
(2017) 01 AHC CK 0215

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 3913 of 2017

Abu Bakar

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Constitution of India, 1950 — Article 21A

Right of Children to Free and Compulsory Education Act, 2009 — Section 6

Citation : (2017) 3 ADJ 521 : (2017) 2 AILLJ 429 : (2017) 2 AllWC 2168 :
(2017) 121 ALR 258

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Ravindra Prakash Srivasta, Advocate, for the Petitioner; C.S.C. and
Dharam Deo Chauhan, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J.—; Heard learned counsel for the petitioner, learned Standing Counsel for State-respondents and learned counsel for Gram Sabha.

2. This writ petition has been filed by the petitioner as a Public Interest Litigation (PIL). The petitioner, in paras 3, 4, 5, 16 & 17 of the writ petition stated as under:

"3. That the petitioner is giving his credentials that for public cause he is seeking the present writ petition (PIL). He has no personal or private interest in the matter. There is no authoritative pronouncement by the Hon"ble Supreme Court or Hon"ble High Court on the question raised and the result of the litigation will not lead to any undue gain to the petitioner or anyone associated with him or any undue loss to any person, body of persons or the State.

4. That the petitioner is public spirited person and is permanent resident of village-Haraha, Post-Uchahra Kala, Tappa-Ujiyar, Pargana-Maghar Poorab, Tehsil-Khalilabad, District Sant Kabir Nagar and with consent of villagers he is filing the

present writ petition.

5. That the Araj No. 232 area 0.089 hectare recorded as Banjar in revenue record, which is Gram Sabha land and which is used by villagers as Abadi land since their ancestors.

16. That after passing the impugned order several reports have been submitted by authorities concerned and it was assured by respondents that the construction of primary school in Araj No. 232 area 0.089 hectare will be cancelled but the concerned Gram Pradhan is adamant to construct the primary school in which the petitioner came Allahabad on 25.05.2016 but due to unavailability of sufficient documents the present writ petition could not be prepared and after taking some other documents the petitioner again came Allahabad on 16.01.2017 and without any further delay the present writ petition is being filed before this Hon"ble Court as such if there is any delay in filing of the present writ petition, the same may be condoned by this Hon"ble Court otherwise the villagers shall suffer an irreparable loss and injury.

17. That in view of the above facts and reasons it is expedient in the interest of justice that this Hon"ble Court may kindly be pleased to stay the operation and effect of the impugned order dated 27.09.2011 passed by Sub Divisional Magistrate, Khalilabad, District-Sant Kabir Nagar during the pendency of present writ petition before this Hon"ble Court otherwise the villagers shall suffer an irreparable loss and injury."

3. Perusal of the impugned order dated 27.09.2011 shows that a primary school was proposed to be opened in the village panchayat in question namely Village Haraha, Vikas Khand Semariyawan, Pargana Maghar Poorab, Tehsil Khalilabad, District Sant Kabir Nagar. Khasra plot no. 232 measuring 0.089 hectare recorded as Banjar in the revenue records was proposed for construction of the primary school. After due inquiry, the proposal was accepted by respondent no. 3 by the impugned order dated 27.09.2011 and accordingly, the aforesaid land was reserved for construction of primary school in the village. It appears that the petitioner started raising objection against the establishment of primary school in the village. This intention of the petitioner is very much evident from his own undated application bearing endorsement of various authorities dated 09.01.2014 filed as Annexure No. 3 to the writ petition in which he stated that over the aforesaid land, construction of a school is not possible and since the land has been reserved for school and as such it cannot be used for any other purpose. He further stated that about 700 meters away from village Haraha there is a primary school in village Safiyabad and as such there is no need for construction of a school in the village.

4. To provide primary education to children is not only the statutory and Constitutional duty of the Government under the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter to be referred as the "Act") but also one of the fundamental right of children in view of Article 21-A of the

Constitution of India and the provisions of Act. Provisions of Article 21-A of the Constitution and Sections 3, 4, 6, 8, 9, 10 & 11 of Act, 2009 are reproduced below:

"Article 21-A: 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.

Sec. 3. Right to child to free and compulsory education. - [(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her 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.

(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clause (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996):

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home based education.

Sec. 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 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.

Sec. 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."

Sec. 8. - Duties of appropriate Government. - The appropriate Government shall--

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

(i) provided free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in section 6;

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

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child;

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers.

Sec. 9. - Duties of local authority. - Every local authority shall--

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of

- expenditure incurred on elementary education of the child in such other school;
- (b) ensure availability of a neighbourhood school as specified in section 6;
 - (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;
 - (d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;
 - (e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;
 - (f) provide infrastructure including school building, teaching staff and learning material;
 - (g) provide special training facility specified in section 4;
 - (h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
 - (i) ensure timely prescribing of curriculum and courses of study for elementary education;
 - (j) provide training facility for teachers;
 - (k) ensure admission of children of migrant families;
 - (l) monitor functioning of schools within its jurisdiction; and
 - (m) decide the academic calendar.

Sec. 10. Duty of parents and guardian. - It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.

Sec. 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.

5. Article 21-A of the Constitution of India clearly mandates that the State shall provide free and compulsory education to all children up to the age of 6 to 14 years.

6. In view of this Constitutional mandate, the Act, 2009 has been enacted with the objects and reason as under:

"The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy

enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,-

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) "compulsory education" casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) "free education" means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in Article 21A of the Constitution.

6. The Bill seeks to achieve this objective."

7. The fundamental right of free education to the children of the age of 6 to 14 years for elementary education casts constitutional and statutory obligation upon the appropriate Government and local authority to establish within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within three years from the commencement of the Act, so as to carryout the provisions of the Act and ensure admission, attendance and completion of elementary education of children of six to fourteen years. The aforesaid Constitutional mandate has been statutorily enforced by the Act.

8. The establishment of the primary school in the village Panchayat in question appears to be a step in compliance to the statutory mandate of Section 6 of the Act which is being obstructed by the petitioner under one pretext or the other and who has now approach this Court by filing this writ petition in the name of PIL so as to prevent the establishment of a primary educational institution in the village Panchayat in question. Apparently and evidently the attempt of the petitioner in filing the present writ petition as a PIL is not in fact a PIL but an attempt to harm the public interest. Such petitioners not only deserve to be discouraged but heavy cost also deserves to be imposed so that such petitioners may not abuse the process of Court and may not come in the way of public interest.

9. The petitioner is an individual and claims himself to be the resident of village in question. The land in question belongs to village Panchayat which has been reserved for establishing a primary school. The village Panchayat is making efforts to establish a school in the village in question for the benefit of children so that they may get education. Primary education to children is not only the basic need of the society for its development but also the fundamental rights of children on whose shoulders there shall be great responsibility for building the nation.

10. Under the circumstances, the writ petition filed by the petitioner to obstruct the establishment of primary school in the village, deserves to be dismissed with cost.

11. In view of the above discussion, the writ petition is dismissed with cost of Rs. 25,000/- which shall be deposited by the petitioner within a month from today with the Legal Cell Authority, High Court, Allahabad.

12. After the judgment was dictated in open Court, the learned counsel for the petitioner submits that the petitioner has stated in paras 10 and 11 of the writ petition that with reference to report of Junior Engineer and the Basic Shiksha Adhikari that the land of khasra plot no. 232 is not suitable for construction of a primary school for the reason that its area is less than 1000 square meters. The submission so made does not impress the Court for simple reason that the object behind filing of this writ petition by the petitioner is to somehow obstruct the establishment of primary school in the village in question which is reflected from

his own application, the relevant portion of which is reproduced below:

"xzke gM+gk ls yxHkx 700 eh0 ij gh xzke lQh;kckn esa izk0@mPp izk0 fo|ky; vkujksM fLFkr gSA ,slh n"kk esa esjs fopkj ls ogka fo|ky; fuekZ.k dh dksbZ vo";drk ugha gS cfYd tufgr ds vU; dk;ksZa esa mDr Hkwfe dk iz;ksx fd;k tk ldrk gSA"

13. It is admitted fact that the land of aforesaid khasra plot no. 232 is adjoining the Abadi. The petitioner is clearly against the establishment of primary school in the village in question and has stated that there is no need for construction of a school in the village. Such an approach, by no stretch of imagination and logic; can be said to be in public interest. Consequently, I do not find any substance even in the last submission made by learned counsel for the petitioner. That apart the impugned order was passed in the year 2011 and the writ petition has been filed in the year 2017 without any proper explanation for laches.

14. Lastly the learned counsel for the petitioner states that the cost may be reduced to Rs. 5,000/- so as to enable the petitioner to pay it.

15. Learned Standing Counsel has no objection for reducing the cost as prayed by the learned counsel for the petitioner.

16. Prayer is accepted, the cost is reduced to Rs.5,000/-.