
(2016) 09 JH CK 0071

In the Jharkhand High Court

Case No : W.P. (Pil) No. 3271 of 2013 with I.A. No. 2111 of 2015

Court On Its Own Motion

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JCR 23

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Rajesh Kumar, G.P.V, for the State; Mr. Vineet Prakash, Advocate, for the Intervenor

Final Decision : Disposed Off

Judgement

Mr. Virender Singh, C.J.—This Court taking cognizance of the reports published in the newspapers about arbitrary and exorbitant fees charged by private schools and certain other irregularities committed by the private schools, brought to the notice of this Court through an anonymous letter, issued notice on 04.07.2013.

2. An Intervention Application being I.A. No. 2111 of 2015 was filed by one Abhay Kumar Singh through Mr. Vineet Prakash, Advocate, who assisted the Court during the hearing of the instant "Public Interest Litigation".

3. A detailed counter-affidavit was filed by the respondent-State of Jharkhand indicating the mechanism for ensuring compliance of the provisions under the Right of Children to Free and Compulsory Education Act, 2009, however, lack of control on other aspects regarding charging of exorbitant tuition fee, transport fee, development fee etc. were not satisfactorily explained by the respondents. During the proceeding of the case it was noticed by the Court that the States like Delhi, Tamilnadu, Haryana, Andhra Pradesh etc. have already a legislation regulating the aforesaid aspects. By order dated 31.07.2014, response of the

respondent-State was sought; whether a similar legislation for regulating collection of fee by the private schools is under contemplation or not, however, no response came from the respondent-State.

4. In the aforesaid background, we decided to hear the matter finally.

5. What appears to the Court is that the respondent-authorities have failed to perform their legal and constitutional obligations. In spite of serious concern raised from different quarters of the society, no mechanism has been introduced by the State for regulating fees charged by the private schools. No doubt, the private schools can fix their fees, however, the same must be in consonance with the quality of education and other facilities provided by the schools. Obviously, a balance has to be struck between autonomy of the private schools and fees charged for the education. Capitation fee and profiteering have been held to be forbidden. One suggestion came during the course of hearing that for fixing the fee-structure, the following considerations may be kept in mind:

- (i) Infrastructure and facility available in the schools,
- (ii) Investments made and salaries paid to the teachers and the staffs,
- (iii) Future plan for expansion and/or improvement of the schools.

6. The learned counsel for the intervenor drew attention of the Court to the decision in Action Committee, Unaided Pvt. Schools & Ors. v. Director of Education, Delhi & Ors. reported in 2009 (11) SCALE 7 and other judgments. The decision of the High Court of Punjab and Haryana in Civil Writ Petition No. 20545 of 2009 (O & M) has also been relied upon by the learned counsel for the intervenor for constituting a Committee headed by a retired Judge of the High Court which would suggest proper mechanism for regulating the issues raised in the instant "Public Interest Litigation".

7. After hearing both the sides, we feel that a Committee on the pattern as ordered by the High Court of Punjab and Haryana needs to be constituted by this Court. This has been necessitated on account of dismal response of the respondent-State. On the suggestion of the learned counsel for the parties, the constitution of the Committee shall be as follows:

- (i) Chairman,

Hon"ble Mr. Justice D.N. Upadhyay, Former Judge, High Court of Jharkhand,

- (ii) Member,

Secretary, School Education and Literacy, Government of Jharkhand,

- (iii) Member,

Mr. D.R. Singh, Ex-Principal, D.A.V. Shyamali, Doranda, Ranchi (renamed as Jawahar Vidya Mandir, Shyamali)

(iv) Member,

Mr. R.K. Bitto, Chartered Accountant.

8. On the suggestion of the learned counsel for the parties, fee of the Hon''ble Chairman is fixed at Rs.35,000/- per sitting and for members except, Secretary, School Education and Literacy at Rs.10,000/- per sitting. The State shall also pay the expenses incurred by the Committee in holding the sitting/public hearing and for secretarial assistance availed. Mr. Rajesh Kumar, the learned G.P.-V suggested that the sitting/public hearing of the Committee may take place at the Judicial Academy, Ranchi on payment. The Hon''ble Chairman shall pass necessary orders for conduct of business of the Committee and payment of fee etc. It is clarified that the Committee may move the Court in the event of any difficulty/exigency. It is expected that all the members shall co-operate with the Hon''ble Chairman and the hearing shall be concluded expeditiously, preferably within 4 months.

9. Since, the Committee headed by Hon''ble Mr. Justice D.N. Upadhyay (Retd.) would grant hearing to all the stake-holders, we have avoided issuing notice to the private schools. The Committee shall examine and make recommendations for regulating charging/collection of fees under various heads by the private schools. The Committee shall take note of the local conditions, and the quality of education imparted by the school should be the prime consideration for fixing the fees.

10. On receiving report from the Committee, the Secretary, School Education and Literacy, Government of Jharkhand shall ensure that a proper legislation for regulating charging of fees by the private schools comes in place, within 3 months thereafter.

11. With a note of appreciation for Mr. Rajesh Kumar, the learned G.P.-V and Mr. Vineet Prakash, advocate for rendering their able assistance to the Court, we close the instant "Public Interest Litigation".