

**Court No. - 33**

**Case :-** WRIT - C No. - 46207 of 2017

**Petitioner :-** Shailendra Kumar Singh And 7 Others

**Respondent :-** State Of U.P. And 11 Others

**Counsel for Petitioner :-** Tarun Varma

**Counsel for Respondent :-** C.S.C.,Hridai Narain Pandey,Jai Krishna Tiwari

**Hon'ble Manoj Misra,J.**

This petition has been listed along with several other connected petitions under nomination order passed by Hon'ble the Chief Justice dated 02nd January, 2018.

From the order-sheet of this case, it appears that on 05.10.2017, a detailed order was passed calling for response from the State-respondents on various aspects culled out in the order dated 05.10.2017. The said order is extracted herein below:-

*"The petitioners are parents and guardians of the schools recognized by Central Board of Secondary Education (in short CBSE) imparting education in primary to secondary classes. The petitioners are aggrieved by the fee being charged by the respondent's institutions, for education of their wards.*

*Submission of learned counsel for the petitioners is that under The Right of Children to Free and Compulsory Education Act, 2009 (in short 'Act 2009'), it is the duty of the State Government to ensure that every child between the age six to fourteen gets free and compulsory education. Section 13 of the Act 2009 envisages that no capitation fee shall be charged by the school while admitting a child and further the child or his parents or guardian are not subjected to any screening procedure. Section 15 mandates that a child shall be admitted in a school at the commencement of the academic year or within the prescribed extended period. Proviso to section 15 mandates that no child shall be denied admission during the aforesaid period. Section 16 & 17 provide for prohibition of holding back and expulsion and of physical punishment or mental harassment to a child.*

*Submission is that the definition of "school" as provided in section 2(n) (iv) of the Act 2009 covers an unaided non-minority institution not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority. The respondent institutions being covered by the Act' 2009 are prohibited from charging exorbitant fee for imparting education to a child, and this is a matter of serious concern for the society.*

*It is submitted that on account of non payment of the illegal demand of fee by the said respondent schools the wards of the petitioners are being subjected to mental and physical harassment by the school authorities. With reference to the messages sent by the School authority appended with the present petition, it is contended that the wards of the petitioners are facing threat of expulsion from the school.*

*Considering the submission of learned counsel for the petitioners and the provision of Act' 2009, it would be relevant to note that the constitutional validity of the Act' 2009 came up for consideration before the Apex Court in Society for Unaided Private Schools of Rajasthan Vs. Union of India & another reported in 2012 (6) SCC 1. While upholding the validity of the said Act subject an exception drawn with regard to the unaided minority school covered by Article 30(1) of the Constitution of India, it was held in paragraph no.28 as under:-*

*"To provide for right to access education, Article 21A was enacted to give effect to Article 45 of the Constitution. Under Article 21A, right is given to the State to provide by law "free and compulsory education". Article 21A contemplates making of a law by the State. Thus, Article 21A contemplates right to education flowing from the law to be made which is the 2009 Act, which is child centric and not institution centric. Thus, as stated, Article 21A provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. The manner in which this obligation will be discharged by the State has been left to the State to determine by law. The 2009 Act is thus enacted in terms of Article 21A. It has been enacted primarily to remove all barriers (including financial barriers) which impede access to education."*

*In another case in **State of U.P. & others Vs. Bhupendra Nath Tripathi & others** reported in **2013 (13) SCC 203**, it has been held that in paragraph no.15 as under:-*

*"The State as at present is under the constitutional obligation to provide education to all children of the age of 6 to 14 years. The State by virtue of Article 21A is bound to provide free education, create necessary infrastructure and effective machinery for the proper implementation of the right and meet total expenditure of the schools to that extent. Right to Education guaranteed by Article 21A would remain illusory in the absence of State taking adequate steps to have required number of schools manned by efficient and qualified teachers."*

*Section 3(1) as contained under Chapter II of the Act 2009 provides that a child referred under the Act shall have right to free and compulsory Education in a "neighbourhood school" till the completion of his or her elementary education. Section 3(2) further says that 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.*

*Chapter III provides for the duties of the appropriate Government, Local Authority and Parents. Section 6 imposes an obligation on the appropriate Government and the local authority to establish a school within such area or limits of neighbourhood, as may be prescribed, where it is not so established, within a period of three years from the commencement of the Act 2009. The emphasis is, thus, on providing "neighbourhood school" facility to the children. Section 8 (f) & (g) mandates the appropriate government to ensure and monitor admission, attendance and completion of elementary education by every child and to ensure good quality education conforming to the standards and norms specified in the Schedule.*

*Section 10 imposes an obligation on every parent or guardian to admit his or her child or ward to an elementary education in the "neighbourhood school". Section 11 cast a duty on the appropriate Government to make necessary arrangement for providing pre-school education for children between age of three to six years.*

*Appropriate Government within the meaning of Act' 2009 is the State*

Government in relation to a school established within the territorial limits of the concerned State. The local authority means the **Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat**, by whatever name called and includes such other authority or body having administrative control over school or empowered by any law for the time being in force to function as a school authority in any city, town or village.

A Full Bench of this Court in the case of **Paripurna Nand Tripathi Vs. State of U.P. & others** reported in 2015 (3) ADJ 563 considering the scope of the Act 2009 and the pronouncement of the Apex Court as noted above has held that it is the State responsibility to provide free and compulsory education to the children of the age of six to fourteen years. Private institutions, which are imparting education to the children of the said age group in fact, are performing and sharing the obligation of the State. Therefore, an obligation is cast upon the State Government to provide infrastructure to such institutions subject to the requisite condition laid by it. Providing education to the children of the age of six to fourteen years shall be a mirage unless qualitative education is provided to them.

It appears that the legislative mandate to provide and regulate free and compulsory education to all children between the age of six to fourteen years in a "neighbourhood school" has not been complied with by the State Government. All efforts appear to have went in vain. No policy has yet been framed by the State Government for establishment of school within area or limit of neighbourhood so that all children get access to free and compulsory education. The duty cast upon the State Government and the local authority under the Act 2009 appears to has not been performed.

Learned Standing Counsel appearing for respondent no.1 and 2 namely State of U.P. through Principal Secretary, Basic Education, and Principal Secretary (Secondary Education), Lucknow, prays for and is permitted to file counter affidavit bringing on record the steps taken by the State Government to comply the mandate of the Act 2009.

So far as the grievances raised by the petitioners regarding the fee being charged by the respondent's institution concerned, as on date, there cannot be any restraint to the respondent schools from charging the fee commensurate with the infrastructure being provided by them.

List this matter on 03.11.2017. "

It appears that on the next date when the matter was taken up on 04.12.2017, the Court was informed that certain Government Orders were issued in respect of controlling the fee charged by private institutions which were engaging attention of the Court in Writ Petition No. 33818 of 2009. Accordingly, this matter was connected with the other pending petition.

It appears that though in Writ C No. 33818 of 2009, parties have exchanged their affidavits, but a detailed counter-affidavit, as was required by this Court vide order dated 05.10.2017, on various aspects culled out in the order, has not yet been filed by the State-respondents. Accordingly, this Court considers it appropriate that this petition along with connected matters be listed on 05.02.2018. By which date, an officer not below the

rank of an Additional Secretary in the Primary Education Department of the State of U.P. shall file an affidavit disclosing what action the State has taken to comply with the mandate of the Right of Children to Free and Compulsory Education Act, 2009 as also Article 21-A of the Constitution of India. Various aspects which have been noticed in this court's order dated 05.10.2017 shall also be dealt with in the counter-affidavit.

Let a copy of this order be supplied to the learned Standing Counsel within 48 hours for compliance.

**Order Date :-** 12.1.2018

Sunil Kr Tiwari