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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4573/2017 and CM APPL. 19925/2017

JUSTICE FOR ALL

..... Petitioner

Through Mr. Khagesh B. Jha,
Advocate

versus

SECRETARY EDUCATION GOVERNMENT OF NCT OF
DELHI AND ORS

..... Respondents

Through Mr. Gautam Narayan, ASC-
GNCTD with Mr. R.A.Iyer
and Ms. Mahamaya
Chatterjee, Advocates
Mr. Gyanendra Kumar,
Advocate for R-2/NDMC
Mr. Sunil Goel, Standing
Counsel for R-3/North DMC
with Ms. Supreet Bimbra
and Mr. Mayank Goel,
Advocates
Mr. Vijay Joshi, Standing
Counsel, SDMC along with
Ms. Rita Sharma, Asst.
Director for R-4/SDMC
Mr. G.D.Mishra, Standing
Counsel for R-5/EDMC with
Sh. Ambuj Kumar,
ADE/HQ, EDMC
Mr. Vinod Diwakar, CGSC
with Mr. Sanjay Pal,
Advocate for R-6

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
% 12.04.2018

1. This writ petition in public interest has been filed by the petitioner, for the benefit of children who are of school going age i.e. between the ages of 6-14 years residing in the territorial jurisdiction of Delhi, belonging to disadvantaged and neglected groups and are entitled to the benefits under the Right of Children to Free and Compulsory Education Rules, 2009 and Article 21A of the Constitution of India.

2. The prayer made in the writ petition is extracted as under:

“(a) Issue any appropriate writ, order or direction to the Respondents No.1, 2, 3, 4, 5 and 6 to ensure time bound survey of children up to years and perform identification of children and school mapping as mentioned in the Sections 8(d) and 8(e) if the RTE Act, 2009 read with Delhi RTE Rules 2011.

(b) Issue any appropriate writ, order or direction to the respondents to ensure the preparation of records of each and every children residing in their jurisdiction in a time bound manner and as prescribed under rule 9 of Delhi RTE Rules, 2011.

(c) Issue any appropriate writ, order”

2. Pursuant to the notice to show cause, the respondent no. 1- Government of NCT of Delhi and respondent no.7- Chief

Secretary, Government of NCT of Delhi have filed a short counter affidavit dated 19th December, 2017.

3. In exercise of powers conferred by Section 38 of the Right of Children to Free and Compulsory Education Act, the Government of Delhi issued a notification on 23rd November, 2013 making the, Delhi Right of Children to Free and Compulsory Education Rules, 2011.

4. The following rules have been relied upon by the parties before us:

"2. Definitions.- (1) In these rules, unless the context otherwise requires,-

xxx xxx xxx

(g) "School Mapping" means planning school location to overcome social barriers and geographical distance;

(h) "Government" means the Government of National Capital Territory of Delhi:

(i) "Local authority" means – the authority notified as Local Authority.

xxx xxx xxx

6. Areas or Limits of neighbourhood :-

The areas or limits of neighbourhood are reproduced as under:-

xxx xxx xxx

(4) The Government/Local Authority shall identify the neighbourhood school (s) where children can be admitted and make such information public for each habitation within its jurisdiction.

xxx xxx xxx

8. Responsibility of Government and Local Authority:-

xxx xxx xxx

8(2) For the purpose of determining and for

establishing neighbourhood schools, the Local authority shall undertake school mapping and identify all children belonging to disadvantaged group, children belonging to economically weaker sections and children referred to in section 4, within a period of one year from the date of notification, and every year thereafter.

xxx xxx xxx

9. *Maintenance of records of children by the Local Authority.- (1) The Local Authority shall maintain a record of all children, in its jurisdiction through a household survey, from their birth till they attain the age of 14 years.*

(2) The record, referred to in sub-rule (1) shall be updated annually

(3) The record referred to in sub rule (1) shall be maintained transparently in the public domain and used for the purposes of clause (e) of section 9.

(4) The record, referred to in sub-rule (1) shall in respect of every child, include-

(a) name, sex, date of birth, place of birth

(b) parents/guardian names, address, occupation

(c) pre-primary school/anganwadi centre that the child attends

(d) elementary school where the child is admitted

(e) present address of the child

(f) class in which child is studying (for children between 6-14) and if education is discontinued in the territorial jurisdiction of the Local Authority, the case of such discontinuance.

(g) whether the child belongs to weaker section.

(h) whether the child requires special facilities or residential facilities on account of (a) migration and sparse population; (b) age appropriate admission; and (c) disability.

(5) The Local Authority shall ensure that the records of all children enrolled in the schools under its jurisdiction are maintained in each school."

5. It appears that the present petitioner had earlier filed WP(C) 5330/2013 seeking school mapping and preparations of record of each and every child of Delhi apart from quashing of notification dated 23rd April, 2013 whereby Lt. Governor of Delhi notified the authorities for the purposes of enforcement of rights of children for free and compulsory education in Delhi.

6. This writ petition stood disposed vide a short order dated 4th September, 2013 which reads as follows:

“1. On the one hand the petitioner wants school mapping and preparations of record of each and every child in Delhi and on the other hand seeks quashing of the notification dated April 23, 2013.

2. With the promulgation of the Right to Education Act, 2009 every child up to the age of 14 years would be entitled to free and compulsory education and this would require a data to be collected of all the children up to the age of 14 years.

3. Albeit belatedly, on April 23, 2013 the Lt. Governor of Delhi has notified the authorities for the purposes of right of children for free and compulsory education in Delhi. The Government of Delhi, the Municipal Corporations, the New Delhi Municipal Council and the Delhi Cantonment Board have been nominated as the local authorities for the purposes of implementation of the Act.

4. This has to be so in Delhi because geographically Delhi has been divided into areas under the control of the three Municipal Corporations of Delhi and the

New Delhi Municipal Committee as also the Delhi Cantonment Board. This, under the overall supervision of the Government of Delhi the three Municipal Corporations. The New Delhi Municipal Corporation and the Cantonment Board would have to do the mapping.

5. Learned counsel for the respondents states that after mapping is done information would be shared for the reason it may happen that a child may be living in an area which falls under the jurisdiction of the say, New Delhi Municipal Council, but the nearest school may be under the Delhi Cantonment Board. This child, though living in a NDMC area would have access to the nearest school in the Delhi Cantonment.

6. Nothing needs to be monitored by this Court on the subject. No direction needs to be issued on the subject.

7. The writ petition is dismissed but without any orders as to costs.”

7. Thus, the manner in which the local authorities were required to enforce the rules, so far as the jurisdictional aspect was concerned, stands interpreted and is binding on all local authorities in Delhi.

8. We may also extract paras 5 and 6 of the affidavit filed on behalf of respondents no. 1 and 7, which is the relevant explanation tendered by the respondents with regard to the manner in which they are working on the rights of children for free education under the statute and the rules in *extenso*, which reads as follows:

“5. That as per Section 9 of the RTE Act, the duty to identify children, maintain records as regards children and carry out school mapping devolves upon the local authorities i.e. the three MCDs, NDMC and DCB. However, the Answering Respondent in the summer vacation of this year, made the efforts on its own to identify children who may be categorized as ‘out of school children’ (OsSC). The Answering Respondent was assisted by the District Urban Resource Centre Coordinator (DURCCO, Cluster Resource Centre Coordinator (CRCC) AND Special Educators for Children with Special Needs to carry out the said identification.

6. That the above identification lead to the finding of 19,770 children (approximately), who have been out of school. In respect of the said 19,770 children, 7673 children have been directly enrolled in the schools and 12097 children have been enrolled in Special Training Centres (STCs) run under Sarva Shiksha Abhiyan for mainstreaming the out of school children. A true copy of the details of children with STCs for the last three years and the present status of the STCs presently run by different local authorities and institutions in the NCT of Delhi.”

9. The respondents have also detailed several steps taken in enforcing the statutory provisions as well as the requirements of the rules as communicated to all the local authorities including the New Delhi Municipal Council, North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation. From the reading of the counter affidavit, it is apparent that the authorities are conscious of their constitutional and statutory duties and are taking effective steps to enforce the same.

10. In view thereof, no further orders are called for in this writ petition. It is disposed of accordingly.

11. Needless to state that the respondents are expected to ensure that the statute and rules are strictly and expeditiously enforced.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 12, 2018

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