
(2015) 05 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition Nos. 16259 and 16361 of 2015 (EDN)

G.C. Gangadhara and Others

APPELLANT

Vs

The Right to Education Cell and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 2(n)(iv), 5, 5(2)

Citation : (2015) 3 AKR 76 : (2015) 4 KarLJ 91 : (2015) 4 KCCR 3398

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Rajagopal M.R., for the Appellant; Veena Hegde, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.

1. Heard the learned Counsel appearing for the petitioner and the learned Government Pleader. The facts of the case are, the first petitioner is said to be father of one Pruthvi Nayaka G., aged about 3 1/2 years and he belongs to a Scheduled Tribe, namely, Valmiki Nayak. The second petitioner is said to be the father of one Sandya S. She is also aged about 3 1/2 years and she also belongs to a Scheduled Tribe namely Valmiki Nayak. Both the petitioners had applied for a seat in a private school, for their respective wards, as provided under the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the "RTE Act", for brevity). On their applications, the son of the first petitioner-Pruthvi Nayaka G. was assigned a seat in the Nehru English Higher Primary School, Gulur. Similarly, the daughter of the second petitioner-Sandya S., was assigned admission to a seat in Varin International School. As matters stood thus, the institution assigned to the son of the first petitioner was found to be away from his residence and there was no proper transport facility, which resulted in the father of the first petitioner seeking a transfer from that

institution to the Varin International Residential School. In that context, the second petitioner also felt uncomfortable with sending his daughter to Varin International Residential School. Therefore, the petitioners found that it would be convenient if the assignment of the seats in respect of their children were exchanged. In that, the first petitioner's son could go to Varin International Residential School and the second petitioner's daughter Sandya S. would opt for Nehru English Higher Primary School. On this understanding the petitioners had together, approached the third respondent-Block Education Officer, Tumkur requesting him to provide for such transfer inter se between the institutions aforesaid. The third respondent is said to have issued an endorsement dated 28-3-2015 which stated that such a request cannot be considered, as it would run counter to Sections 5(2) and 2(n)(iv) of the RTE Act. During the first week of April 2015, the third respondent had informed the petitioners that there is no power under the Act to effect such a transfer, inter se, and it was orally informed to the petitioners. It is this which is sought to be questioned before this Court.

2. The learned Government Pleader has raised a vehement objection to the maintainability of the petition on the footing that there is a clear bar under the RTE Act and any direction issued on the basis of the prayer made would create a wrong precedent and it would throw the procedure prescribed awry and therefore it would not be welcome to consider the claim of the petitioners.

In this background, the provisions of the RTE Act according to which such a transfer inter se is said to be impermissible, provides as follows:

"2. Definitions.--In this Act, unless the context otherwise requires.--

(n) "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;

5. Right of transfer to other school.--(1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.

(2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary

education.

(3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her".

The provisions read together certainly includes the respective schools to which the petitioners' children have been admitted and a plain reading of sub-section (2) of Section 5 would indicate the exclusion of the right to seek a transfer to a school defined under Section 2(n)(iv) would apply only where there is single child's parent seeking a transfer. But in the peculiar circumstances of this case, since there is an exchange of students who were admitted, there is no disturbance of any allotment made or other infirmity that would be caused. In that, the benefit that is provided by the State insofar as the respective students is concerned, would remain the same. It is only the exchange which would result in the children conveniently attending the respective schools. Thus, the State cannot reject their request on a mere technicality.

Therefore, notwithstanding the bar imposed in respect of transfer of students in respect of schools covered under sub-clause (iv) of clause (n) of Section 2, it would be possible for the respective schools to admit the respective children as proposed.

Consequently the writ petition is allowed. The endorsement at Annexure-F is quashed. The respondents are directed to permit the mutual transfer of the respective children of the petitioners as prayed for, which shall be done forthwith, in any event, before the commencement of the academic year. It is also clear that this shall not be treated as precedent to seek transfer which would run counter to sub-section (2) of Section 5, unless it is similar case of mutual transfer and other things remaining equal.