

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

WRIT PETITION NO.13751 OF 2019 (EDN-RES) PIL
DATED: 28-08-2019

MASTER MANJUNATH VS. UNION OF INDIA, NEW DELHI AND
OTHERS

ORDER

CHIEF JUSTICE

On an earlier date, we had put the parties to notice that the petition will be taken up for final disposal.

2. The learned Additional Government Advocate represents the second to eighth respondents and takes notice on their behalf. The learned counsel appearing for the first respondent takes notice.

3. The petitioner is a student of III Standard in a State-run school described in paragraph 3 of the petition. He has filed this petition through his father, raising a very important issue. The issue is about the entitlement of the children to whom sub-section (1) of Section 3 of the Right of Children to Free and Compulsory Education, 2009 (for short, 'the RTE Act') applies to two sets of school uniforms. According to the case of the petitioner, the said provision mandates that students who are studying in schools run by the State Government are entitled to two sets of school uniforms.

4. With a view to appreciate the controversy, a brief reference to the legal position will have to be made. The first provision which is material for our consideration is Article 21-A of the Constitution of India which was brought into force by the 86th Amendment to the Constitution of India. Article 21-A reads thus:

“21-A. Right to education-

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

5. Earlier, Article 45 which is a part of Chapter IV of the Constitution laid down the following directive principles of State Policy. The said provision read thus:

“45. Provision for free and compulsory education for children.

The State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

As a consequence of incorporation of Article 21-A in the Constitution, Article 45 was amended which now reads thus:

“45. Provision for early childhood care and education to children below the age of six years.

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

6. As can be seen from the objects and reasons of the RTE Act, for the purposes of giving effect to the fundamental right conferred under Article 21-A of the Constitution of India, the RTE Act was enacted. Therefore, we must also make a reference to the RTE Act which provides for free and compulsory education to all children of the age group of 6 to 14 years. Sections 3 and 7 of the RTE Act are material which read thus:

“3. Right of child to free and compulsory education.

(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with “multiple disabilities” referred to in clause (h) and a child with “severe disability” referred to in

clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.

(underline supplied)

7. Sharing of financial and other responsibilities.

(1) The Central Government and the State Government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of Article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall—

(a) develop a framework of national curriculum with the help of academic

authority specified under Section 29;
(b) develop and enforce standards for training of teachers;
(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.”

Article 21-A and sub-section (1) of Section 3 of the RTE Act confers a right upon every child of the age group of 6-14 years to free and compulsory education till the completion of his or her elementary education. Children belonging to the disadvantaged groups or children belonging to the weaker sections, as defined in clauses (d) and (e) respectively of Section 2 of the RTE Act are also entitled to the same rights.

7. Clause (f) of Section 2 of the RTE Act defines ‘elementary education’ to mean education from Classes I to VIII. Sub-section (2) of Section 3 of the said Act is very important. It provides that ‘no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing or completing the elementary education.’

8. The State Government has exercised its Rule making power under sub-section (1) of Section 38 of the RTE Act by framing the Karnataka Right of Children to Free and Compulsory Education Rules, 2012 (for short, ‘the State Rules). Rule 5 of the State Rules is material which reads thus:

“5. Duties of Government and Local Authority towards disadvantaged group

of children for the purpose of Section 8 and 9-

(1) A child attending a school of the State Government or local authority referred to in sub-clause (i) of clause (n) of Section 2, a child attending a school referred to in sub-clause (ii) of clause (n) of Section 2 in pursuance to clause (b) of sub-section (1) of Section 12, and a child attending a school referred to in sub-clause (iii) and (iv) of clause (n) of Section 2 in pursuance to clause (c) of sub-section (1) of Section 12 shall be entitled only to free textbooks, writing materials and uniforms.

Provided that a child with disability shall also be provided free special learning and support material.

(2) For the purpose of determining and for establishing neighbourhood schools, the C.P.I. or the local authority shall undertake school mapping, and identify all children, including children in remote areas, children with Disabilities, children belonging to disadvantaged groups, children belonging to weaker sections and children referred to in Section 4, within a period of one year from the appointed date, and every year thereafter.

(3) The D.D.P.I. or local authority shall ensure within their jurisdiction that no child is subjected to caste, class, religious or gender discrimination in the school.

(4) For the purposes of clause (c) of Section 8 and clause (c) of Section 9, the C.P.I. and the local authority shall ensure that a child belonging to a weaker section and a child belonging to disadvantaged group is not segregated or discriminated against in the classroom, during midday meals, in the playgrounds, in the use of common drinking water and toilet facilities, and in the cleaning of toilets or classrooms.”

(underline supplied)

framework of *Sarva Shikshana Abhiyaan* based on the RTE Act published by the Ministry of Human Resources Department, Government of India and the corresponding ministry of the State Government. It provides that *Sarva Shikshana Abhiyaan* will provide two sets of uniforms to all the Scheduled Caste/Scheduled Tribe children and also to children below the poverty line, wherever the State Governments are not providing the same from the State budget.

10. The question is, whether the State Government is under an obligation to provide two sets of uniforms to the children to whom Section 3 of the RTE Act is applicable, and who are pursuing elementary education in the schools run by the State Government. Reliance is placed on the Government Order dated 30th June, 2018 pertaining to free distribution of the second set of uniforms to students studying from Classes I to VIII in schools run by the Government during the academic year 2018-19. Under the aforesaid Government Order, permission was granted to the State Project Director of *Sarva Shikshana Abhiyaan* to enforce the direction of distributing second set of uniforms amongst the children studying in Classes I to VIII in Government schools, with the active co-operation of the Union Government, subject to terms and conditions incorporated therein. Thus, there was a direction in the year 2018-19 by the State Government to provide two sets of uniforms

to the students studying in Classes I to VIII in Government schools.

11. After having heard the learned counsel for the parties and after perusing the statement of objections filed by the State, we are of the view that the contentions raised in the petition will have to be accepted. We have already quoted Article 21-A of the Constitution. It enjoins the State to provide free and compulsory education to all the children in the age group of 6 to 14 years in such manner as the State may, by law, determine. Those children to whom subsection (1) of Section 3 of the RTE Act is applicable, are entitled to free and compulsory elementary education. Subsection (2) of Section 3 is more specific which in no uncertain terms lays down that 'no child shall be liable to pay any amount or fee or charges or expenses which may prevent him or her from pursuing or completing the elementary education.' Hence, no student can be forced to incur any expenditure on uniforms, if wearing of the same is compulsory.

12. If the rules of the schools run by the State Government require the children studying in the said schools to compulsorily wear uniforms, it is obvious that the parents of the students or the students will have to incur charges or expenses for purchasing the uniforms. If the parents of the students cannot afford to purchase the

uniforms, it will prevent their wards from pursuing elementary education. Hence, in view of sub-section (2) of Section 3 of the RTE Act, the students or their parents cannot be forced to spend on uniforms. In the light of sub-section (2) of Section 3, the State Government has taken a decision earlier to provide one set of uniform to each student. As stated earlier, in the last academic year, there was a decision taken by the State Government to provide two sets of uniforms.

13. Thus, the State has accepted its obligation under Section 3 of the RTE Act to provide one set of uniform to each student. We fail to understand how one set of uniform will serve the purpose. The State cannot expect the children to wear one set of uniform everyday for five or six consecutive days in a week. Apart from being arbitrary and irrational, it will be totally unhygienic. Moreover, due to the failure of the State to provide the second set of uniform, the parents or students may be forced to pay for the second uniform. This will be in violation of the fundamental right guaranteed under Article 21-A of the Constitution of India and also in violation of sub-section (2) of Section 3 of the RTE Act as well as Rule 5 of the State Rules. There is enough indication in Rule 5 of the State Rules about the entitlement of students to more than one set of uniforms and not merely to one set of uniform. We have already pointed out that under the *Sarva Shikshana Abhiyaan*, there is a provision for making available two sets of uniforms to the children belonging

to Scheduled Caste/Scheduled Tribe and children below the poverty line.

14. After having accepted its obligation to provide two sets of uniforms in the earlier academic year, we fail to understand as to why during the current academic year, the State Government has decided to provide only one set of uniforms.

15. Today, a statement of objections has been filed by the State. After setting out so many procedural aspects and difficulties, a very peculiar statement is made in paragraph 10 which reads thus:

'10. It is respectfully submitted that the proposed utilization of funds allocated for the year 2019-20 includes amount earmarked for the second set of stitched uniforms also. As soon as proposed funds are released to Samagra Shikshana, the school wise amount will be sent to respective schools to take up procurement and distribution of stitched uniform.'

(underline added)

Thus, funds have been earmarked for providing a second set of uniforms. However, a vague stand is taken that as soon as the funds are released to *Samagra Shikshana*, the amounts will be sent to the respective schools to take up procurement and distribution of stitched uniforms. It is not stated when the funds will be released and by whom the

funds will be released. All this is stated after accepting that the proposed utilization of funds for the year 2019-20 includes the amount earmarked for the second set of uniforms.

16. Practically three months of the present academic year are already over. The statement of objections filed by the State Government records that as soon as the funds are released, the same will be distributed to various schools. Such assurances are of no value in the light of the constitutional as well as statutory obligations of the State Government.

17. We are conscious of the fact that under Section 7 of the RTE Act, the Central Government and the State Government have concurrent responsibilities for providing/releasing the funds for the purposes of the RTE Act. Therefore, if the State Government wants the contribution of the Central Government, it can always seek such a contribution. In view of the mandate of Section 7 of the Act, the Central Government is bound to act upon the requisition of the State Government.

18. A perusal of the order of the State Government for the year 2018-19 refers to procuring shoes and socks for the academic year 2018-19. The reason is, if shoes are a part of the prescribed school uniform, in view of sub-section (2) of Section 3 of the RTE Act, at least one pair of shoes

and two pairs of socks will have to be provided by the State Government to the students studying in State Government schools free of cost.

19. Therefore, the petition must succeed. We propose to grant time of two months to the State Government to ensure that the second set of uniforms is provided to the children covered by Section 3 of the RTE Act who are pursuing elementary education in the schools run by the State Government.

20. We must record here that the petitioner (through his father) has raised a very important issue, the resolution of which has helped the cause of thousands of students covered by Section 3 of the RTE Act. As the learned counsel appearing for the petitioner has done *pro bono* work, we are not awarding costs in terms of money. However, we propose to direct the State Government to immediately provide the second set of uniform to the petitioner. If the school in which the petitioner is studying requires the students to wear shoes, one pair of shoes and two pairs of socks shall be immediately made available to the petitioner. This compliance shall be made within a period of two weeks from the date on which a copy of this order is provided to the office of the learned Government Advocate.

21. Accordingly, we pass the following order:

ORDER

(i) We hold that it is the obligation of the first and second respondents to provide two sets of uniforms to the students pursuing elementary education in State Government schools who are governed by Section 3 of the RTE Act;

(ii) Wherever the Rules of the concerned school require the students to wear shoes, the first and second respondents shall be under an obligation to provide one pair of shoes and two pairs of socks to the students;

(iii) We direct the State Government to provide the second set of uniforms as held above, along with shoes and socks (wherever required) to the students studying in schools run by the State Government to whom Section 3 of the RTE Act is applicable, within a period of two months from the date on which a copy of this order is provided to the office of the learned Government Advocate;

(iv) It will always be open for the State Government to seek financial assistance or contribution from the Central Government in accordance with the provisions laid down under Section 7 of the RTE Act;

(v) Needless to add that the obligation of both the Governments is to provide two sets of uniforms to the concerned children during the present academic year and even thereafter;

(vi) To the above extent, the Government notification dated 18th January, 2019 stands modified.

(vii) In lieu of costs, we direct the State Government to ensure that the petitioner is provided with the second set of stitched uniform along with one pair of shoes and two pairs of socks (provided shoes are part of the school uniform) within a period of two weeks from the date on which a copy of this order is provided to the office of the learned Government Advocate;

(vii) The writ petition is allowed on the above terms.

(viii) A copy of this judgment be provided to the office of the learned Government Advocate.