

**Chief Justice's Court****AFR****Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 3334 of 2016**Petitioner :-** Ajay Kumar Patel**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Adarsh Bhushan, Arpan Srivastava**Counsel for Respondent :-** C.S.C., Nisheeth Yadav**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice**
Hon'ble Yashwant Varma, J.

(Per : Dr D Y Chandrachud, CJ)

These proceedings which have been instituted in the public interest raise a seminal issue in regard to the implementation of the provisions of the Right of Children to Free and Compulsory Education Act, 2009¹ in relation to students belonging to the economically weaker sections. The submission of the petitioner is that the salutary mandate of Section 12 (1) (c) of admitting at least twenty-five percent students from children belonging to the weaker sections and disadvantaged group in the neighborhood has been defeated by the State Government. The Act was enacted to provide for free and compulsory education to all children of the ages of six to fourteen years. The object of the Act is to implement Article 21 A of the Constitution which provides for free and compulsory education to children between the ages of six to fourteen years. This is a fundamental right guaranteed by Part-III of the Constitution and is to be implemented in such manner as the State

¹ Act

may by law determine.

The expression “school” is defined in Section 2 (n) as follows :

“school” means any recognised school imparting elementary education and includes—

- (i) a school established, owned or controlled by the appropriate Government or a local authority;
- (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) a school belonging to specified category; and
- (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

Section 3 (1) provides for the right to free and compulsory education in a neighborhood school to every child between the ages of six to fourteen till the completion of his or her elementary education. Elementary education is defined in Section 2 (f) to mean education from first class to eighth class. Among the mandatory duties of the appropriate government under Section 8 and of the local authorities under Section 9 is to provide free and compulsory elementary education to every child and to ensure the availability of a neighborhood school as specified in Section 6. Under Section 6, the appropriate Government and local authority are required to establish within such area or limits of a neighborhood, as may be

prescribed, a school, where it is not so established within a period of three years from the commencement of the Act. Under Section 8 (c) and Section 9 (c), the appropriate Government and the local authority are obligated to ensure that a child belonging to the weaker section and a child belonging to a disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds. The local authority is required under Section 9 (d) to maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed and under Clause (e) to ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction. Section 12 forms a part of Chapter IV which deals with the responsibility of schools and teachers.

Section 12 (1) (c) provides as follows :

“specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.”

The expression 'child belonging to disadvantaged group' is defined in Section 2 (d) as follows :

“child belonging to disadvantaged group” means a child with disability or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification.”

The expression 'child belonging to weaker section' is defined in Section 2 (e) as follows :

“child belonging to weaker section” means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification.”

The rule making power is conferred upon the appropriate Government in Section 38. The expression appropriate Government is defined in Section 2 (a) to mean the Central Government in relation to a school established, owned or controlled by the Central Government or the administrator of a Union Territory, having no legislature. Other than the above, the State Government is the appropriate Government in relation to a school established within the territory of the State.

In exercise of the rule making power conferred by Section

38, the State Government has made the Uttar Pradesh Right of Children to Free and Compulsory Education Rules 2011², which were notified on 27 July 2011.

Rule 4 (1) provides for the area or limit of a neighborhood and is in the following terms :

“4 (1). The area or limit of neighborhood within which a school has to be established by the Committee authorized by the State Government shall be as under :

- a) in respect of children in classes I-V, a school shall be established in habitation which has no school within a distance of 1.0 Km. and has population of at least 300;
- b) in respect of children in classes VI-VIII, a school shall be established in habitation which has no school within a distance of 3.0 Km. and has population of at least 800.”

Rule 7 which deals with the admission of children belonging to the weaker sections and disadvantaged groups is in the following terms :

“7 (1) The schools referred to in sub-clauses (iii) and (iv) of clause (a) of section 2 shall ensure that children admitted in pursuance of clause (c) to section 12 (1) shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

(2) The schools referred to in sub-clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in pursuance of clause (c) to section 12 (1) shall not be

² Rules

discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as textbooks, library and Information, Communication and Technology (ICT) facilities, extra-curricular activities and sports.

(3) The areas or limits of neighborhood specified in rule 4 (1) shall apply to admissions made in pursuance of clause (c) to section 12 (1):

Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) to section 12 (1), extend these limits with the prior approval of the State Government.

(4) The local authority (Gram Panchayat/Nagar Nigam/Nagar Palika/Nagar Panchayat, as the case may be) shall maintain a name-wise list and record of all children belonging to weaker section and disadvantaged group, studying in private and specified category schools under its jurisdiction.”

Under Rule 8, provisions have been made for the grant of admission to children inter alia referred to in Section 12 (1) (c).

Insofar is material, sub-rule (1) is in the following terms :

“The process of admission of children referred to in clauses (b) and (c) of section 12 (1) shall be totally transparent. The detail of such children applying for admission shall be maintained by the school regularly, which shall include the name, address, sex, caste, date of birth of the child and the name, address, occupation and monthly income of father/mother/guardian, detail of whether child belongs to weaker section or disadvantaged group. Such information shall be made public through website. Out of the total

applicants, all the children who applied for admission, but not admitted for whatsoever reason, shall be informed in writing with the reason thereof. It shall also be binding for the school to follow the process of admission prescribed by the State Government from time to time.”

The State Government has issued Government orders from time to time in the exercise of its administrative authority to regulate admissions under Section 12 (1) (c). On 3 December 2012, a Government Order was issued by which in clause 6-(Kha), the following provision was made :

“(ख) जिला बेसिक शिक्षा अधिकारी द्वारा यह पाए जाने पर कि “अलाभित समूह” तथा “दुर्बल वर्ग” के बालकों को पड़ोसी राजकीय/परिषदीय एवं सहायित विद्यालयों में स्थान/सीटों के अभाव के कारण दाखिला नहीं मिल पा रहा है तो राज्य सरकार द्वारा बनाई गई नीति के अनुरूप ऐसे विद्यार्थियों को निजी असहायित विद्यालयों में 25 प्रतिशत स्थान/सीटों की सीमा तक कक्षा-1 में प्रवेश पाने का अधिकार प्रदान करने हेतु प्रार्थना पत्र प्राप्त होने के अधिकतम 10 कार्य दिवस में आदेश पारित करके निजी विद्यालयों में दाखिला देने का दायित्व होगा, जो सम्बन्धित विद्यार्थी हेतु कक्षा-8 तक की शिक्षा तक मान्य रहेगा। जिला बेसिक शिक्षा अधिकारी द्वारा उपरोक्त कार्यवाही हेतु 05 दिवस में स्वतः स्पष्ट प्रस्ताव सहित पत्रावली जिलाधिकारी के अनुमोदन हेतु प्रस्तुत की जायेगी तथा जिलाधिकारी द्वारा अधिकतम 05 दिवस में प्रकरण पर अन्तिम निर्णय लिया जायेगा एवं माता-पिता/अभिभावक को तदुपरान्त जिला बेसिक शिक्षा अधिकारी द्वारा सूचित भी किया जायेगा।”

Subsequently, a further Government Order was issued on 20 June 2013. By a further Government Order dated 6 January 2015, the State Government issued directions by which, inter alia, it was

provided as follows :

“1— जनपद मुख्यालय में प्राथमिकता के आधार पर नगर क्षेत्र का सर्वेक्षण करा लिया जाय तथा ऐसे वार्ड चिन्हित कर लिए जायें, जिनमें राजकीय, परिषदीय अथवा शासन द्वारा वित्त पोषित प्राथमिक विद्यालय संचालित नहीं है। ऐसे असेवित वार्डों में स्थित अशासकीय गैर सहायता प्राप्त विद्यालयों को चिन्हित कर लिया जाये और शासनादेश के अनुसार पात्र छात्र-छात्राओं को इन अशासकीय विद्यालयों में कक्षा-1/पूर्व प्राथमिक कक्षा में प्रवेश दिलाने हेतु उनके माता-पिता/अभिभावक से आवेदन पत्र आमंत्रित कर लिए जायें। इसके उपरान्त शासनादेश द्वारा विहित प्रक्रिया के अनुसार वार्ड में स्थित अशासकीय गैर सहायता प्राप्त विद्यालयों में कक्षा-1/पूर्व प्राथमिक कक्षा में प्रवेश दिलाया जाय।

इस हेतु समय सारिणी निम्नवत् की गयी है:—

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| (1)– असेवित वार्डों का चिन्हीकरण | 24 जनवरी, 2015 तक |
| (2)– असेवित वार्डों की चिन्हीकरण सूची का शिविर कार्यालय शिक्षा निदेशक (बेसिक) को प्रेषण | 31 जनवरी, 2015 तक |
| (3)– असेवित वार्ड में योजना का प्रचार प्रसार एवं आवेदन पत्र प्राप्त करना | 01–28 फरवरी, 2015 तक |
| (4)– आवेदन पत्रों का परीक्षण एवं प्रवेश हेतु अशासकीय मान्यता प्राप्त विद्यालय आवंटित करना | 15 मार्च, 2015 तक |
| (5)– पुनः आवेदन पत्र आमंत्रित करना | 31 मार्च, 2015 तक |
| (6)– नवीन आवेदन पत्रों का परीक्षण एवं प्रवेश हेतु विद्यालय आवंटित करना | 15 अप्रैल, 2015 तक |

2— शासनादेश सख्या-3087(1)/79-5-2012-29/09टी.सी.-11 दिनांक 3-12-2012 के प्रस्तर-6 खण्ड(ख) में यह प्राविधान किया गया है कि “जिला बेसिक शिक्षा अधिकारी द्वारा यह पाये जाने पर कि “अलाभित समूह” तथा “दुर्बल वर्ग” के बालकों को पड़ोसी राजकीय/परिषदीय एवं सहायतित विद्यालयों में स्थान/सीटों के अभाव के कारण दाखिला नहीं मिल पा रहा है तो राज्य सरकार द्वारा बनाई गई नीति के अनुरूप ऐसे विद्यार्थियों को निजी असहायतित विद्यालयों में 25 प्रतिशत स्थान/सीटों की सीमा तक कक्षा-1 में प्रवेश पाने का अधिकार प्रदान करने हेतु प्रार्थना पत्र प्राप्त होने के अधिकतम 10 कार्य दिवस में आदेश पारित करके निजी विद्यालयों में दाखिला देने का

दायित्व होगा, जो सम्बन्धित विद्यार्थी हेतु कक्षा-8 तक की शिक्षा तक मान्य रहेगा।”

The Government Order dated 20 June 2013 has been amended on 24 February 2016 in certain respects.

In the writ petition, it has been stated that out of a total 56.53 lac enrollments of students for Class 1 in primary schools in the State of Uttar Pradesh, 6.37 lac enrollments representing a quota of 25% prescribed under Section 12 (1) (c) should have been filled up but as on 5 June 2015, only 2817 admissions were confirmed to have been granted under the said provision.

The grievance of the petitioner, when the petition was entertained on 27 January 2016 was two fold. Firstly, it was submitted on the basis of the Government Orders dated 3 December 2012 and 6 January 2015 that the District Basic Education Officers have been directed that it is only where no seat is available in government schools or aided institutions that the provisions of Section 12 (1) (c) would apply. Secondly, it was submitted that as a result of an artificial distinction between the urban and rural wards, Section 12 (1) (c) is being applied only to urban wards with the result that the rural population is not obtaining the benefit of the provision. On both these aspects, this Court directed the Secretary, Basic Education to file a short counter affidavit.

Accordingly, the Secretary, Basic Education has responded to the directions of this Court. The Secretary, Basic Education states that the submission of the petitioner that 25% of the seats in unaided private schools in Class 1, out of a total of 6.37 lac enrollment should be filled up from students from the specified groups is only a statistical calculation. In the view of the Secretary, Basic Education, this cannot be construed as a target. According to the counter affidavit, the provisions of Section 12 (1) (c) do not abrogate the responsibility of the appropriate Government as prescribed in Section 6. Dealing with the two specific issues which have been raised by the petitioner, the affidavit of the State clarifies that there is no distinction between the rural or urban areas in the relevant Government Orders. The relevant averments in the affidavit are as follows :

“13. That considering the provision of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 in the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 and in the relevant Government orders there is no distinction in the Rural or Urban Areas. In so far as the office order dated 06.01.2015 issued by the Director of Education Basic is concerned it does not restrict the admissions of children belonging to the disadvantaged group and weaker section in the neighborhood schools to urban areas only, but considering the unavailability of space for establishing new government schools or non-availability of schools run by the Basic

Education Board the District Basic Education Officers were given directions that in the urban wards in which the schools run by the Basic Education Board are not available the students/ children belonging to the weaker section and disadvantaged group be given admission in the unaided private schools.... It is submitted that the Government Order dated 3.12.2012 does not make any distinction between rural and urban areas for coverage of the said act.”

The first issue which falls for consideration relates to the interpretation of the provisions of Section 12 (1) (c). Section 12 defines the nature of the responsibility of a school to provide for free and compulsory education. Section 12 (1) (c) covers schools belonging to specified categories and unaided schools not receiving any grant or aid to meet expenses from the Government or local authority. These schools have been obligated to admit to Class 1 to the extent at least 25% of the strength of that class, children belonging to weaker sections and disadvantaged groups in the neighborhood and to provide free and compulsory elementary education till its completion. The mandate of Section 12 is not conditional on the absence of schools established, owned or controlled by the appropriate Government or local authority or of aided schools. In other words, the obligation to admit students belonging to the weaker sections and from disadvantaged groups does not come into existence only upon the absence of seats in schools which are run by the State or local authority or by aided

institutions. The obligation under Section 12 (1) (c) has not been made dependent on the non existence of State run schools or aided schools or the unavailability of seats in those schools. To read Section 12 (1) (c) in a contrary manner so as to import an obligation to admit students from the weaker sections and disadvantaged groups only where seats are not available in State run schools or aided institutions would be to defeat the object of the provisions. The Government Order dated 6 January 2015 reiterates the earlier Government Order dated 3 December 2012 by stipulating that it is only where the District Basic Education Officer has found that students belonging to weaker sections or disadvantaged groups are unable to obtain admissions to government schools or schools run by the Basic Shiksha Parishad and in aided institutions due to unavailability of seats that such students would be entitled to obtain admission against the 25% seats available in unaided institutions. This prescription creates a hierarchy in the availment of the benefits under Section 12 (1) (c) by stipulating that it is only in the absence of admissions being available in Government run schools or aided institutions that the obligation to admit students from disadvantaged groups or of weaker sections under Section 12 (1) (c) would arise. This interpretation and understanding of the State is clearly contrary to the provisions of Section 12 (1) (c).

Moreover, it is evident that the rules which have been prescribed by the State Government under the rule making authority do not establish any such hierarchy as indeed the rules could not have done in violation of the provisions of the parent enactment. Consequently, we find merit in the first submission which has been urged on behalf of the petitioner that laying down a hierarchy or condition for the availment of the benefits under Section 12 (1)(c) by restricting them only to a situation where admissions in schools which are conducted by the Government or in aided institutions are not available, would be contrary to the plain mandate of Section 12 (1) (c). Such a policy cannot be laid down by the State Government in violation of the provisions of the Act of Parliament and would be ultra vires. The plain effect of the policy would be to mandate that a child belonging to the weaker section or disadvantaged groups cannot aspire for admission to an unaided institution under Section 12 (1) (c) so long as admissions are available in State run schools or in aided institutions. This is impermissible. It is a matter of common knowledge that the facilities which are provided in unaided institutions are superior to those in government institutions and aided institutions though may be with certain exceptions. The whole object and purpose of Section 12 (1) (c) was to provide for an assimilation of students belonging to the weaker sections and disadvantaged groups into the

main stream of education by allowing them access to facilities and means of learning provided in unaided institutions. Unfortunately, as a result of the policy which has been framed by the State Government to which we have made a reference earlier, this object has been negated by depriving the most deserving of students from the grant of benefits which have been provided by the legislation enacted by Parliament in implementation of the fundamental right to free and compulsory education between the ages 6 and 14.

On the second aspect of the matter, we are equally of the view that it would be impermissible for the State Government to postulate, as a matter of policy, that the provisions of Section 12 (1) (c) will be applicable only to the urban as distinct from rural areas. Neither the Act nor the Rules make any such distinction. There can be no plausible justification whatsoever to restrict the ambit of the provisions made under Section 12 (1) (c) to the urban areas by depriving the rural population access to better education facilities in primary education. The Secretary, Basic Education has in his counter affidavit clarified that there is no distinction as such between rural and urban areas but, considering the unavailability of space for establishing new Government schools or non availability of schools run by the Basic Education Board, the District Basic Education Officers were given directions that in the urban wards in which the schools run by the Board are not available,

students/children belonging to the weaker sections or disadvantaged groups be given admissions in unaided private institutions. If the aforesaid formulation of the State Government is intended to be inclusive by emphasizing the need to grant admissions to the groups covered by Section 12 (1) (c), there can be no objection. However, this formulation cannot be read in an exclusionary manner so as to confine the benefits of Section 12 (1) (c) only to students who are pursuing education in urban areas as distinct from rural areas. The provisions of Section 12 (1) (c) must be enforced by the State without distinction between the urban and rural areas.

During the course of hearing, one aspect which has emerged before the Court is the failure of the Principal Secretary, Basic Education to deal specifically with the number of admissions granted across the State under Section 12 (1) (c). Apart from controverting the statement made by the petitioner, by submitting that Section 12 (1) (c) is not a target, no specific disclosure of statistics has been made before the Court. The State Government shall ensure that the provision is implemented in letter and spirit in the State of Uttar Pradesh from the coming academic session. The State shall do so in accordance with the basic interpretative principles that must govern the implementation of Section 12 (1) (c) in the State as enunciated in this judgment. The State shall now

revisit its earlier formulations so as to bring them in conformity with the mandate of Section 12 (1) (c) as interpreted in the present judgment of this Court no later than within a period of two months from the date of receipt of a certified copy of this order.

The writ petition is, accordingly, disposed of. There shall be no order as to costs.

Order Date :- 1.3.2016

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(Yashwant Varma, J) (Dr D Y Chandrachud, CJ)