

(2015) 03 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1811 of 2014

Shirish Pathak and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 12(1)(c), 16, 2, 2(e), 2(n)

Citation : AIR 2015 Chh 107 : (2015) 2 MPJR 71

Hon'ble Judges : Pritinker Diwaker, J

Bench : Single Bench

Advocate : Surfaraj Khan, for the Appellant; N.K. Vyas, Assistant Solicitor General, Y.S. Thakur, Dy. A.G. and Sanjay S. Agrawal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J—Government of India promulgated the Act known as Right of Children to Free and Compulsory Education Act, 2009 (in short "the Act, 2009") and also framed rules thereunder known as Rules, 2010. The object and reason for enactment of such Act is to provide free elementary education of satisfactory and equitable quality to the children from disadvantaged groups or weaker sections. It casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education of such children. As the petitioners were desirous to take advantage of the Act, 2009, on behalf of petitioner No. 1/student, his father petitioner No. 2 made an application in the office of District Education Officer, Raipur (in short "DEO"). As per rules, the application was forwarded to the Nodal Officer appointed by the State of CG and after making a preliminary enquiry and examining the documents, the Nodal Officer recommended the case of petitioner No. 1 to DEO for his admission in the private school i.e. respondent No. 6 of which respondent No. 7 is the Principal. As despite recommendation of DEO, admission was not granted to petitioner No. 1 in respondent No. 6 school, the petitioners filed WP (C) No. 870/13 before this

Court, inter alia, pleading that though petitioner No. 1 is entitled for his admission under the Act, 2009 and the rules framed thereunder, the private school is deliberately not granting admission to petitioner No. 1 despite the fact that as per the Act, 2009, 25% seats are reserved for such children like petitioner No. 1. After hearing counsel for the respective parties and considering the provision of the Act, 2009, this Court finally disposed of the said writ petition by directing the DEO to hold an enquiry and to determine as to whether name of father of petitioner No. 1 i.e. petitioner No. 2 is included in the list of Below Poverty Line or not. The relevant portion of the order passed by this Court reads as under:

"11. The statutory obligation of respondent No. 6 as enjoined upon it under Section 7 of the Act of 2009 can be enforced only when it is proved that petitioner No. 2, the father of petitioner No. 1, is included in the list of Below Poverty Line. In the absence of that information, no direction can be issued by this Court in favour of the petitioners.

12. Though petitioner No. 2 has failed to establish before this Court that he is included in the list of Below Poverty Line, considering that the matter relates to enforcement of educational rights under the provisions of the Act of 2009, I deem it expedient to direct the District Education Officer to hold an enquiry in the matter. The petitioner No. 2 shall appear before the District Education Officer, Raipur within a period of 10 days from the date of receipt of copy of this order and on his appearance, the District Education Officer shall verify whether petitioner No. 2 is included in the list of Below Poverty Line published and maintained by the State Govt. in its authenticity. The relevant details collected shall be forwarded by the District Education Officer to respondent No. 6-Institution within a period of 15 days from the date of first appearance of petitioner No. 2 before it. Within a period of 10 days thereafter, respondent No. 6 Institution shall take appropriate steps depending upon the nature of information with regard to inclusion or otherwise of petitioner No. 2 in the list of Below Poverty Line.

13. With the aforesaid observation/direction, the petition is finally disposed of."

Pursuant to direction given by this Court, an enquiry was conducted by District Education Officer and he passed the order on 12-6-2014 (Annexure P/3) holding that petitioner No. 2 does not belong to the weaker section category as he does not come within the class "Below Poverty Line". Though on this count it has been held by the DEO that petitioner No. 1 is not entitled for his admission under the Act, 2009 but considering the fact that a ration card was produced by the petitioners in relation to wife of petitioner No. 2, treating it to be a valid one and apprehending the threat of contempt of this Court, it was directed that admission be given to petitioner No. 1 in the private school i.e. respondent No. 6. As despite the above order passed by DEO and further other correspondence made by the Nodal Officer of District Education Office, Raipur, admission was not granted to petitioner No. 1, a contempt petition was also filed by the petitioners

and during the pendency of that petition, order dated 5-7-2014 (Annexure P/5) was passed by DEO cancelling his earlier order dated 12-6-2014 (Annexure P/3). In this order it has been held by DEO that wife of petitioner No. 2 had obtained the ration card by submitting incorrect facts, the said ration card has already been cancelled by the competent authority and FIR has also been registered against petitioner No. 2 and his wife and therefore, the order dated 12-6-2014 directing for admission of petitioner No. 1 is cancelled with immediate effect. Aggrieved with this order and the action of the private school/respondent No. 6 refusing to grant admission to petition No. 1, the present petition has been filed on 9-9-2014 and by virtue of interim order dated 15-9-2014 passed by this Court, petitioner No. 1 has been admitted in Class-1 of respondent No. 6 school.

2. Learned counsel for the petitioners and respondent No. 6 have informed this Court that petitioner No. 1 has already completed one year education of Class-1 and the new session would commence from 1st April, 2015.

3. Learned counsel for the petitioners submits as under:

(i) that once under the provisions of the Act, 2009 and the rules framed thereunder, the petitioner No. 1 has been admitted in the school, has successfully passed Class-1, he is entitled to be allowed to continue his education in the same school even assuming that he does not fulfil some of the criteria laid down under the Act.

(ii) that if at this stage petitioner No. 1 is ousted from the school it will adversely affect his educational career.

(iii) that petitioner No. 1 fulfils all the criteria as laid down under the Act and thus he cannot be denied admission in the private school.

(iv) that the order impugned dated 5-7-2014 has been issued by DEO under the influence and pressure of respondent No. 6 because on earlier occasion the same authority had passed the order dated 12-6-2014 and there was no occasion or reason for DEO to change his order subsequently. The order impugned has been passed only after receipt of notices by the school authorities of contempt petition filed by the petitioners before this Court.

(v) that the case of petitioner No. 1 was recommended by the Nodal Officer after conducting a detailed enquiry and once the said report of the Nodal Officer was accepted by DEO and directions were given for admitting petitioner No. 1 in respondent No. 6 school, it clearly demonstrates that petitioner No. 1 is legally entitled for his admission in the private school/respondent No. 6 and it is only on the influence and pressure of respondent No. 6 that the order dated 12-6-2014 has been changed by DEO.

(vi) that even today number of seats reserved for admission of the children like petitioner No. 1 are laying vacant in respondent No. 6 school and if petitioner No. 1 is allowed to complete his school education in the said school, no harm would be caused to anyone.

(vii) that in view of Section 16 of the Act, 2009 the admission already granted to petitioner No. 1 cannot be cancelled under any circumstances.

(viii) that the enquiry has not been conducted by DEO in a proper manner before passing the order impugned.

(ix) that though name of petitioner No. 2 has been included in the list of persons belonging to BPL class, yet advantage of the same has not been granted to the petitioners simply because the petitioners do not have any document in their possession to establish that name of petitioner No. 2 has already been included in such list.

4. On the other hand, opposing the writ petition it has been argued on behalf of counsel for respondent Nos. 6 & 7 as under:

(i) that pursuant to direction given by this Court dated 26-4-2014 in WP(C) No. 870/13 a detailed enquiry was conducted by DEO wherein it was found that petitioner No. 2 is not living below the poverty line and therefore, considering the provisions of the Act, 2009 and the notification dated 23-8-2011 (Annexure R/2), petitioner No. 1 cannot be admitted in the private school.

(ii) while holding enquiry the DEO has recorded a categorical finding that it is only apprehending the threat of contempt of this Court he had accepted the only piece of evidence i.e. ration card issued in the name of wife of petitioner No. 2 and based on that, direction was issued to grant admission to petitioner No. 1 in the school.

(iii) that from the order of the DEO dated 12-6-2014 it is apparent that the said order is based on the ration card obtained by wife of petitioner No. 2 and as soon as the said ration card was cancelled by the competent authority, the DEO was fully justified in passing the impugned order dated 5-7-2014 (Annexure P/5) directing for cancellation of his earlier order dated 12-6-2014.

(iv) while referring to Annexure R/3 i.e. the report dated 29-5-2014 lodged by the Food Inspector before the Station Officer of Police Station, Raipur, it is argued that after enquiry a finding has been recorded by the Food Inspector that petitioner No. 2 is a Journalist, owner of a Nano car and just to take advantage of the Act, 2009 his wife had obtained the forged ration card (blue ration card) whereas she was not working as labour which was the basic requirement for obtaining such card. For obtaining the benefit of the Act, 2009, petitioner No. 2 and his wife have gone to the extent of showing their incorrect address the radius of 1 km from the school. Petitioner No. 2 and his wife own a building in Raipur town, apart from 12 acres of agricultural land in the neighbouring district.

(v) that present is a classic case of misuse of the Act of 2009 and if such fraudulent persons are allowed to misuse the provisions of the Act, the very object of the Act would be frustrated and simultaneously, the genuine persons who are entitled for the benefits of the Act, 2009 would be deprived of the same.

(vi) that prima facie the allegation levelled against petitioner No. 2 and his wife for obtaining a bogus ration card has been found to be correct and that is why FIR has already been registered against them for the offence under Section 4(8-b) of CG Public Distribution Control Order, 2004 and other provisions of the Act.

(vii) While referring to the order dated 26-4-2014 passed by this Court it has been argued that before the State Commission for Protection of Child Rights it was admitted by petitioner No. 2 that he does not hold any card as belonging to the class Below Poverty Line and that is why his application was rejected by the Commission vide order dated 13-6-2013 i.e. much prior to institution of earlier petition W.P.(C) No. 870/13.

(viii) that none of the authorities of the school had ever influenced any of the State authorities, in particular the DEO, Raipur, to pass the impugned order and it has been passed by the DEO only after cancellation of ration card issued in the name of wife of petitioner No. 2.

(ix) that respondent No. 6 has also sympathy for petitioner No. 1, a minor child, but merely on the basis of sympathy the school cannot permit him to continue in the school especially when petitioner No. 2 could secure admission of his son/petitioner No. 1 by pleading incorrect facts before the competent authorities and playing fraud.

(x) that admission was granted to petitioner No. 1 by the school pursuant to interim order dated 15-9-2014 passed by this Court in this petition, however, this Court had made it Very clear that this admission would be provisional one, and once it is established that petitioner No. 1 is not entitled for his admission in the school, he cannot be allowed to continue for a fresh academic session starting from 1st April, 2015.

5. Contention of learned counsel of the State is as under:

(i) that the first order passed by the DEO dated 12-6-2014 was solely on the ground of holding of ration card by wife of petitioner No. 2 and having found that the said ration card was a forged one, the DEO was fully justified in passing the impugned order.

(ii) that in the enquiry conducted by the Government Officers it was revealed that wife of petitioner No. 2 had obtained the ration card by submitting incorrect fact and playing fraud and therefore, not only the said ration card was cancelled but FIR has also been registered.

(iv) that admission to a child not belonging to weaker section or disadvantageous group under the Act, 2009 would adversely affect the right of the genuine candidates who are otherwise entitled for admission under the Act.

6. Counsel appearing for Union of India has also ably assisted the Court.

7. Before advertng to the rival submissions made by the respective parties, it would be appropriate to refer to certain provisions of the Act, 2009.

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

"12. Extent of school's responsibility for free and compulsory education.--(1) For the purposes of this Act, a school,--

(a) to (b) xxx xxx xxx xxx

(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 disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its Completion:

Provided further that where a school specified in clause (n) of Section 2 imparts preschool education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education."

"School" has also been defined in Section 2(n) which reads as under:

"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";

Section 2(e) defines child belonging to weaker section in the following manner:

"(e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification";

In exercise of power conferred under clause (e) of Section 2 of the Act, 2009, the State Government has issued a notification on 23-8-2011 (Annexure R/1), the relevant portion of which reads as under:

"No. F13-73/20-3/11.--In exercise of powers conferred by clause (e) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), the State Government, hereby, notifies that, in Chhattisgarh State the "child belonging to weaker section" means:--

(a) a child whose parents are included in the list of Below Poverty Line effective at that time;

(b) a child whose parents are not alive at present but his name was included in the list of Below Poverty Line effective at the time of their death.

[Published in Rajpatra (Asadharan) dated 23-8-2011 page 506(1)]"

8. A bare reading of the notification makes it clear that it does not prescribe the annual income limit and what is provided is that the child belonging to weaker section would mean a child whose parents are included in the list of Below Poverty Line. Considering this aspect of the case and to ensure as to whether parents of petitioner No. 1 come within the purview of Below Poverty Line or can take advantage of the weaker section, this Court on 26-4-2014 had directed the DEO to hold a detailed enquiry and to pass appropriate order. Pursuant to direction of this Court, an enquiry was conducted by the DEO and it has been held by him in the order dated 12-6-2014 that name of parents of petitioner No. 1 does not find place in the list of Below Poverty Line of the concerned ward and the piece of evidence in favour of parents of petitioner No. 1 is the ration card issued in the name of wife of petitioner No. 2. It has been observed by DEO that petitioner No. 2 has failed to adduce any evidence that he belongs to weaker section.

9. From the tenor of this order it is apparent that the DEO was apprehending the threat of contempt of the order passed by this Court and therefore, based on the ration card issued in the name of wife of petitioner No. 2 it has directed the private school/respondent No. 6 to admit petitioner No. 1. From the report of Municipal Corporation, Raipur it appears that the ration card was obtained by wife of petitioner No. 2 by placing incorrect facts before the authorities and even she was not residing at the given address within the radius of 1 km from the private school which is the mandatory requirement of the rule. Though this Court is refraining itself from recording any finding on the basis of report lodged by the Food Inspector but from the said report and other documents it appears that petitioner No. 2 does not belong to weaker section as defined under Section 2(e) of the Act, 2009 and the notification dated 23-8-2011 (Annexure R/1) issued by the State Government.

10. I find no substance in the arguments of the petitioners that the order impugned dated 5-7-2014 (Annexure P/5) has been passed at the behest or under the influence of respondent No. 6 or any of its authorities. No such material has been brought before this Court except the sweeping statement made by the petitioners in the writ petition. On the contrary, the impugned order makes it clear that the same has been passed after cancellation of the ration card issued in the name of wife of petitioner No. 2, which was the basis for passing the earlier order dated 12-6-2014 by the DEO, Once the very basis of the order dated 12-6-2014 goes, the DEO appears to be fully justified in passing the impugned order. The language of the order dated 12-6-2014 is very relevant and makes it clear that the said order was passed by the authority apprehending some contempt action against it and it appears that to be on the safer side the said order was passed placing reliance on the ration card issued in favour of wife

of petitioner No. 2. It also appears from the order dated 26-4-2014 passed by this Court which has not been controverted by the petitioners in this petition that before the State Commission for Protection of Child Rights it was admitted by petitioner No. 2 that he does not belong to weaker section. Further, the petitioners have failed to file any document before this Court to show that the petitioners or mother of petitioner No. 1 belong to weaker section or disadvantaged section. In absence of any such documentary evidence, the statement made by counsel for the petitioners that the petitioners belong to weaker section or disadvantaged group is to be noted and rejected.

11. So far as reliance placed by the petitioners on Section 16 of the Act, 2009 is concerned, it contemplates that no child admitted in a school shall be held back in any class or expelled from school till completion of the elementary education. However, present is not a case of expulsion of petitioner No. 1 by private school but is a case where provisional admission was given to petitioner No. 1 pursuant to direction of this Court dated 15-9-2014. Thus, the petitioners cannot take any advantage of Section 16. I find enough substance in the argument of the State counsel that if the persons like the petitioners are allowed to take benefits of the Act, the right of the children who are genuinely and legally entitled for such benefits would be adversely affected and the very purpose of this Act would be defeated because prima facie it appears that petitioner No. 2 or his wife does not belong to weaker section, but yet they are trying to secure admission of petitioner No. 1 in the private school.

12. As regards the contention of the petitioners that the enquiry has not been conducted by the DEO in a proper manner, I find no substance in this argument because this Court has not passed any order for a departmental enquiry or for an enquiry to be conducted in a manner in which other enquiries are conducted. From the enquiry report of the DEO it is apparent that sufficient opportunity was afforded to petitioner No. 2 to produce relevant documents and but for the ration card issued in the name of his wife, petitioner No. 2 has not filed any document before the DEO and therefore, the enquiry report of the DEO cannot be faulted with. For the reasons stated above, this Court finds no substance in the petition, the same is liable to be dismissed and is, accordingly, dismissed.