

Social Jurist, a Civil Rights Group Vs. Kendriya Vidyalaya Sanghthan & Anr

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Court :Delhi

Judge :MANMOHAN

Decided On :2013-12-13

Appellant : Social Jurist, a Civil Rights Group

Respondent : Kendriya Vidyalaya Sanghthan & Anr

Judgement:

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 2993/2013 SOCIAL JURIST,A CIVIL RIGHTS GROUP Petitioner Through Mr. Ashok Agarwal with Mr. Khagesh B. Jha, Advocates versus KENDRIYA VIDYALAYA SANGHATHAN & ANR Through Respondents Mr. S. Rajappa with Mr. H. Jayaraman and Dr. Puran Chand, Advocates for R-1. Mr. Sunil Kumar with Mr. Rajiv Ranjan Mishra and Mr. T.P. Singh, Advocates for R-2. Reserved on :

27. h November, 2013 Date of Decision :

13. h December, 2013 % CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J:

1. Present writ petition has been filed in public interest challenging the Kendriya Vidyalaya Sangathan's action of charging fees under various heads including Vidyalaya Vikas Nidhi from its students in civil sector schools and tuition fees from its students in public sector schools studying in classes one to eight on the ground that it is violative of Article 21-A of the Constitution of India as well as contrary to the provisions of The Right of Children to Free and Compulsory Education Act, 2009 (for short "RTE Act"). By the present petition, the petitioner has also prayed for a direction prohibiting Kendriya Vidyalaya Sangathan from recovering any kind of fee from students studying in classes one to eight in any category of Kendriya Vidyalayas. There is also a prayer for refund of entire school fees charged from the parents of the students studying in different Kendriya Vidyalayas during the academic years 2010-11, 2011-12 and 2012-13 along with interest @12% per annum.

2. Mr. Ashok Agarwal, learned counsel for the petitioner submitted that in view of the mandate of Article 21-A of the Constitution of India as well as Preamble and Section 3 of RTE Act, Kendriya Vidyalaya Sangathan was legally prohibited from charging any kind of fee or charge from any of its students studying in classes one to eight in different Kendriya Vidyalayas all over the country. Article 21-A of the Constitution as well as Preamble and Section 3 of RTE Act relied upon by Mr. Agarwal read as under:A) Article 21-A of Constitution —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.|| B) Preamble and Section 3 of RTE Act —An Act to provide for free and compulsory education to all children of the age of six to fourteen years.|| 3. Right of 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 neighborhood school till

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 and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (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 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.|| 3. Mr. Agarwal stated that Kendriya Vidyalayas all over the country had been charging fees under various heads from students studying in classes one to eight. In this connection, he had drawn this Court’s attention to pages 22 and 23 of the paper book which showed that students had been paying fees under the head of Vidyalaya Vikas Nidhi and computer fund. He had also drawn this Court’s attention to pages 24 to 31 of the paper book which showed levy of tuition fees as well as Vidyalaya Vikas Nidhi by Kendriya Vidyalaya, NTPC, Badarpur.

4. Mr. Agarwal repeatedly emphasised that in view of Article 21-A, even a private school could not levy any fees on any of its students till Class eight. In support of his submission, Mr. Agarwal relied upon Supreme Court’s judgment in *Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another*, (2012) 6 SCC1 wherein it has been held as under:—37. Thus, from the scheme of Article 21-A and the 2009 Act, it is clear that the primary obligation is of the State to provide for free and compulsory education to children between the age 6 to 14 years and, particularly, to children who are likely to be prevented from pursuing and completing the elementary education due to inability to afford fees or charges. Correspondingly, every citizen has a right to establish and administer educational institution under Article 19(1)(g) so long as the activity remains charitable. Such an activity undertaken by the private institutions supplements the primary obligation of the State. Thus, the State can regulate by law the activities of the private institutions by imposing reasonable restrictions under Article 19(6).|| 5. Mr. Agarwal also drew this Court’s attention to Orissa High Court’s judgment in *Niranjan Mishra & Ors. Vs. Union of India & Ors.*, 2013 (I) ILR-CUT-507 wherein the charging of Vidyalaya Vikas Nidhi fee has been quashed as illegal and unconstitutional. Lastly, Mr. Agarwal relied upon the Karnataka High Court’s judgement in *W.P. 18809/2012* decided on 24th January, 2013 wherein it has been held as under:—It is also contended by some of the petitioners, i.e., parents of the children that the schools concerned and private managements are refusing to entertain the children to attend the classes. Such being the position, private managements are also directed not to prevent the children from attending classes or tests or examination. However, it is for the private managements to put forth their claim with the State Government with regard to fee structure and recover the same from the Government. If the same is not satisfied, they can very well approach the Court for redressal of their grievance. xxxx xxxx xxxx xxxx Private managements can also approach the Government expressing their grievance and seek for reimbursement of fees towards arrears, if any, in furtherance of enforcement of fundamental right. Further, the Government and the association have to take note of the observation of the decision of the Apex Court reported in (2012) 6 SCC1 in the case of *SOCIETY FOR UNAIDED PRIVATE SCHOOLS OF RAJASTHAN vs. UNION OF INDIA AND ORTHERS.*|| 6. On the other hand, Mr. S. Rajappa, learned counsel for respondent no.1-Kendriya Vidyalaya Sangathan stated that for the last fifty years of their existence, the respondent no.1 had not charged any tuition fees from any of its students of classes one to eight and from girl students of classes nine to twelve. He, however, stated that a nominal Vidyalaya Vikas Nidhi and computer fees was collected from students of all classes for spending on a number of activities such as participation of students in sports & games at various levels, adventurous activities, educational trips, payment of contractual teachers, filling up of leave vacancies of teachers, scouts & guide activities, maintenance of school building, sports ground maintenance and upkeep etc. He contended that strict norms of expenditure exist for Vidyalaya Vikas Nidhi and computer fees.

7. Mr. Rajappa repeatedly emphasized that after RTE Act, Kendriya Vidyalaya Sangathan had granted admission to children belonging to disadvantaged group to the extent of twenty five per cent of seats in class one in all Kendriya Vidyalaya schools and such students had been exempted from the payment of

any kind of fee or charge, including Vidyalaya Vikas Nidhi and computer fees.

8. Mr. Rajappa stated that Kendriya Vidyalaya Sangathan runs schools in broadly four sectors, namely, Civil Sector, Defence Sector, Project Sector and Institute of Higher Learning. He stated that in project sector schools like NTPC, Badarpur, the land and building was provided by the project concerned and recurring as well as non-recurring expenditure was also borne by the project. He further stated that Kendriya Vidyalaya Sangathan only provided teaching and non-teaching staff to the schools under the project sector. The salary of all the employees along with maintenance of school building and sports ground was borne by the project concerned.

9. According to Mr. Rajappa, the children of the employees of the project were given preferential admissions in project sector schools, and therefore, Kendriya Vidyalaya schools running under public sector undertakings were schools of public sector undertakings for all practical purposes. He stated that some of the projects had become sick and were increasingly finding it difficult to discharge their liabilities in respect of the Kendriya Vidyalaya under their sponsorship. Consequently, according to Mr. Rajappa, some of these projects had approached the respondent to be permitted to prescribe a fee structure that could generate enough internal resources to run the school. Keeping in view the aforesaid request, in the year 1999, Kendriya Vidyalaya Sangathan had authorised the project authorities to prescribe/charge such scale of fee structure as it deemed fit.

10. Upon a perusal of the RTE Act, this Court finds that schools run by Kendriya Vidyalaya Sangathan fall in the definition of specified category schools in accordance with Section 2(p) of the RTE Act. Sections 2(n) and —2. Definitions(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; xxxx xxxx xxxx xxxx (p) —specified category||, in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government; (emphasis supplied) 11. In our opinion, Kendriya Vidyalaya Sangathan schools are governed by Section 12(1)(c) of RTE Act which only mandates that a school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 must admit twenty five per cent of its strength in class one from children belonging to weaker section and disadvantaged group in the neighbourhood and must provide them free and compulsory elementary education. RTE Act does not mandate that no fees shall be charged from the remaining seventy five per cent of its students. Section 12(1)(c) is reproduced hereinbelow:- —12. Extent of school's responsibility for free and compulsory education-(1) For the purposes of this Act, a school,— xxxx xxxx xxxx xxxx (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 pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.|| (emphasis supplied) 12. Keeping in view the aforesaid Section, this Court is of the opinion that the action of the respondent in charging Vidyalaya Vikas Nidhi and computer fund from students not admitted under the RTE Act, is legally justified and not violative of Article 21-A of the Constitution of India and Section 3 of RTE Act.

13. It is pertinent to mention that the constitutional validity of RTE Act has been upheld by the Supreme Court in Society for Unaided Private Schools of Rajasthan (supra) for all schools except Section 12(1)(c) with regard to unaided minority schools.

14. We are not in agreement with the view expressed by the Orissa and Karnataka High Courts inasmuch as the said judgments do not take into account Sections 2(n), 2(p) and 12(1)(c) of the RTE Act.

15. We are also in agreement with the submission of learned counsel for respondent No.1 that Kendriya Vidyalaya, NTPC, Badarpur being run by a project authority and not being financed by the Government

of India, was entitled to a differential fee structure. The employees of public sector can afford to pay a reasonable fee for their wards. It is pertinent to mention that even in project sector Kendriya Vidyalayas no fee or charge under any head is being charged from children admitted under twenty five per cent underprivileged quota under RTE Act.

16. We also do not find any merit in Mr. Agarwal's submission that all children should be given free elementary education irrespective of their socio-economic background. In our opinion, if this submission were to be accepted, the Government would have to reimburse fees to students of rich parents studying in private unaided schools. The intent of the Act is to ensure that all children have access to elementary education. The intent of the RTE Act is not to subsidise the wards of the rich and influential parents. The main objective of the RTE Act 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 [Statement of Objects And Reasons].. The Supreme Court in *Society for Unaided Private Schools of Rajasthan vs. Union of India and Another*, (2012) 6 SCC 1 has held as under:"7. The word "free" in the long title to the 2009 Act stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling. The word "compulsory" in that title stands for compulsion on the State and the parental duty to send children to school. To protect and give effect to this right of the child to education as enshrined in Article 21 and Article 21-A of the Constitution, Parliament has enacted the 2009 Act."

17. In our opinion, if petitioner's argument is accepted, it would amount to violation of Article 14 of the Constitution which clearly mandates that unequals cannot be treated equally. In our view all the children do not require 'free and compulsory education'. Certainly not the ones who belong to the privileged sections of society, because they need neither free nor compulsory education. They are already getting much more than the minimum required by others, who are not so privileged or favourably placed in life. [See: Vol. 55 No.1 JILI2144 (2013)].

18. Consequently, present writ petition being bereft of merits, is dismissed. MANMOHAN, J CHIEF JUSTICE DECEMBER 13 2013 m/sk

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