

09.02.2023
Item No. 14
Crt.No.11
b.r.

MAT 1639 of 2022

with

IA No. CAN 1 of 2022

Sujan Sadhukhan

-vs-

The State of West Bengal & Ors.

Mr. Sujit Kumar Rath

Mr. Subir Hazra

Mr. Sukumar Sarkar

..... for the appellant.

Ms. Debarati Sen(Bose)

..... For the State.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Learned Counsel, appearing on behalf of the appellant submits that Section 5 Sub-Section (2) of the Right of Children to Free and Compulsory Education Act, 2009 lays down as follows:-

“ (2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and, (iv) of clause (n) of section 2, for completing his or her elementary education.”

He further submits that another ward who had applied for transfer on medical ground has been considered and this appellant is on the same footing

as has been stated in the Medical Certificate issued by the Superintendent of Dr. B.N. Bose Sub Divisional Hospital, Barrackpore, 24 Parganas (North). Considering the fact that one child has already been considered on medical ground to have his transfer from one school to another and as per the Right of Children to Free and Compulsory Education there is provision of transfer from one school to another except to schools belonging to specified category and unaided schools which is mentioned in Clause-(n) Sub-Clauses (iii) and (iv) of Section 2 of the said Act (Right of Children to Free and Compulsory Education Act, 2009), denial of an equal consideration to the son of the appellant/writ petitioner, who is equally circumstanced, constitutes an arbitrary action.

As such the appellant prays for consideration of the application for transfer of his son on equal grounds.

Learned Counsel appearing on behalf of the State submits that the competent State authority be directed to consider the transfer in accordance with law.

On going through the record, it reveals that the son of the appellant is suffering from acute exacerbation of chronic bronchial asthma suffering of recurrent attacks of cough and fever and respiratory

distress particularly during change of weather, which has been mentioned by the Superintendent of Dr. B.N. Bose Sub Divisional Hospital, Barrackpore in the Medical Certificate issued in respect of the son of the appellant. Considering Section 5 Sub-Section (2) where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, which refers to schools belonging to specified category and unaided schools.

Considering the aforesaid facts and the law applicable, this Court is of the view that as per the Right of Children to Free and Compulsory Education Act, 2009, a child has a right to seek transfer for any reason whatsoever but that should be a cogent one and in this instant case, as has been stated by the medical expert that the ward of the appellant is suffering from acute respiratory problem, this Court is of the considered view that the Commissioner of Schools is required to consider the application of transfer made by the appellant.

Accordingly, the order passed by the Hon'ble Single Bench stands set aside.

The appellant shall be at liberty to file a fresh application for consideration of transfer before the Commissioner of Schools and the said Commissioner of Schools is required to consider the said application within a fortnight of receipt of the said application on merits and in the light of the discussion made above and also pass a reasoned order, which shall be then communicated to the appellant.

Let the above directed exercise be completed within a period of two weeks from the date of filing the representation as directed above.

MAT 1639 of 2022 along with **IA No. CAN 1 of 2022** stand accordingly **allowed**.

Affidavit of Service filed in Court today be retained with the record.

Parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties in compliance with necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)