

(2013) 12 CHH CK 0009
In the Chhattisgarh High Court
Case No : W.P. (C) No. 1557/2013

Chhattisgarh State Commission for Protection of Child Rights	APPELLANT
Vs	
State of Chhattisgarh	RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 1 CG.L.R.W. 92 : (2014) 2 MPJR 68

Hon'ble Judges : Pritinker Diwaker, J

Bench : Single Bench

Judgement

Pritinker Diwaker, J.—This petition has been filed by Chhattisgarh State Commission for Protection of Child Rights praying that despite order dated 16.7.2013 passed by it, respondent No. 3 (Rajkumar College, Raipur - a private unaided school) is not admitting son of respondent No. 4 namely Mohd. Anas in class I under The Right of Children to Free and Compulsory Education Act, 2009 (for short "RTE Act, 2009"). Facts of the case in brief are that Mohd. Anas son of respondent No. 4 herein filed an application before the Nodal Officer praying that he be admitted in Rajkumar College, Raipur (for short the "College") in class I for studies under the RTE Act, 2009. This application was forwarded by the Nodal Officer of the College vide Annexure R-1 filed by the State Government along with documents of the child. It seems that the child had also approached the Collector who on 4.7.2013 wrote a letter to the College requesting it for his admission in Class-I under the RTE Act, 2009. Reference of this letter of the Collector finds place in the letter of District Education Officer, Raipur (for short the "DEO") vide Annexure R-2 by which he had directed respondent No. 3 to admit the child in class-I. As respondent No. 3 failed to comply with the order of the DEO, on 29.7.2013 another letter was written by him asking the College to give admission to the child. By the said letter, the DEO had also asked respondent No. 3 to apprise him about the compliance thereof. Meanwhile, the petitioner - commission had also started proceedings against respondent No. 3 for not admitting the child under the RTE Act, 2009.

Stand of respondent No. 3 before the petitioner--commission was that it is a boarding school and therefore RTE Act, 2009 is not applicable to it. After giving due notice to respondent No. 3, on 16.7.2013 order (Annexure P-I) was passed by the petitioner--commission directing respondent No. 3 to admit the child. Petitioner--commission had further cautioned the DEO for not co-operating with it as expected and asked him to ensure compliance of the order passed by it.

2. Even after the order being passed by the petitioner - Commission, respondent No. 3 - school was of the opinion that child cannot be admitted in its school and various excuses were made by it while writing letter dated 31.7.2013 to the DEO. On 31.7.2013 another letter (Annexure R-5) was written by the DEO to respondent No. 3 directing it to immediately admit the child and their act in not giving him admission is violative of RTE Act, 2009. By this letter again the DEO had asked the principal of the College to report the compliance of the same to him by remaining personally present before him on 2.8.2013 at 12 noon. From the letter dated 19.8.2013 written by the DEO it is clear that the orders passed by him were not complied with by respondent No. 3 or even the responsible officer of it has failed to appear before the DEO, Raipur. Two more letters dated 6.9.2013 and 1.10.2013 were written by the DEO but they went in vain. Petitioner--commission was also informed by the DEO that respondent No. 3 was not obeying the orders issued by him. When the orders of the DEO and the petitioner--commission were not complied with, this petition has been filed before this Court on 3.10.2013 inter alia pleading that under the RTE Act, 2009 respondent No. 3 is under obligation to admit at least 25 per cent. children belonging to disadvantaged group and weaker section which has not been done in this case and therefore a writ be issued against respondent No. 3 for admitting the child, the son of respondent No. 4.

3. Counsel for the petitioner submits that as per sub-clause (ii) of Section 15 of The Commission for protection of Child rights Act, 2005 the petitioner--commission has approached this Court for ensuring the compliance of its order. He submits that respondent No. 3 is bent upon to ignore the order of the Commission and the letters written by the DEO. He further submits that under no circumstances respondent No. 3 can escape from its liability of admitting at least 25 per cent. of the students in every class belonging to disadvantaged group and weaker section. Referring to various sections of the RTE Act, 2009 it has been argued by the counsel for the petitioner that respondent No. 3 is under obligation to admit the child namely Mohd. Anas in class-I.

4. State Government in return filed by it has supported the stand of the petitioner-commission and it has been argued by the counsel appearing for it that the State Government is feeling helpless against the rigid and adamant approach of respondent No. 3. Referring to various letters written by the DEO, it has been argued that respondent No. 3 is not even bothering to the letters of the State authorities.

5. Defending the act of respondent No. 3 it has been argued by the counsel

appearing for it as under:

(i) That child Mohd. Anas is not residing within the neighbourhood area of 1 k.m. of Rajkumar college and therefore he has no right to get admission under the RTE Act, 2009.

(ii) That the child had approached respondent No. 3 at the belated stage and by the time he approached it in the month of June 2013, the academic session 2013-14 had already started and thus respondent No. 3 is fully justified in not admitting him.

(iii) That by virtue of Rule 6(6) made under RTE Act, 2009 the State Government is under obligation to identify the neighbourhood schools where the children can be admitted and make such information public for each habitation.

(iv) That till date no such exercise has been done by the State Government in this respect and thus respondent No. 3 cannot be compelled to admit any child under the RTE Act, 2009

(v) That by virtue of Rule 11(3), Rule 6(1) of the Rules which provide for the limit of 1 k.m. alone are applicable.

6. Heard counsel for the parties and perused the documents on record.

7. The statement of objects and reasons of the RTE Act, 2009 reads as under:

"Statement of Objects and Reasons. - 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 to 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 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 section 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.

8. Section 38 of the RTE Act, 2009 empowers the State Government to make Rules and pursuant thereto it has framed Chhattisgarh Right of Children to Free and Compulsory Education Rules, 2010 (for short "Rules 2010").

9. Section 2(n) of the RTE Act, 2009 reads as under:

"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."

10. Section 3 of the RTE Act, 2009 reads as under:

"3. Right of 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 Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 (1 of 1996), shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act."

11. Section 12(1)(c) of the RTE Act, 2009 reads as under:

"For the purposes of this Act, a school,-

(c) specified in sub-clauses (iii) and (iv) 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 disadvantage group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided 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 preschool education."

12. Section 15 of the RTE Act, 2009 reads as under:

"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:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.

13. Further, as per Section 16 of the RTE Act, 2009 no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

14. Chapter VI of the RTE Act, 2009 is about protection of right of children and Section 31 which empowers the petitioner to approach this Court reads as under:

"31. Monitoring of child's right to education.-(1) The National Commission for Protection of Child Rights constituted u/s 3, or, as the case may be, the State Commission for Protection of Child Rights constituted u/s 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:--

(a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;

(b) inquire into complaints relating to child's right to free and compulsory education; and

(c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed."

15. Section 15 of Commissions for Protection of Child Rights Act, 2005 empowers National Commission to approach the Supreme Court and High Court for issuance of directions and writs to ensure compliance of its orders and by virtue of Section 24 of this Act the State Commissions are also empowered to get their orders executed with the help of Supreme Court or High Court.

16. From a bare reading of the above-stated provisions it would be clear that object of the RTE Act, 2009 and the rules made thereunder is to ensure that at least 25 per cent. of children belonging to disadvantaged group and weaker section should be admitted in every class up to the elementary stage. Stand of respondent No. 3 that it being a boarding school is not covered under the RTE Act, 2009 is taken note of and rejected for the reason that respondent No. 3 runs into three categories of students which are day scholars, day boarders and boarders.

Rule 11 of Rules 2010 reads as under:

11. Admission of children belonging to weaker section and disadvantaged group

(1) The school referred to in clauses (iii) and (iv) of clause (n) of Section 2 shall ensure that children admitted in accordance with clause (c) of subsection (1) of Section 12 shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

(2) The school referred to in clauses (iii) and (iv) of clause (n) of Section 2 shall ensure that children admitted in accordance with clause (c) of subsection (1) of Section 12 shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and Information, Communication and Technology (ICT) facilities, extra-curricular and sports.

(3) The area or limits of neighbourhood specified in sub-rule (1) of Rule 6 shall

apply to admissions made in accordance with clause (c) of sub-section (1) of Section 12:

Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) of subsection (1) of Section 12, extend these area or limits with the prior approval of the appropriate Government.

17. The Apex Court in the matter of Society for Un-aided Private Schools of Rajasthan Vs. Union of India (UOI) and Another, , has held that provisions of the RTE Act, 2009 are mandatory and enforceable against all types of schools provided u/s 2(n) of the RTE Act, 2009 except unaided minority institutions.

18. Admittedly, respondent No. 3 is not an unaided minority school and therefore the RTE Act, 2009 is applicable to it also irrespective of the fact that it is a boarding and day scholar school. Moreover, respondent No. 3 is not merely a boarding school, it has three categories of students i.e. day scholars, day boarders and boarders. Day scholars are the students who take classes in the school but do not avail any facility like food and co-curricular activities available for residential students. Day boarders avail the facility of meals but after completing day education, they go back to their houses and do not stay in the hostels or enjoy residential status whereas the boarders stay in the school and enjoy all the facilities including residential one.

19. Pursuant to the order dated 12.12.2013, respondent No. 3 has filed additional affidavit clearly indicating about the fee structure of three different types of students who are pursuing their studies in the school. From this affidavit it is clear that 3 different slabs of fee are provided for the students and thus it is not correct on the part of respondent No. 3 to say that it is exclusively a boarding school. Thus on this ground it cannot be held that RTE Act, 2009 is not applicable to respondent No. 3. As on date respondent No. 3 is not an exclusively boarding school, the point whether in exclusively boarding schools only the children are to be admitted for study under the RTE Act, 2009 or not, is left open as in this case there is no occasion for this Court to deal with the same.

20. Other contention of respondent No. 3 is that child Mohd. Anas is not residing within 1 k.m. limit of the school and therefore as per Rule 11(3) read with 6(1) of the Rules 2010 the child is not entitled to pursue his studies in the respondent No. 3--school and he should take admission in a school which is within 1 k.m. periphery from his residence. Another contention of respondent No. 3 is that by virtue of Rule 6(6), the local authority is duty-bound to identify the neighbourhood schools where children can be admitted and make such information public for each habitation and once this has not been done by the State Government, respondent No. 3 cannot be compelled to admit child Mohd. Anas in its school. These arguments made by respondent No. 3 are totally misconceived.

21. Rules 11 and 6 have to be read with the main section 12 of the RTE Act,

2009 and Section 12 clearly mandates that at least 25 per cent. of the students of the total strength of each class have to be from the disadvantaged group and weaker section and if any of 25 per cent. of the seats remain vacant, duty is cast on the schools to apply for extension of the neighbourhood area in order to ensure filling up of minimum 25 per cent. of the seats as stipulated under the RTE Act, 2009. Thus the limit of 1 k.m. as provided in Rule 6 is not absolute.

22. In the present case, as per the affidavit of the school not a single student of any class belonging to disadvantaged group and weaker section has been admitted by respondent No. 3. Thus respondent No. 3 cannot take the stand of neighbourhood area of 1 k.m. Admittedly, respondent No. 3 had never approached the State Government informing that no student has turned up under the RTE Act, 2009 and thus in every class the clause of 1 k.m. limit may be relaxed. Though this ground has not been raised by the petitioner before any authority on an earlier occasion, this Court cannot stop it do to so at this stage.

23. So far as the other point argued by respondent No. 3 that the local authority has not identified the neighbourhood schools as required in Rule 6(6) is concerned, even assuming that this fact has not been identified by the local authority, it does not disentitle the student to get admission in the school of his own choice where 25 per cent. of the seats are not yet filled up and it does not relieve respondent No. 3 of its statutory liability as contemplated u/s 12 of the RTE Act, 2009. If the local authority or the State Government has failed to discharge any obligation, it does not mean that respondent No. 3 is not obliged to undertake such exercise as required under the law.

24. So far as the last point raised by respondent No. 3 in respect of delay on the part of the child in approaching it is concerned, Section 15 of the RTE Act, 2009 provides that a child shall be admitted in a school at the commencement of academic year within such extended period as may be prescribed. It is further provided that no child shall be denied admission if the same is sought even subsequent to the extended period. Further, proviso to Section 15 of the RTE Act, 2009 says that any child admitted after the extended period shall complete his studies in such a manner as may be prescribed by the appropriate Government and to fulfill the mandatory requirement Rule 14 has been framed which provides for extended period of admission. Rule 14 reads as under:

"Extended period of admission.-(1) Extended period of admission shall be six months from the date of commencement of the academic year of a school.

(2) Where a child is admitted in a school after the extended period, he or she shall be eligible to complete studies with the help of special training, as determined by the head teacher of the school."

25. In the case in hand, the Nodal Officer and the DEO have written several letters to respondent No. 3 for admitting the student but yet respondent No. 3 with the adamant approach has decided not to admit the child. Even after passing of the order by the petitioner--Commission on 16.7.2013, the same has

not been complied with and the petitioner was compelled to approach this Court.

26. Considering the rival submissions of the parties, this Court is of the view that the petition deserves to be allowed. It is accordingly allowed. Respondent No. 3 is directed to immediately admit the child namely Mohd. Anas in class-I within 15 days from the date of receipt of copy of this order. Respondent No. 3 is further directed to ensure the studies of the child as provided under Rule 14 of the Rules 2010. Respondent No. 3 would further ensure compliance of beneficiary scheme of compulsory education as enshrined in the Constitution of India. State authorities would also provide uniform, text books, school bag and other facilities to child Mohammed Anas as required under Rule 11 of Rule 2010. This facility should be extended to him within seven days from admission.

27. From the facts of this case it appears that even the State Government has also not taken appropriate steps to respect the scheme of free and compulsory education. State Government should have made sincere efforts to ensure admission of the child in the school of respondent No. 3.

28. The legislation (RTE Act, 2009) has been enacted embracing in its fold the benevolent spirit of providing the elementary education to the children belonging to the downtrodden strata of the society. The sole object of this enactment is to streamline such ill-fated children and not let them sink into the quagmire of illiteracy. So the State Government being a welfare State is expected not to leave any stone unturned to ensure that the children hailing from disadvantage group and weaker section of the society are not deprived of better and quality elementary education so that the social fabric of democracy gets strengthened. Looking to the fact that child Mohd. Anas ran pillar to post to materialize his dream of getting free elementary education for quite a considerable period, there would be a cost of Rs. 10,000/- to be paid by respondent No. 3 to respondent No. 4.