

ITEM NO.50

COURT NO.11

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Criminal) No(s). 406/2023

TUSHAR GANDHI

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(IA NO. 181890/2023 - EXEMPTION FROM FILING AFFIDAVIT)

Date: 25-09-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Shadan Farasat, AOR
Ms. Mreganka Kukreja, Adv.
Ms. Hrishika Jain, Adv.
Ms. Natasha Maheshwari, Adv.

For Respondent(s) Mr. K.M. Nataraj, A.S.G.
Mr. Sharan Dev Singh Thakur, A.A.G.
Ms. Ruchira Goel, AOR
Mr. Siddharth Thakur, Adv.
Ms. Indira Bhakar, Adv.
Mr. Adit Jayeshbhai Shah, Adv.
Mr. Sharanya Sinha, Adv.
Mr. Mustafa Sajad, Adv.
Ms. Keerti Jaya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have perused the Status Report submitted by the State of Uttar Pradesh.

After a long delay, a First Information Report was registered on 6th September 2023, alleging the commission of offences under Section 75 of the Juvenile Justice (Care and Protection of

Children) Act, 2015 (for short, "JJ Act"). Apart from Section 75, which is a cognizable offence, Sections 323 and 504 of the Indian Penal Code, 1860 (for short, "IPC") have been invoked. The submission of the learned counsel appearing for the petitioner is that, in fact, the offence is under the second proviso to Section 75 of the JJ Act. Additionally, he submits that in view of the complaint made by the victim child's father, even Section 153A of the IPC will have to be applied. The Police cannot ignore the communal angle which is reflected in the Complaint.

Considering the manner in which the Police have delayed action and especially the fact that though a case of cognizable offence was made out, only a non-cognizable case was reported, we direct that the investigation shall be conducted under the supervision of a senior IPS Officer, nominated by the State Government. The State Government shall do the needful within a period of one week from today. The IPS Officer so nominated will go into the question of whether the second proviso to Section 75 of the JJ Act is attracted and whether Section 153A of the IPC needs to be applied. The IPS Officer so nominated shall be responsible for submitting the compliance report to this Court on this aspect and for reporting the progress made in the investigation.

Learned ASG raised an objection to the locus of the petitioner. He states that the petitioner cannot make capital of the fact that he is the great-grandson of Mahatma Gandhi. In fact, in a case like this, the State should not be really concerned with the locus of the petitioner inasmuch as this is a case not only of

the failure to effectively set the criminal law in motion but also a case where there may be a violation of the fundamental right of the victim under Article 21A of the Constitution of India as well as violation of the rights under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for short, "RTE Act"). Moreover, we find that there may be a breach of the provisions of the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 (for short, "the said Rules"). Therefore, even assuming that there is any merit in the objection raised by the State Government, this Court can always treat the petition as a *suo motu* proceeding. Therefore, this objection need not detain us.

As the investigation is pending, we are not going into the merits of the allegations. However, we must note that the allegation is that a teacher while finding fault with the victim for his poor performance, directed the other students to assault or physically punish the victim. The allegation is that this was done by the teacher because the victim belongs to a particular minority community.

Clause 3(a) of the Statement of Objects and Reasons of the RTE Act clearly lays down that free and compulsory education should be of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Under Section 8(g) of the RTE Act, it is the obligation of the appropriate Government to ensure good quality elementary education. The same is the obligation of the local authorities under Section

9(h) of the RTE Act.

We may also note one more aspect of the matter. Under sub-section (1) of Section 17 of the RTE Act, there is a complete prohibition on subjecting a child to physical punishment or mental harassment. If the allegations made by the parents of the victim are correct, this may be the worst kind of physical punishment imparted by a teacher inasmuch as the teacher directed other students to give physical punishment to the victim.

When the object of the RTE Act is to provide quality education, unless there is an effort made to inculcate the importance of constitutional values in the students, especially the core values of equality, secularism and fraternity, there cannot be any quality education. There cannot be quality education if, in a school, a student is sought to be penalised only on the ground that he belongs to a particular community. Thus, there is a *prima facie* failure on the part of the State to comply with the mandatory obligations under the RTE Act and the Rules framed thereunder.

We may also note that under sub-rule (3) of Rule 5 of the said Rules framed by the State Government, there is a mandate that the local authority shall be responsible for ensuring that no child is subjected to caste, class, religious or gender abuse or discrimination in the school.

The State Government is under an obligation to enforce and implement the provisions of the RTE Act and the said Rules.

The victim must have undergone trauma. We direct the State Government to ensure that proper counselling is extended to the

victim of the offence through an expert child counsellor. Even the other students, who were involved in the incident, in the sense that they allegedly followed the mandate issued by the teacher and assaulted the victim, need counselling by an expert child counsellor. The State Government will take immediate steps to do the needful by providing services of an expert child counsellor.

The State will have to answer one more important question. The question is what educational facilities the State will extend to the victim of the offence for discharging its obligations under the RTE Act and Article 21A of the Constitution, which means that the State must make proper arrangements for providing quality education to the victim in terms of the provisions of the RTE Act. The State cannot expect the child to continue in the same school.

At this stage, the learned ASG assures that the State does not want to protect anybody and will ensure that the law is implemented.

The senior police officer appointed in terms of this order shall submit a compliance report as well as a report on steps taken in the investigation. He shall provide to this Court the copies of the transcripts of the conversation in the video clip of the alleged incident.

The State shall submit the compliance report on providing better education facilities to the victim of the offence and complying with the direction to undertake counselling of the victim and other students through an expert child psychologist. After looking at the report, we will consider whether further directions

are required to be issued to ensure that there is no violation of sub-section (1) of Section 17 of the RTE Act.

The RTE Act is aimed at providing compulsory elementary education to strengthen the social fabric of our democracy. The emphasis is on giving equal opportunities to all to get access to the facilities of education. Moreover, there are detailed guidelines for eliminating Corporal Punishment in Schools laid down by the National Commission for Protection of Child Rights established under the provisions of the Commissions for Protection of Child Rights Act, 2005. We direct the State Government to place on record the said guidelines.

We expect the State Government/senior Police Officer to submit the compliance reports on both aspects within a period of four weeks from today.

We direct that the State of Uttar Pradesh be also impleaded through the Secretary of the Education Department so that on the aspects of compliance with the requirements of the RTE Act and the Rules framed thereunder, effective directions can be issued. The amended memo be filed within one week. The AOR representing the State will accept the notice. The response of the Education Department shall also be filed within four weeks.

List on 30th October, 2023.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)