

Court No. - 69

Case :- WRIT - C No. - 873 of 2022

Petitioner :- Nikhil Upadhyay (Minor)

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Sharad Chand Rai

Counsel for Respondent :- C.S.C., Krishna Mohan Asthana

Hon'ble Saumitra Dayal Singh, J.

1. Heard Shri Sharad Chand Rai, learned counsel for the petitioner; Shri Krishna Mohan Asthana, learned counsel for the respondent no.5 and; learned Standing Counsel for the State-respondents.

2. Present petition has been filed to challenge the order dated 5.2.2021 passed by respondent no.3 - Basic Education Officer, Bulandshahar. Thereby the name of the petitioner has been struck off from the list of beneficiaries under the Right of Children to Free and Compulsary Education Act, 2009 (hereinafter referred to as the Act). Further directions have been sought to allow the petitioner to continue his studies at Atomic Energy Central School, Narora, Bulandshahar.

3. At the outset, Shri Asthana submits, the petitioner had earlier approached this Court in Writ - C No. 24327 of 2019, that came to be dismissed by order dated 7.12.2020. Against that order, the petitioner had filed Special Appeal Defective No. 44 of 2021 which also has been dismissed by order dated 3.2.2021. Review application filed there against has also been dismissed. Therefore, there is no right surviving in favour of the petitioner to avail benefit under the Act. The impugned order is only a consequential order. Therefore, the writ petition is misconceived.

4. While preliminary objection raised viz-a-viz the challenge arising from the order dated 5.2.2021 merits consideration, at

the same time, the writ petition is found to be maintainable with respect to other directions sought, inasmuch as, it is the specific case of the petitioner - he is a minor who was about 8 years of age on the date of institution of the earlier writ petition being Writ - C No. 24327 of 2019 and was studying in Class I, in the year 2019. Despite the order dated 17.7.2019 passed by respondent no.3 - Basic Education Officer, Bulandshahar, recommending cancellation of the admission of the petitioner at the aforesaid institution, the petitioner continued his studies at that school in view of the interim order passed in that writ petition. Thus, the petitioner was granted promotion from Class II to Class III. Even in the Special Appeal Defective No. 44 of 2021, an interim protection granted in the writ petition stood protected by the order dated 20.1.2021, wherein it was observed as below:

"Till the next date of hearing, position as obtaining today would be maintained by the respondent-Institution."

5. Thus, the petitioner claims a direction upon the respondent institution to allow the petitioner to complete his studies for the academic session 2021-22. He further seeks a direction upon the respondent institution to allow him further studies from academic session 2022-23, against payment of full fees.

6. Having heard learned counsel for the parties and having perused the record, as noted above, no interference is warranted with the order dated 5.2.2021 passed by respondent no.3 - Basic Education Officer, Bulandshahar. To that extent, the present writ petition is dismissed.

7. As to the further aspect of the matter, it cannot be forgotten that a minor child may never be penalized for the fault and blame-worthy conduct of their parents. In any case, every child has a fundamental right to be educated. His education may not

be allowed to be disrupted mid way into the academic session.

8. In the present case, it is the father of the petitioner namely Dinesh Upadhyay who made the claim on behalf of the petitioner under the Act. It is that claim which has been found fraudulent or ineligible in law. If that is the case, it does not lead to the conclusion that the petitioner who is a minor and therefore immune from legal liabilities may have his fundamental right to be educated violated. The only difference such fact may make is that the petitioner loses out as a beneficiary under the Act and his parents would have to pay up the fees to ensure completion of his education.

9. Seen in that light, the status of the respondent institution cannot be ignored. It is a school established and being run only for the purpose of imparting education to children. By virtue of interim order passed by this Court in the earlier writ petition as also in the special appeal, the petitioner completed his Class I and Class II studies at the respondent institution. In fact, he has almost completed his Class III studies as well. At the fag end of the academic session, it is too late to leave the petitioner- minor child in the lurch as that may lead to loss of one academic session, for the fault of his father.

10. On the other hand, respondent institution would not stand to lose as it has already invested sufficient time and resources in helping the petitioner-child complete his Class III studies.

11. Accordingly, insofar as the second aspect of the matter, the present petition is **disposed of** with the following direction:

(i) Subject to the petitioner fulfilling the attendance requirement for the academic session 2021-22 (till now), he may be allowed to complete his studies in that academic session without any let

or objection by the respondent no.5 and without it insisting for any payment of fees as the academic session is at its fag end.

(ii) Subject to successful completion of the studies in Class III for the academic session 2021-22, the petitioner may remain entitled to continue his studies at the respondent institution, though upon payment of full tuition fees as any other student regularly admitted to the said institution who may have progressed from Class III to Class IV, for the academic session 2022-23 onwards.

(iii) If for any circumstance, either because the petitioner may not like to continue his education at the said institution or if he fails to make the mark for promotion to the next class for the academic session 2022-23, the respondent institution shall issue the Transfer Certificate, etc. as may allow the petitioner to continue his studies at any other institution of his choice.

12. To the above extent, the order dated 5.2.2021 passed by the respondent no.3 - Basic Education Officer, Bulandshahar has been modified.

13. Writ petition is **partly allowed**.

Order Date :- 21.1.2022
Prakhar