair or a flea market.

3. The facts of the case are that the wards of the Petitioners were in the age group of 3 years and plus and are eligible to seek admission in schools in a C.W.P. No. 2104 of 2011 -3 class which is described as Pre-Nursery. According to the existing criteria adopted by the schools, a child of 3+ years, is eligible for Pre-Nursery and a child of 5+ is eligible for seeking admission in Class-I. Anneuxre P-2 is the letter written by the District Education Officer, Chandigarh Administration to the Heads of all Government/Government-aided recognized schools in U.T. Chandigarh specifically mentioning that the minimum age to be eligible to get admission to Class I is 5+ years and for Pre-Nursery it is 3+ years. Upon some querries having been made, the District education Officer clarified that the existing age criteria of 3 years for Pre-Nursery and 5 years for Class I respectively on the Ist April of the academic year will enure. This was followed by another letter dated 18.1.2011 apparently on some further querries made by the four private schools of the U.T. namely Sacred Heart School, Sector 26, Carmel Convent School, Sector 9, St. John School, Sector 26, and St. Anne School, Sector 32, Chandigarh in which it was stated that "in view of the various representations made by various parents expressing difficulty in admission of their wards, you may continue with the criteria followed by you in the past. It is for your necessary action."

4. All these four schools then set up a notice which is extracted here below:

NOTICE

As per directions received from education Department, Chandigarh today i.e. 17th January, 2011 at 12.00 noon, the age limit for admission to Lower Kindergarten 2011-12, is changed from Ist April, 2006 and 31st March, 2007 to Ist April, 2007 and 31st March, 2008. Hence the correction is made in the Registration Form. Kindly follow the corrected age group.

5. As per the aforesaid notice, the age group for consideration for admission to Lower Kindergarten (LKG) and Class I was changed from 1.4.2006 and 31.3.2007 to 1.4.2007 and 31.3.2008. Various forms given to the parents of the desirous children carry the necessary correction.

6. This is the cause of grievance of the Petitioners who say that the criteria for admission has been changed abruptly to their disadvantage which is likely to debar their children from consideration in the admission process being carried out by these schools. It is pertinent to mention here that the grievance has been made qua a change of criteria adopted by these four private schools alone as in government schools there has been no break from the previous practice.

7. The Petitioners in order to demonstrate their grievance, have produced charts to establish their grievance which are extracted below:

CHART 1

|  |  |  |
| --- | --- | --- |
| S. No | Carmel Convent School and Sacred Heart | (Age upto 31st March of year of admission) |
| 1. | Session | LKG(yr)(entry class) | Born between | KG(YR) | Ist(YR) |
| 2. | 2008-09 | 3-1/2 - 4-1/2 | 1.1.03 to 30.9.04 | -1/2 - 5-1/2 | 5-1/2 - 6-1/2 |
| 2. | 2009-10 | 3-1/2 - 4-1/2 | 1.10.04 to 30.9.05 | 4-1/2 - 5-1/2 | 5-1/2 - 6-1/2 |
| 3. | 2010-11 | 3-1/2 - 4-1/2 | 1.10.05 to 30.9.06 | 4-1/2 - 5-1/2 | 5-1/2 - 6-1/2 |
| 4. | 2011-12 (as per form) | 4-5 | 1.4.06 to 31.3.07 | 5-6 | 6 - 7 |
| 5. | Past practice. | 3-1/2 - 4-1/2 | 1.10.06 to 30.9.07 | 4-1/2 - 5-1/2 | 5-1/2 - 6-1/2 |

No opportunity to 1.4.07 to 30.9.07 children born between this period.

CHART 2

|  |  |  |
| --- | --- | --- |
| S.No. | St.John's | (Age upto 31st March of year of admission) |
| 1. | Session | KG(yr) | Born between | Ist (yrs) |
| 2. | 2008-09 | 4-1/2 - 5-1/2 | 1.10.02 to 30.9.03 | 5-1/2 - 6-1/2 |
| 2. | 2009-10 | 4-1/2 - 5-1/2 | 1.10.03 to 30.9.04 | 5-1/2 - 6-1/2 |
| 3. | 2010-11 | 4-1/4 - 5-1/2 | 1.10.04 to 31.12.05 | 5-1/4 - 6-1/2 |
| 4. | 2011-12(as per form) | 5-6 | 1.04.06 to 31.3.06 | 6-7 |
| 5. | Past practice. | 4-1/2 - 5/1-2 | 1.10.05 to 31.12.06 | 5-1/4 - 6-1/2 |
|   | 2011-12 |   |   |   |

CHART 3

|  |  |  |
| --- | --- | --- |
| S. No. | Strawberry Fields World School | (age upto 31st March of year of admission) |
| 1. | Session | KG(YR) | Born n between | Ist (yrs) |
| 2. | 2008-09 | 4-1/2 - 5-1/2 | 1.10.02 to 30.9.03 | 5-1/2 - 6-1/2 |
| 2. | 2009-10 | 4-1/2 - 5-1/2 | 1.10.03 to 30.9.04 | 5-1/2 - 6-1/2 |
| 3. | 2010-11 | 4-1/2 - 5-1/2 | 1.10.04 to 30.9.05 | 5-1/2 - 6-1/2 |
| 4. | 2011-12 (As per form) | 5-6 1.04.05 to 31.3.06 | 6 - 7 |   |
| 5. | 2011-12(As per past practice) | 4-1/2 - 5-1/2 | 1.10.05 to 30.9.06 | 5-1/2 - 6-1/2 |
|   |   |   |   | 1.4.06 to 30.9.06 |

No opportunity to children who have been Bor n between this period.

CHART 4

|  |  |  |  |
| --- | --- | --- | --- |
| St.Anne's |   |   | (Age upto 31st March of year of admission) |
| Session | LKG (yr)(entry class) | Bor n between | KG(yr) | Ist(yrs) |
| 2008-09 | 3-1/4 - 4-1/4 | 1.1.04 to 31.12.04 | 4-1/4 - 5-1/4 | 5-1/4 - 6-1/4 |
| 2009-10 | 3-1/4 - 4-1/4 | 1.1.05 to 31.12.05 | 4-1/4 - 5-1/4 | 5-1/4 - 6-1/4 |
| 2010-11 | 3-1/4 - 4-1/4 | 1.1.06 to 31.12.06 | 4-1/4 - 5-1/4 | 5-1/4 - 6-1/4 |
| 2011-12(as per form) | 4-5 | 1.4.06 to 31.3.07 | 5-6 | 6-7 |
| 2011-12(as per past practice) | 3-1/4 - 4-1/4 | 1.1.07 to 31.12.07 | 4-1/4 - 5-1/4 | 5-1/4 - 6-1/4 |
|   |   |   |   | 1.4.07 to 31.12.07 |

No opportunity to children who have been born between this period.

8.The contention of the learned Counsel for the petitioners is two fold, (1) that all the schools ought to have followed a uniform policy and to substantiate this contention, reference has been made to a judgment of the Delhi High Court which while considering an almost similar controversy, constituted a Committee by the name of Ganguly Committee whose recommendations were accepted by the Director of Education and NCERT, Delhi and which are extracted below:

(i) That there should be uniformity in nomenclature and duration of pre-primary education across all private, government and local bodies. The cabinet further approved that in all schools of Delhi the pre-primary education should uniformly be of one year duration and the same should be the class immediately prior to Class I, which will be uniformity known as pre-primary.

(ii) That the cut off date for the calculation of age should be 31st March of the year of admission. A child should have completed four years on or before 31st March of the year of admission to be considered eligible for gaining admission to pre-primary class. A child should have completed a minimum of five years on or before 31st March of the year of admission to be considered eligible for gaining admission to Class I. The cut off date of 31st March will be of the academic year for which admission will be taken.

(iii) While one year class of early childhood education would be offered by all recognized schools immediately prior to Class-I, the schools which have infrastructural facilities may be allowed to open pre-school classes for children below the age of four years. However, these pre-schools classes will not be part of

(iv) (v) -7 main school nor shall these be treated as feeder school to pre-primary class of the school. The children in pre-school should be from the immediate neighbourhood. There should be no school bag for carrying any prescribed books in all such pre-school classes. That the Department of Education will establish a monitoring mechanism in each district to ensure that all recommendations are effectively implemented and that children of pre-school should not get preference over other children for admission in pre-primary class. The Department of Education would law down regulatory mechanism for pre-school education. That the Department of Education will introduce one year pre-primary in all Govt. schools within three years. This will require addition of class-rooms and recruitment of teachers. There are 365 Sarvodaya Vidayalayas. Introducing one section of 40 students in pre-primary in 365 Sarvodaya Vidalayas will required 365 class rooms and 365 Assistant Teachers. If the cost of construction of a room be taken between Rs. 2 -2.50 lacs the cost of construction would be approximately be Rs. 8 crores and another Rs. 4 crores per annum may be needed for teachers. So an approximate expenditure of nearly Rs. 15 crores may be allowed to be incurred for schools run by Department of Education. Additional funding to start these classes in MCD schools may be provided?

9. Extensive reference was also made to the official record which the Petitioners have obtained under the Right to Information Act where the Administration of the Union Territory Chandigarh stated that in view of the provisions of Section 3(1), 4, 11 and 15 it will be appropriate if admission is granted in Class I in the beginning of the academic year to such children who complete 6 years of age during the academic year, i.e. who are of the age 5+ years on the Ist of April of the academic year because it will enable those students to get admission in the beginning of the session who become eligible for the same during the session for their smooth completion of school curriculum. It was stated further that by fixing the age criteria as mentioned above, the children complete the elementary education by the time he or she completes the age of 14 years. This criteria was specifically approved and before doing so, in the very same communication, it has been noticed by the authorities concerned that as per the existing age criteria for admission, a child of the age of 5+ years on Ist April of the academic session is eligible to get admission in Class I in any government school and almost all private schools shall follow the same criteria which criteria is being followed in the States of Punjab and Haryana and that similarly, a child of the age of 3+ years as on Ist April of the academic year is eligible to get admission in the Pre-Nursery Class in government schools of U.T. Chandgiarh and that further, some of the private schools have increased the minimum age to get admission in primary classes from 3 to 4 years and consequently in Class I from 5 to 6 years and that the U.T. Education Department upon such querries had given out the decision, the relevant portion of which has been extracted in the foregoing paragraphs. When the four schools referred to above, implemented this decision, there was huge discontent amongst the parents who were keen to get their children admitted to such schools and the Chandigarh Administration once again reiterated as follows:

Therefore in view of Section 3(1), 4, 11 and 15, it will be appropriate if we grant admission in Class-I in the beginning of the academic year to all such children who complete six years of age during the academic year i.e. who are of age 5+ years on Ist April of the academic year because it will enable those students to get admission in class-I, the beginning of the session who become eligible for the same during the session for their smooth completion of school curriculum By fixing the age criteria as mentioned above, all children will be able to complete elementary education by the time he/she completes the age of 14 years. Similarly it will also be appropriate fix 3+ years in the minimum age as on Ist April of the current academic year for admission to Pre-Nursery class.

It is also worth mentioning that the above criteria is the same which in vogue in the adjoining states i.e. Punjab Haryana and New Delhi. Extract from the Punjab Education Code (clause 206) and circular of the New Delhi Govt. No. F15(185)DE.ACT/2010/54-63 dated 6.1.2011 are placed below at flag "A" and "B" respectively.

10. In the information obtained by the Petitioners, there is also a reference to a meeting which was held by the Principals of the four schools wherein they admitted that if the previous practice is followed, no children would be left out for admission and there will be lot of resentment amongst the parents if new procoedurfe is adopted and it was agreed that the previous criteria would be followed. Instead, the criteria suggested by the Chandigarh Administration was C.W.P. No. 2104 of 2011 -10 followed and a change was effected which is now the cause of grievance of the Petitioners.

11. Notice of motion was issued to the Respondents and an affidavit has been submitted by the Director of Public Instructions, in which he has stated that "criteria which is being followed in Government scchools in Chandigarh is that a child of the age is 3+ years as on Ist April of the academic year would be eligible to get admission in the initial class, i.e Pre-nursery/L.K.G. In this manner child of the age of 5+ years on Ist of April of academic session should be eligible to get admission in Class-I in any Government school".

12. It was further submitted in the affidavit that the private schools of Chandigarh had been following their own criteria with regard to the age for admission and the Chandigarh Administration had not issued any circular/direction in this regard. However, after coming into force of the Right of Children to Free and Compulsory Education Act, 2009, (hereinafter known as R.T.E. Act also) there was confusion in the minds of parents as well as certain private institutions. Various querries were being addressed to the Administration by the parents and schools for clarification in this regard. In pursuance to these querries the Chandigarh Administration issued clarificatory circular dated 14.1.2011 in which it was informed that the age criteria would be 3+ years for Pre-Nursery and 5+ years for Class-I respectively. It was conceded in the affidavit that by coming into force the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the Act"), the eligible age limit for admission had not increased. It was stated further that the circular dated 14.1.2011 issued by the Administration had been misinterpreted and the factum of the meeting having taken place with the officials of the Administration with the parents and the Principals of the schools was admitted and the decision taken to resort to the earlier practice was also admitted.

13. No reply has been filed on behalf of the private schools namely Sacred Heart School, Sector 26, Carmel Convent School, Sector 9, St. John School, Sector 26, and St. Anne School, Sector 32, Chandigarh who have been represented by Shri M.L. Sarin, but Shri Amar Vivek, learned Counsel appearing for the Strawberry Fields World School, Sector 26, Chandigarh who is also one of the Respondents, has filed a reply by way of an affidavit of Ms. Aman Sidhu, Principal, of Strawberry Fields World School, Sector 26, Chandigarh, wherein she has stated that they have no problem, if as a one time measure, the children who complete 5 years upto 31.12.2011 be considered for admission to UKG/KG and that instead of the cut off date being April, 2006 to 31.3.2007, they have no difficulty in including the children in the zone of consideration who have been born upto 30.9.2006.

14. Before proceeding with the matter further, since this particular school, i.e. the Strawberry Fields World School has taken this stand, which is to the satisfaction of the Petitioners, I am of the opinion that the petition qua this school has been rendered infructuous and as a consequence thereof, the parents who are desirous of submitting the forms in this particular school, and whose wards have been born upto 30.9.2006, are free to approach the school for obtaining the forms for due consideration for admission as a one time measure.

15. Shri Sarin, learned Counsel pleading the cause of the private schools in question (except the Strawberry Fields World School), has offered twofold justification for effecting the change that they being the private schools, are entitled to prescribe their own criteria and they have every right to manage their own affairs and thus, the Petitioners cannot make any grievance on account of the change in criteria. Reference was made to the judgments of the Hon'ble Supreme Court in T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors.  : (2002) 8 S.C.C. 481 and P.A. Inamdar and Ors. v. State of Maharashtra and Ors. (2005) 6 S.C.C. 537, wherein in para-133, 137 and 138 the Hon'ble Supreme Court while dealing with the rights of the minority institutions, made the following observations:

133. So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State cannot interfere therewith. Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

... .... ...

137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefore subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.

16. He, thus, laid emphasis on the fact that the minority institutions had a legitimate claim and unfettered fundamental right to choose the students to be allowed admission and the procedure governing such admissions. The only condition being that this should be fair, transparent and non-exploitative.

17. The second justification is that the Act defines a child to be "a male or a female child aged 6 to 14 years and then with reference to Sections 3(1), 4, 11 and 15, it was submitted that every child of age 6 to 14 years had a right of free and compulsory education in a neighbourhood school till the completion of elementary education criteria was changed to ensure that when the child reaches Class-I, he should of the age of 6 years. Sections2(c), 3(1), 4, 11 and 15 are extracted here below:

2(c) "child" means a male or female child of the age of six to fourteen years

. ... ... ...

3(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.

4. Special provisions for children not admitted to, or who have not completed, elementary education.-Where a child above six years of age has not been admitted in in any school or though admitted, could not complete his or her elementary education, then he or she shall be admitted in a class appropriate to his or her age:

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

This clause to provide for children above six years, who have either not been admitted to any school, or admitted but could not complete elementary education, the right to be admitted to a class appropriate to his or her age for completing elementary education and also special training to enable such children to be at par with other children and also making said children entitled for free education till completion of their elementary education, even after fourteen years.

. ... ... ...

11. Appropriate Government to provide for pre-school education.-With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

. ... ... ...

15. No denial of admission.-A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period.

18. It is thus, the contention of Shri Sarin that at more than one place, the aforesaid provisions refer to the age of the child as 6 years and keeping in view the provisions of the Act, the criteria so adopted by the schools has enabled them to meet the requirements and objectives of the Act.

19. Upon due consideration of the matter, I proceed to determine the issue at hand.

20. The grievance of the Petitioners is the abrupt change of criteria resorted to by the four private schools of U.T. Chandigarh which, according to them, has not only resulted in different practices being followed by the schools in Chandigarh, but has also resulted in exclusion of their children from the zone of consideration for the current year and by providing an upper limit of cut off date i.e. from 1.4.2006 to 31.3.2007. The children born between 1.4.2006 to 31.12.2006 in St. John School, Sector 26, from 1.4.2007 to 30.9.2007 in Carmel Convent School, Sector 9 and Sacred Heart School and from 1.4.2007 to 31.12.2007 in St. Anne School, Sector 32 would be totally excluded and would not get any chance to get into these schools as they would be beyond 6-1/2 years at the time of consideration in the next year. They have, however, expressed their satisfaction regarding the stand taken by the Strawberry Fields World School, Sector 26 and they state that they have no objection if, as a one time measure, the criteria for consideration is changed to include the children born upto 30.9.2006 for consideration for admission to KG/LKG for consideration for admission to UKG/KG Class.

21. To consider the controversies in the right perspective, it is important to examine the stand of the Respondents who have stated that the avowed objective is to meet the requirements of the Right of Children to Free and Compulsory Education Act, 2009. If the object of this legislation is to be seen, then the laudable objective becomes evident and that is to provide free and compulsory education to children upto the age of 14 years so as to enable the State to achieve the objective enshrined in the Directive Principles of the State Policy and to achieve this, the State has also been required to provide the necessary infrastructure. The further objective is to provide universal elementary education keeping in view the disadvantaged groups and weaker sections who drop out of the school before completing the elementary education, apart from providing them quality of learning achievement and to achieve this objective, the appropriate government is required to provide and ensure admission, attendance and completion of elementary education.

22. The Act further provides the definition of a child to mean to be of 6 to 14 years and that every child shall have the right of free and compulsory education and in the eventuality of a child over 6 years being not admitted to any school or though admitted, is unable to complete his elementary education, then he be admitted to a class appropriate to his of her age and in such a situation, to bring him at par with the other children. He shall be afforded a special training in such a manner as may be prescribed. Section 11 of the Act obliges the appropriate Government with a responsibility to prepare the children above the age of 3 years for elementary education and to provide early childhood care and education for all children upto the age of 6 years.

23. A perusal of the provisions of the Act coupled with the objectives which the Act contemplates, prompts the Court to conclude that the said Act neither inhibits, nor fetters or prescribes a minimum or a maximum age group for the purpose of admission in a particular class. The provisions of the Act are aimed at the deprived sections and the disadvantaged children and to provide them the opportunity to have education, elementary as well as higher. It is with this purpose in view that the age of a child has been defined from 6 to 14 years and any such unprivileged child who has been deprived of the education in the early years, can still acquire his education by joining any class appropriate to his age and in which eventuality, such a child would be provided with a supportive special training which may act as a scaffolding to such an endeavour, but to say that it is necessarily prescribed by the statute that since a child has been defined to be of 6 to 14 years, therefore, when he reaches Class-I, he should be 6 years, is to my mind, providing a fictional interpretation which was never intended by the Act.

24. The Act has vast social implications and seeks to provide impetus to the attempt to educate the underprivileged, and if the interpretation as propounded by Shri Sarin, or the interpretation that the Administration has sought to place is accepted, in its so called clarificatory order, then it can only impede the accelerated process of those who already have sufficient access to education. The purpose of the Act is to help the downtrodden & underprivileged and not to act as a growth inhibitor.

25. The plea is thus rejected and once this is held, then one wonders, what other rationale survives to support the decision of the schools and the Administration which is now being termed not as a decision but a clarification.

26. If it was a clarification, then it certainly has not resulted in clearing the air, but has compounded the situation.

27. The other aspect is that these schools which are minority schools, have a right to prescribe norms of admission or not.

28. Shri Sarin appears to be right when he contends that private institutions such as the ones he represents, have a right to prescribe their own norms of admission to regulate them in the manner they so desire. There is indeed no doubt that they have a right to follow their own procedure in the matters of admission and regulation thereof if such a decision satisfies the tests of "fairness, transparency and being non exploitative". Such a decision which is to subserve the interest of children and society thus should also be reasonable, as fairness would also include reasonableness and the interests of the children in general would require a desirable situation where a uniform policy of admission is adhered to in the region where such schools are located.

29. It is also not in dispute that prior to this year, a uniform policy was being followed by the government schools, as also the private schools where a child of Pre-Nursery would enter the Class at the age of 3+ years and enter Class-I at the age of 5+. But now with the change of criteria, a child entering Class-I would be 6 years.

30. Much of the confusion has been created by the Chandigarh Administration who have been doing a flip-flop of sorts.

31. The plea of the Administration that they have nothing to do with the process of admission being followed by the private schools has to be taken with a pinch of salt. The details of the communication which the officials have exchanged with the schools, establishes shadow boxing by them. If the Administration had nothing to say in this matter then, why were the school managements rushing to them for clarification and why was the Administration sermonising them? But in any case, if the matter had come to them, they should have attempted to have a uniform Policy, rather than issue a directive in the garb of a clarification and then leave the schools holding the baby and fend for themselves when hue and cry erupted.

32. It was thus imperative for them to evolve a mechanism at that point of time and even if the procedure had to be changed according to the interpretation that they had arrived at regarding the provisions of the Right of Children to Free and Compulsory Education Act, 2009 some uniform transitional mechanism should have been evolved and adopted by them. Instead all Govt. schools which were directly under the control of the Administration were permitted to admit children as per previous policy or was it the case that RTE was applicable only to private schools and not to Govt. schools. The stand of the Administration thus is illogical and irrational while the stand of Shri Sarin is evasive. To a pointed querry as to what objection he could have if the interpretation placed by the Administration on the R.T.E. Act is weaned away from its decision of resorting to the changed stand and the old procedure adopted, even as a one time measure he merely said that schools which he represents have a right to have their own criteria. To another question whether any prejudice would be caused to the schools, if the old criteria is adopted, he could not offer any justifiable explanation, except to say that this decision was keeping in view the R.T.E. Act.

33. Now once it is held that provisions of R.T.E. Act do not contemplate the pegging of the age of a child at the admission to elementary school as 6 years and in the absence of any prejudice, the decision seems irrational and sans any foundation.

34. It is not disputed that the consideration of the application of the children desirous of admission would have been considered by a draw of lots and no harm would have been done, if for the time being, the old procedure would C.W.P. No. 2104 of 2011 -20 have been followed and adoption of the revised norms could have been prescribed for the next session. In this way the parents would have been on due notice and would have been prepared for such an eventuality.

35. To conclude, it is held that the private schools certainly have a right to fix the norms and adopt a criteria for admission to their schools and if they do so, there is no illegality, provided such a decision satisfies the tests of fairness, reasonableness, transparency and being non exploitative but the reason given by them for doing so, does not seem to be rational. Providing any cut of date is likely to have the impact of inclusion and exclusion both, so therefore any such date which is provided should have a sustainable logic based on serious inputs in this regard. It is not the case that any serious inputs have gone into such a decision making, which inputs have been derived on a sound study of the issue.

36. The Court thus, feels that the following directions are necessitated in the given circumstances of the case:

(1) It is desirable and in the interest of the children and their parents that a somewhat uniform policy is adopted so as to create a harmonious process of regulated admissions.

(2) Such a process would obviate the chance of children of different age groups competing with each other.

(3) All the four schools namely Sacred Heart School, Sector 26, Carmel Convent School, Sector 9, St. John School, Sector 26, and St. Anne School, Sector 32, Chandigarh would, as a one time measure, consider the cases of all the children who are born upto 30.9.2006.

(4) Schools may issue a communique about the directions given in this judgment which shall be sufficient notice to the desirous parents with no further publication of a notice.

(5) The schools need not give any separate notice for this purpose. However, they shall display it on their notice-boards.

(6) As per the norms set up by the Chandigarh Administration, the schools shall also be entitled to charge fee of Rs. 100/-on the admission form given out by them. If the forms are available on the website of the schools, the same be downloaded by the parents and submitted to the school along with fee of Rs. 100/-.

(7) The forms shall be accepted by the 20th of February, 2011. Each school is thereafter free to fix the date for admission. The forms shall be scrutinised by the schools in another three days after receipt and thereafter a date shall be fixed for holding draw of lots as per their convenience, which date shall be given out to the applicants/parents.

37. Before parting, the Court feels compelled to add, that these directions should not result in euphoria for those who might perceive it as a vindication of their stand, nor should it be perceived as a derision of those whose decision has not been appreciated, but this should be treated as an opportunity to all, where we put our heads together to evolve a mechanism, where our young ones do not have to see a brooding gloominess in the process which otherwise is the beginning of their journey on the path of enlightenment.

38. The writ petitions be now posted for further hearing on April 27, 2011. Before this date, the Administration through its Education Secretary, shall submit a proposal to be followed uniformly in all schools of the U.T. Chandigarh. The copies of the proposals shall be given to all the schools and they would be free to submit counter proposals, if any. While concluding such an exercise those involved in the process may also derive the benefits of the conclusions arrived at by the Ganguly Committee formed pursuant to the directions of the Delhi High Court. The entire material be thus placed before the Court. The Administration shall form a panel of educationalists, sociologists, psychologists to suggest a C proper age for admission in the initial classes and to ascertain a uniform policy. Adjourned to 27.4.2011.

39. Copies of this order be given Dasti to the counsel for the parties in the main case under the seal and signatures of the Special Secretary to this Court.