

Independent Thought vs. Union of India [W.P. (C) 8763 of 2015]

Notice issues to Union of India by Hon'ble High Court of Delhi on 14 September 2015

Synopsis

Independent Thought¹ (NGO) the Petitioner has approached this Hon'ble Delhi High Court by way of the Writ Petition under Article 226 of the Constitution seeking a writ of declaration that ***exclusion of schools established, owned or controlled by the appropriate Government*** or the local authority under Section 18(1) of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) to obtain a certificate of recognition as required under the RTE Act is violative of Articles 14 and 21A of the Constitution and it defeats the aims and objectives of the RTE Act of providing quality education to all children in India. The Petitioner, therefore, prays that part of Section 18(1) of RTE Act is liable to be struck down ***as unconstitutional***.

Presently Section 18 of the Act would show that all schools owned or run by the Government and/or its agencies have been excluded from the ambit of Sections 18 & 19 of the RTE Act. The norms and standards elaborated under Section 19 and the Schedule to the RTE Act do not apply to such schools. This exclusion of a large number of schools from the ambit of Sections 18 and 19 of the RTE Act of 2009 is unconstitutional *inter alia* for the reason that:

- 1) This exclusion is not based on any intelligible differentia and has no rational nexus with the object of the Act and hence violates Article 14 of the Constitution.
- 2) This exclusion is contrary to the aims and objectives of the Act itself.
- 3) The exclusion is violative of Article 21A of the Constitution as the quality of education is essential part of Article 21A.
- 4) It is assumed that government school per se will ensure quality and does not require monitoring on periodic basis. This assumption is not correct and infact Government schools require greater checks on quality.

While excluding all government and its aided schools from the ambit of Sections 18 and 19 of the RTE Act, the State has violated the principle of non-discrimination. While schools run by private bodies are subjected to a lot of monitoring, scrutiny and regulatory processes, large number of schools have been left out without any kind of check, regulation or adherence to norms and quality checks. The said exclusion fails to protect the rights of children who are constitutionally guaranteed a right to good and quality education across all kinds of schools in the country. Parliament has failed in its duty to protect the rights of children to quality education by placing Government schools outside the coverage of Section 18 of the RTE Act. Simply because the child is getting free education does not mean that the quality of education and learning is compromised for the child going to government schools.

The provision also leads to gross violation of rights of millions of children studying in government and as the Government Schools/aided schools/ schools run by local authority are not bound to comply with basic

¹ Independent Thought (www.ithought.in) is a National Human Rights organization working towards equity, justice and mutual respect. Independent Thought works on human right and law through direct Intervention, Advocacy and Judicial actions in several states of India.

In another ongoing PIL by Independent Thought the Honorable Supreme Court is hearing the writ [Independent Thought vs. Union of India (W.P. Civil 382 of 2013)] for declaration that Exception 2 to Section 375 of the Indian Penal Code (provision on Rape), [as amended by Criminal Law (Amendment) Act, 2013] is violative of Articles 14, 15 and 21 of the Constitution to the extent that it permits intrusive sexual intercourse with a girl child aged between 15 to 18 years only on the ground that she has been married. The exception is contrary to the provisions of Protection of Children from Sexual Offences Act, 2012 (POCSO)

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norms. This is clearly reflected in State's failure to comply by the two deadlines prescribed within the Act. Firstly the Three years deadline ending 31.03.2013 for All Schools to fulfil norms and standards specified in the Schedule and Section 19 of the Act, and Secondly the Five years deadline ending 31.03.2015 for States to ensure qualified teachers as per prescribed qualification laid down by academic authority as minimum qualification (Section 23 (2) of The Right of Children to Free and Compulsory Education Act, 2009 [Act 35 of 2009])

The RTE Act provides that that while schools run by the private bodies can be closed or shut down if they contravene norms and conditions laid down, the same does not apply to government schools. So such schools can be allowed to run even if they do not meet the minimal requirement and do not provide quality education or learning to the children. The said provision infact would encourage the government/local authority to run the school in the same manner, without taking any effort to improve the functioning and thereby infringing children's right to quality education. This exclusion is not acting as a meaningful contribution to the Right of Children guaranteed under Article 21A as well as under the aims and objectives of the RTE Act itself.

Presently, there is no system of accreditation of schools by any independent governing body in India. It is humbly submitted that should an external agency not check quality norms and parameters in government and said schools too in the best interests of children and also to truly meet the aims and objectives of the Constitution and RTE Act.

It is humbly submitted by the Petitioner that India needs to learn from best practices being followed in other countries and truly secure the right to education of every child. In UK, OFSTED is the Office for Standards in Education, Children's Services and Skills. They report directly to Parliament and are independent and impartial. They inspect and regulate services which care for children and young people, and those providing education and skills for learners of all ages. They cover all schools, irrespective of who manages the school. OFSTED inspectors work to government legislation and statutory guidance, which is based on the Department for Education's Safeguarding children and safer recruitment in education. This ensures that all schools are under the same scrutiny and maintain the same standards and all children get equal rights. OFSTED has on many occasions closed down government schools due to lack of standards and norms.

Prayer

In these premises, it is most respectfully prayed that this Hon'ble Court be pleased to –

1. 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;
2. 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
3. Pass such other order or orders and directions 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;

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