

\$~21

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

Date of Decision: 19.02.2020

+ **W.P.(C) 8763/2015**

INDEPENDENT THOUGHT

..... Petitioner

Through: Mr. Pradeep Narula, Mr. Vikram
Srivastava, Mr. Arjun Narula, Mr. Yash Shukla &
Ms. Pooja, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Ajay Digpaul, CGSC with
Mr. Amit Kr. Dogra & Mr. Soumava Karmakar,
Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This Public Interest Litigation has been preferred with the following prayers:-

“a) issue an appropriate writ, order or direction in the nature of certiorari or such other similar writ, in the nature of declaration, declaring that the expression "other than a school established, owned or controlled by the appropriate Government or the local authority" in Section 18(1) of the RTE Act of 2009 is unconstitutional and liable to be struck down;

b) issue an appropriate writ, order or direction in the nature of certiorari or a writ of declaration that there shall be an

independent body set up to regulate and monitor quality norms and standards in all schools that are covered under the RTE Act of 2009; and

c) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case as also in the interest of justice;”

2. For ready reference Sections 18 and 19 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as ‘the Act, 2009’) read as under:-

“18. No School to be established without obtaining certificate of recognition.—*(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.*

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to

function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

19. Norms and standards for school.—(1) *No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.*

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.”

(Emphasis supplied)

3. Learned counsel appearing for the petitioner submitted that in pursuance of the aforesaid provisions of Section 18 of the Act, 2009, schools owned, managed and controlled by the appropriate Government or by local authorities can be established without obtaining certificate of recognition meaning thereby the norms and standards which are to be followed by these

schools. Norms and standards which are to be followed by these schools are given go-bye which results into the deterioration of the standard of education in the schools owned and managed by appropriate Government or by local authority. Moreover, by virtue of Section 18 of the Act, 2009 two classes have been created; one is Government schools and another is private schools and different norms are to be followed by them for imparting education which is violative of Article 14 of the Constitution of India.

4. It is also submitted that the learned counsel appearing for the petitioner that because of this Section 18 of the Act, 2009, the standard of education in the Government schools is inferior to that of private schools.

5. Learned counsel appearing for the respondent submitted that Section 18 has nothing to do with dilution of norms and standards of the Government schools. Section 18 is concerned only with the certificate of recognition to be obtained by the private schools. So far as norms and standards for the schools are concerned, separate Section – Section 19 has already been enacted to be read with the Schedule and norms and standards for schools which are prescribed in the Schedule as per Section 19 are to be followed by all the schools.

6. It is also submitted by the learned counsel appearing for the respondent that all the schools have to follow the norms and standards prescribed under Section 19 to be read with the Schedule of the Act, 2009. Thus, no two classes have been created by Section 18 for different norms and standards to be followed by them.

7. It is further submitted by the learned counsel appearing for the respondent that Section 18 prescribes that no school to be established without obtaining certificate of recognition by private schools. For Government schools this type of certificate of recognition is not required but that does not mean that Government schools shall not follow the norms and standards for the schools prescribed under Section 19 to be read with Schedule of the Act, 2009.

8. Having heard the learned counsel for both parties and looking to the facts and circumstances of the case, it appears that Section 18 has nothing to do with the norms and standards for the schools to be followed by the Government schools. As per Section 19 to be read with Schedule of the Act, 2009, all the norms and standards prescribed are to be followed by both Government schools and private schools.

9. Section 18 prescribes that no school is to be established without obtaining certificate of recognition and this Section is applicable to the private schools. So far as Government schools are concerned, such type of certificate of recognition is not required because they are already owned, managed and controlled by the appropriate Government or by local authority. If the school is being run by the Government, there is no need of certificate of recognition. The whole school is a recognition itself whereas private operators have to obtain certificate of recognition as per Section 18 of the Act, 2009. The classification created under Section 18 is thus a valid classification and has a reasonable nexus with the objects to be achieved. Private operators of the school has to obtain the certificate of recognition.

10. Much has been argued out by the learned counsel appearing for petitioner about the standards and norms for the schools to be followed by Government schools. It ought to be kept in mind that Sections 18 and 19 are operating in different fields. Section 19 is prescribing norms and standards for the schools to be read with Schedule appended to the Act, 2009. As per Section 19 to be read with Schedule of the Act, 2009, the detailed standards and norms have been prescribed. These standards and norms for the schools are to be followed by Government schools as well as by the private schools. Section 18 has never diluted the norms and standards which are prescribed under Section 18 of the Act, 2009.

11. Learned counsel appearing for the respondent has produced a letter bearing F.No.4-19/2015-EE-4/IS-3 dated 9th September, 2019, which has been taken on record. He has pointed out to this Court the steps taken so far for evaluation and monitoring of the quality of education, norms and standards in the schools. For ready reference, the steps initiated by the respondent for the quality of education and norms and standards in the schools for the whole of the country read as under :-

“xxx

D. Steps taken so far for Evaluation and Monitoring of the quality of education and norms and standards in schools:

- i. *The Centrally Sponsored Scheme of Samagra Shiksha has an inbuilt concurrent evaluation and monitoring system. The Ministry of Human Resource Development convenes periodic meetings with State Education Ministers and Secretaries to review the progress of Schemes. Educational data is collected through UDISE every year to assess the progress. A National*

Achievement Survey (NAS) across all States and UTs was conducted on 13.11.2017 to assess the learning achievement of students of classes III, V and VIII. The status of these evaluations and monitoring is placed in the public domain on the Ministry's website. Further, an All India Performance Audit on Implementation of RTE Act, 2009 was conducted by the Comptroller & Auditor General of India (C&AG) for the period extending from 2010-11 to 2015-16 and accordingly Report No. 23 of 2017 has been laid on the Table of the Parliament on 21.07.2017. An independent third party evaluation of the SSA Scheme was also conducted in 2017-18. It has pointed out that the SSA achieved considerable success in universalizing access and strengthening of infrastructure in schools. It has appreciated the enhanced focus of SSA on quality of education in recent years.

xxxx”

12. In view of the aforesaid facts and reasons, Section 18 of the Act, 2009 is constitutionally followed. The classification of the Government schools and private schools is valid classification. So far as obtaining certificate of recognition to establish the schools is concerned, the norms and standards to be followed by Government schools and private schools are the same which are prescribed under Section 19 to be read with Schedule appended with the Act, 2009.

13. It is trite that a classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The

test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved.¹

14. There is no violation of the aforesaid two tests by the classification pointed out by Section 19 of the Act, 2009. In view of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this writ petition and the same is, therefore, dismissed.

15. With the aforesaid observations, this writ petition is dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 19, 2020/ns

¹ *All Manipur Pensioners Association v. The State of Manipur and Ors.*, AIR 2019 SC 3338.