

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 178 of 2023

Petitioner :- U.P. Sr.Basic Shiksha Mahasha.U.P.Officer Shri N.P.M.Vidy.Raebareli Thru. President Ankur Chaudhari

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education U.P. Civil Sect. Lko. And Others

Counsel for Petitioner :- Piyush Mishra,Shaktipal Rajpal

Counsel for Respondent :- C.S.C.,Sarvesh Kumar Dubey

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Subhash Vidyarthi,J.

Heard the learned counsel for the petitioner, the learned State Counsel and Sri Sarvesh Kumar Dubey, learned counsel representing respondent no. 3.

This Public Interest Litigation has been filed by an association known as Uttar Pradesh Senior Basic Shiksha Mahasabha Uttar Pradesh which appears to be an association of managements of basic and senior basic schools in the State of U.P. which are though recognized but are not aided by the Government. The prayer made in the writ petition is that the State-respondents may be directed to facilitate the claim of providing free text books and uniforms to all the students studying in class 6 to 8 in non aided recognized junior high schools who are recognized by the Basic Education Board, Prayagraj, Uttar Pradesh.

For the aforesaid prayer emphasis has been laid by learned counsel for the petitioner Sri Piyush Mishra that Rule 5 of the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 which has statutory force clearly mandates that the State Government or the local authority shall provide such facility to all the students studying in the recognized

junior high schools which are managed by private management but are not aided by the government.

We have considered the aforesaid submissions and have perused the relevant provisions of Rules 2011 as also the provisions contained in the Right of Children to Free and Compulsory Education Act, 2009.

It is true that Rule 5 of the 2011 Rules cast a duty upon the State Government and the local authority to provide free text books and uniform to certain class of students studying in such institutions, however, in our opinion the said provisions does not cover all the students admitted in unaided recommended junior high schools being managed by the private management.

Rule 5 of the Rules 2011 is extracted hereunder:-

5. Duties of State Government and local authority (Sections 8 and 9). - (1) A child attending a school of the State Government or local authority referred to in sub-clause (i) of Clause (n) of Section 2 of the Act a child attending a school referred to in sub-clause (ii) of Clause (n) of Section 2 of the Act in pursuance of Clause (b) of sub-section (1) of Section 12 of the Act and a child attending a school referred to in sub-clauses (iii) and (iv) of Clause (n) of Section 2 of the Act in pursuance of Clause (c) of sub-section (1) of Section 12 of the Act shall be entitled to free text books each year and uniform once in each year:

Provided that a child with disability shall also be provided free special learning, support material and equipments. Explanation - In respect of the child admitted in pursuance of Clause (b) of sub-section (1) of Section 12 and a child admitted in pursuance of Clause (c) of sub-section (1) of Section 12, the responsibility of providing the free entitlement shall be of the school referred to in sub-clause (ii) of Clause (n) of Section 2 and of sub-clauses (iii) and (iv) of Clause (n) of Section 2, respectively.(2) For the

purposes of determining and establishing neighbourhood schools, the local authority (Gram Panchayat/ Nagar Nigam/ Nagar Palika/Nagar Panchayat, as the case may be) shall undertake school mapping, and identify all children, including children in remote areas, children with disability, children belonging to disadvantaged group, children belonging to weaker section and children referred to in Section 4, least by 31st March and every year.(3) The local authority shall be responsible to ensure that no child is subjected to caste, class, religious or gender abuse or discrimination in the school.(4) The local authority shall ensure that a child belonging to a weaker section and a child belonging to disadvantaged group is not segregated or discriminated against in the classroom, during mid day meals, in the play grounds, in the use of common drinking water and toilet facilities, and in the cleaning of toilets or classrooms.

Section 2(n) of the 2009 Act is also extracted hereunder:-

(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 12 of the 2009 Act is also extracted hereunder:-

12. Extent of school's responsibility for free and compulsory education.—(1) For the purposes of this Act, a school,— (a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein; (b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses,

subject to a minimum of twenty-five per cent.; (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. 8 (2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of subsection (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed: Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2: Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation. (3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

If we peruse the afore-quoted Rule 5 what we find is that students studying in the schools as defined in Section 2(n)(i), Section 2(n)(ii) as also the students attending the school defined under Section 2(n)(iii) & (iv) are entitled to free text books each year and uniform once in each year in pursuance of Section 12(1)(c) of the Act. Section 12(1)(c) of the Act as quoted above states that the schools specified in Section 2(n)(iii) and (iv) shall admit in class-1, 25% of the strength of that class, children belonging to weaker sections and disadvantaged groups and as such schools

shall provide free and compulsory education till its completion. Thus, if we closely scrutinize Rule 5 as afore-quoted what we find is that so far as the children studying in the non-aided privately managed recognized junior high schools are concerned, the duty upon the State and local authority is cast to provide free text books and uniform each year only to the to the students who are admitted in terms of the provisions of Section 12(1)(c) of the Act i.e. the students admitted up to 25% of the total strength from amongst weaker and disadvantaged sections of the society. It is thus clear that such facility has been made available to only such students.

It is not the case pleaded in this petition that the facility of free uniform and text books is not being provided to the students admitted under Section 12(1)(c) of the Act rather the prayer is that all the students admitted in such institutions should be provided this benefit.

In view of the aforesaid writ petition is misconceived which is hereby *dismissed*.

(Subhash Vidyarthi, J.) (Devendra Kumar Upadhyaya, J.)

Order Date :- 3.3.2023
Pradeep/-