

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6180 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

HARIOM MUKESHBHAI BHATT
Versus
STATE OF GUJARAT

Appearance:

MR ASHISH M. DAGLI WITH MR HITESH L GUPTA(3937) for the
Petitioner(s) No. 1

MR NAYAN L GUPTA(11798) for the Petitioner(s) No. 1

MR J. K. SHAH, ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3,4

CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 02/05/2023****ORAL JUDGMENT**

With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final disposal.

2. Issue Rule, returnable forthwith. Mr J. K. Shah, learned Assistant Government Pleader waives service of notice of Rule on

behalf of respondent nos.1 to 3. Though served, respondent no.4, has chosen not to enter appearance.

3. Mr Ashish M. Dagli, learned advocate appearing with Mr Hitesh L. Gupta, learned advocate for the petitioner, submitted that initially, the petitioner, was aggrieved by the introduction of sub-rule (1) of Rule 3 of the Right of Children to Free and Compulsory Education Rules, 2012 (hereinafter referred to as “the Rules of 2012”) which, provides that no Elementary School shall admit a child in 1st standard who has not completed 6th year of age on the 1st June of the academic year. It is submitted that the date of birth of the son of the petitioner is 01.06.2017 and therefore, he would be short by one day for seeking admission in the 1st standard. It is submitted that the Rules of 2012, has been amended in the year 2020; however, the relaxation was provided to the academic years 2020-2021, 2021-2022 and 2022-2023. It has been provided that the child shall be eligible for admission who has completed 5th year of age on the 1st June of the respective academic year. So far as the case of the petitioner is concerned, the son of the petitioner has been denied admission on the ground that he is short by one day and will have to repeat one whole year in the Senior K.G.

3.1 It is urged that since the petitioner is short by one day, the petitioner, has not pressed the challenge to the Rules as the grievance of the petitioner, has now been taken care of by the judgment of this Court in the case of *Yusufbhai Mamadbhai Dabawala v. Director of Primary Education Gujarat State & Others* reported in 2016 SCC OnLine Guj 6853. It is submitted that appeal against that judgment has also been dismissed. Hence, the principle laid down in said judgment applies to the facts of the present case.

4. Mr J. K. Shah, learned Assistant Government Pleader, could not dispute the principle laid down by this Court in the above referred judgment, and its applicability to the facts of the present case. It is therefore urged that let appropriate orders be passed in the matter.

5. Heard the learned advocates appearing for the respective parties.

6. The petitioner, has not pressed the challenge to the legality and validity of the sub-rule (1) of Rule 3 of the Rules of 2012 and therefore, acceding to the request of the petitioner, this Court, has passed an order dated 01.05.2023 which, reads thus:

“Mr Ashish M. Dagli, learned advocate with Mr Hitesh L. Gupta, learned advocate for the petitioner, does not press the prayer challenging of the newly inserted sub-rule (1) of Rule 3 of the Right of Children to Free and Compulsory Education Rules, 2010. It is urged that the child of the petitioner is short by one day and therefore, would be covered by the judgment of this Court in the case of *Yusufbhai Mamadbhai Dabawala vs. Director of Primary Education* reported in 2016 SCC OnLine Guj 6853.

At the joint request, let the matter appear on 02.05.2023.”

7. The petitioner has not pressed the prayer and the limited relief which the petitioner has claimed, would be application of the judgment of this Court in the case of *Yusufbhai Mamadbhai Dabawala v. Director of Primary Education Gujarat State & Others* (supra). The issue before this Court, was regarding sub-rule (1) of Rule 3 in Chapter II under the caption “Right to Free and Compulsory Education” of the Right of Children to Free and Compulsory Education Rules, 2010 which provided that no Elementary School shall admit a child who has not completed 6th year of age on the date of admission. It further provided that if a child is desirous to be admitted on completion of 5 years of age, he

shall be admitted, provided he has completed 5 years of age as on 1st June of that year. Relevant paragraphs 5 to 9 of the said judgment, read thus:

“5. Now, the child bears his date of birth to be 02nd June, 2011. The pedantic respondent states that on 01st June, 2016, he does not complete five years of age, falling short by a day. On the other hand, the case put-forth on behalf of the petitioner is that without reckoning with reference to the dates, but calculating on the basis of total 365 days in a year, the child completes total number of days to make five years.

5.1 How to apply Rule 3(1) of the Rules? What should be the interpretational cannon? Indeed, interpretation has to be cultivating exercise to being home the justice and feed to the concept of substantive justice. The process of interpretation is not reading a provision dead. It is a live process. It is art of judicial interpretation which helps to cross the barrier to travel from the realm of justice according-to-law, to the arena of what is cherished as substantive justice.

5.2 The methodology of interpretation of statute is perceived with two ways of approach. One is called maxwell principles of interpretation whereas the other method is Mimansa rules of interpretation. It is complained that Mimansa principles have been forgotten to be applied in the judicial dispensation by the Constitutional Courts. The maxwell method of interpretation can be said to be a search-bound, whereas the Mimansa principles are solution oriented.

5.3 One of the Mimansa Principle is Gunapradhan Axiom, wherein “Guna” means subordinate or accessory while “Pradhan” means principal. The Gunapradhan Axiom states as quoted by the Supreme Court in Ispat Industries Limited v. Commissioner of Customs, Mumbai [(2006) 12 SCC 583] as well as further in Gujarat Urja Vikas Nigam Limited v. Essar Power Limited [(2008) 4 SCC 755], thus:

“If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the later or must be disregarded altogether.”

5.4 The maxim is known also by principle that the main object would gulp the subordinate things or aspects, and only principal consideration would govern. As per Jaimini-the exponent of Mimansa theory, acts are of two kinds, principal and subordinate. The Apex Court explaining the principle

elaborated thus in Gujarat Urja Vikas Nigam Limited (supra),

“Commenting on Jaimini 3:3:9 Kumarila Bhatta says:

“The Siddhanta (principle) laid down by this Sutra is that in a case where there is one qualification pertaining to the Accessory by itself and another pertaining to it through the Primary, the former qualification is always to be taken as set aside by the latter. This is because the proper fulfillment of the Primary is the business of the Accessory also as the latter operates solely for the sake of the former. Consequently if, in consideration of its own qualification it were to deprive the Primary of its natural accomplishment then there would be a disruption of that action (the Primary) for the sake of which it was meant to operate. Though in such a case the proper fulfillment of the Primary with all its accompaniments would mean the deprivation of the Accessory of its own natural accompaniment, yet, as the fact of the Accessory being equipped with all its accompaniments is not so very necessary (as that of the primary), there would be nothing incongruous in the said deprivation”.

See Ganganath Jha's English translation of the Tantravartika, Vol.3 page 1141.” (Para 50)

5.5 The above was reiterated in Ispat Industries (supra), from which paragraph 36 may be extracted to clarify the principle further.

“The Gunapradhan Axiom can also be deducted from Jaimini 6 : 3 : 9 which states:

“When there is a conflict between the purpose and the material, the purpose is to prevail, because in the absence of the prescribed material a substitute can be used, for the material is subordinate to the purpose. To give an example, the prescribed Yupa (sacrificial post for tying the sacrificial animal) must be made of Khadir wood. However, Khadir wood is weak while the animal tied may be restive. Hence, the Yupa can be made of Kadar wood which is strong. Now this substitution is being made despite the fact that the prescribed wood is Khadir, but this prescription is only subordinate or accessory to the performance of the ceremony, which is the main object. Hence if it comes in the way of the ceremony being performed, it can be modified or substituted.” (para 36)

5.6 The maxim is that the characteristics of the accessory, which in this case is the date prescribed, is determined by the primary, namely the concept of year and the total period comprised in years. The accessory has to operate subservient to the purpose of the primary. Reverting to Rule

3(1), it emphasizes completion of certain number of years-five years. By necessary implication the object of the Rule making authority is that, a child to be imparted education at the completion of age, that should be mature enough to go to the school, thus to be admitted to the school. The prescription of the date of 1st June is provided a kind of yardstick to be applied for considering the completion of five years.

5.7 The above Rule thus could be construed with reference to the Gunapradhan Axiom. The requirement of completion of years is the primary element and the outer date or cut-off date provided to determine the completion of total number of required five years is accessory. It is called "Guna" namely the subordinate aspect or in the nature of accessory, while "pradhan" or principal is the completion of years. Guna cannot be elevated to Pradhana. Years therefore could be viewed as time period comprising of total number of 365 days, and if that requirement is fulfilled, a day's deficit has to be ignored. Rule 3(1) of the Rules as well as Rule 128 of the Bombay Primary Education Rules both could be properly construed and applied as per the above principles for understanding the "five years of age".

5.8 The proper context to be supplied for applying the aforesaid Rule of eligibility is the completion of years. The two dates, namely the date of birth of a child and the outer date of 1st June, contemplated in the Rule are incidental to the main object of completion of five years. Once five years span in terms of total days in the year in the age of the child is satisfied, the child has to be considered fit in terms of age and maturity to be entitled to admission to elementary education and for that purpose to Elementary School.

6. In attaching the above interpretation to the word "year" or "five years of age", it was entirely possible to completely observe and follow the following principle of interpretation, as stated by Justice Frankfurter of the U.S. Supreme Court.

"As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great Judges have constantly admonished their brethren of the need for discipline in observing the limitation. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

7. In the present case, it is possible to evolve and apply yet another principle of interpretation by adverting to alternative interpretation. When any word or group of words in the statute are capable of being supplied two alternative interpretation, essentially leading to the same meaning, and when, without doing violence to the words or without deviating from the object, rather in order to endear the object of the word in the statute or the object of the statute or rule in general, it is possible to accord alternative meaning, such alternative meaning should be applied to make the provision of law or rule purposive.

7.1 Having regard to the above principles of interpretation, it is eminently possible to construe "five years of age" by attaching the meaning to the word "years" as aggregation of days of an year which is comprised in 365 days. When Rule 3(1) of the Rules provides that the child should have completed five years of age as on 1st June of that year, the emphasis and leaning is on the completion of years, and the mathematical exactitude for understanding the word "age" is not warranted, especially when it is one day's difference applied to attach inability on the child to be admitted to the elementary school. In such circumstances, a virtuous interpretation would be to count the five years in terms of total days in year by attaching such meaning to the word "year" and considering the age of the child in that way, rather than reckoning the age with reference to date. Accordingly and in this view, child must be held to be completing five years of age as on 1st June of that year.

8. A child admitted to the school and introduced to education is invigoration of Article 21 read with Article 21A of the Constitution. From the societal standpoint, introducing a child to elementary, primary and education at all levels is to lay a reinforcing stone in the foundations of civilized society, to contribute to make the democracy vibrant and worthy with educated citizenry. No stone should be left unturned to ensure that one and all gets education. Right to education and right to free and compulsory education to a child being fundamental rights, it can be best accorded in company of the principles flowing from Article 14. Article 14 always strikes at unreasonableness. It seeks to weed out all elements of arbitrariness in application of any law or rule.

8.1 Denying a child admission to a school for want of an illusory deficit of one day in completion of five years, which in fact does not exist, would not be countenanced by the Constitutional Court when it is eminently possible to construe the Rule without supplying thereto any additions and doing any variation or violence to the language of the Rule.

9. It is declared that the petitioner is entitled to get admission in the first standard. He shall be treated as fulfilling the requirement of completion of five years of age for the purpose of Rule 3 of the Rules. The sixth respondent shall grant admission to the petitioner, while respondent Nos.2, 3, 4 and 5 shall ensure on their part that petitioner is allowed admission by the sixth respondent. The respondent educational authority shall help to complete the necessary procedure for admitting the petitioner expeditiously and in any case within one week from the date of receipt of the order. For the purpose of presence, the time elapsed because of pendency of this petition so far, shall be condonable.”

8. The State Government, has now come out with new Rules which, provides that no Elementary School shall admit a child in 1st standard who has not completed 6th year of age on 1st June of academic year. As per the said Rule, the requirement is that the school shall not admit a child in 1st standard who has not completed 6 years of age on 1st June of the academic year.

9. In the present case, it is not in dispute that the date of birth of the son of the petitioner is 01.06.2017 and therefore, would be completing 6 years but with a shortage of one day. In the aforesaid judgment, this Court, applying the principle of interpretation held that when any word or group of words in the statute are capable of being supplied two alternative interpretation, essentially leading to the same meaning, and when, without doing violence to the words or without deviating from the object, rather in order to endear the object of the word in the statute or the object of the statute or rule in general, it is possible to accord alternative meaning, such alternative meaning should be applied to make the provision of law or rule purposive. In paragraph 7.1, this Court, has held and observed that having regard to the said principle of interpretation, it is possible to construe “five years of age” by attaching the meaning to the word “years” as aggregation of days of an year which is

comprised in 365 days. It has been held and observed that when Rule 3(1) of the Rules provides that the child should have completed five years of age as on 1st June of that year, the emphasis and leaning is on the completion of years, and the mathematical exactitude for understanding the word “age” is not warranted, especially when it is one day’s difference applied to attach inability on the child to be admitted to the elementary school. It has been also pointed out that in such circumstances, a virtuous interpretation would be to count the five years in terms of total days in year by attaching such meaning to the word “year” and considering the age of the child in that way, rather than reckoning the age with reference to date. It has been therefore, concluded that child must be held to be completing five years of age as on 1st June of that year.

10. The principle laid down by this Court in *Yusufbhai Mamadbhai Dabawala v. Director of Primary Education Gujarat State & Others* (supra), applies on all fours to the facts of the present case and therefore, action on the part of the respondent in not admitting the son of the petitioner, deserves to be quashed and set aside and is hereby quashed and set aside.

11. The respondents are therefore directed to consider the case of the son of the petitioner and grant admission and not deny the admission only on the ground that son of the petitioner has not completed 6 years of age as on 01.06.2023.

12. The petition stands allowed. Rule is made absolute. No order as to costs. Direct service is permitted.

Sd/-
(SANGEETA K. VISHEN,J)

RAVI P. PATEL