**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**WP No. 15768/2013 (EDN-Res)**

Between:

The Registrar Judicial ...Petitioner

And

The Chief Secretary,

Govt. Of Karnataka ...Respondent

**INDEX**

|  |  |  |
| --- | --- | --- |
| **Sl. No.** | **Contents** | **Pg. Nos.** |
| 1 | **Submissions** | 1-12 |
| 2 | **Annexure – V**  Suggested additions to Rules under Right to Education Act with regard to ‘Children with Special Needs’ | 13- |

Bangalore

Date:18/09/2013 (Kathyayini Chamaraj)

Party-in-person

**IN THE HON’BLE HIGH COURT OF KARNATAKA**

**AT BANGALORE**

**WP No. 15768/2013 (EDN-Res)**

Between

The Registrar Judicial …..Petitioner

And

The Chief Secretary, Govt. of Karnataka ….Respondent

**FURTHER REPORT SUBMITTED BY PARTY-IN-PERSON,**

**SMT. KATHYAYINI CHAMARAJ**

The undersigned begs to submit as follows:

1. We are grateful that the Sarva Shikshana Abhiyan (SSA) had invited us for a meeting and discussed various issues. The State Project Director (SPD) also asked the undersigned to come for detailed discussions and requested her to incorporate desired additions/changes to the Rules under the Right to Education Act, which the undersigned has done.

**Suggested changes to the Rules**

1. The suggested changes to the Rules submitted by the undersigned to the SSA SPD is submitted to this Hon’ble Court for consideration and is summarised as follows:
2. Re-define ‘free education’ as including free transportation to school beyond 1 KM
3. Fix a deadline for meeting all infrastructure in government schools as per norms under the RTE Act
4. Education officials to inspect all government schools and give reports on gaps in fulfilling norms
5. Impose penalties on officials of Appropriate Authority failing to provide schools with minimum norms
6. Fix time-frame within which all incentives and scholarships are distributed to children at the beginning of academic year
7. Re-define drop out as ‘child with unexcused absence of seven days’
8. Re-define ‘Disadvantaged Child’ according to its parents’ social, occupational and locational vulnerabilities
9. Re-define ‘Child belonging to weaker section’ as a child of parents earning less than a Class IV government employee
10. Provide to all children identified as ‘disadvantaged’ or ‘belonging to weaker section’ with scholarship of Rs. 1,200 per year along with a bond of Rs. 10,000 which matures to Rs. 1 lakh when the child turns 14 or 18 years of age, at the time of enrolment itself to prevent the child from dropping out.
11. The scholarship to be a special scholarship created under the RTE Act as suggested by Amicus Curiae.
12. Put the child in a free hostel or residential school if it fails to attend school despite scholarship
13. Appoint Attendance Authorities (AAs)
14. Incorporate protocol to be followed by Attendance Authorities to ensure all children are in school or free hostel or residential school
15. Protocol to be applicable to all children born after a cut-off date, perhaps to those currently enrolled in 1st to 3rd standards and those going to join school henceforward.
16. Officials to be required to put children of migrating parents in free hostels or residential schools at the source of migration so as not to disrupt their schooling.
17. Impose penalties on AAs failing to follow protocol for ensuring all children are in school
18. Create a record of all schools and children in e-format along with micro-plan for each never-enrolled or drop-out child and put in public domain for public feedback
19. Create convergent team of officials of all relevant departments and elected representatives at taluk, district and state-level along with NGOs and experts to implement protocols and hear grievances
20. Remedial teaching for currently out-of-school children to be residential in nature and of minimum duration depending on their age.
21. Declare minimum age for employment of children as 14 years
22. Impose penalties on employers employing children of compulsory school age
23. Funds for meeting norms of schools under RTE Act to be compulsorily provided to all government schools
24. The norms for pupil:teacher ratio to be based on the number of children attending the government school plus those still out-of-school in the neighbourhood.
25. Recurring costs for drinking water and electricity connections for all schools to be paid for by the state;
26. One cleaner and one attender / watchman to be appointed for every school
27. The state shall define within the Rules the expected learning outcomes of children at the end of each grade and arrange for evaluation and remedial teaching for every subject to improve learning levels.

**Suggestions accepted by government and notifications issued**

1. We are grateful that notifications have been issued to re-define the definition of ‘drop-out’ as a child absenting itself from school for more than seven days. Notifications designating Attendance Authorities, and specifying grievance redressal and appeals mechanisms at taluk and district levels for violations of the Act have also been issued.

**Many never-enrolled are the ‘Children with special needs’**

1. Many of the never-enrolled children are the physically and mentally challenged children.  In other countries, every "child with special needs"  who can be integrated with a normal class, has an individual teacher who teaches him, based on what the 'normal teacher' is explaining.  Others who cannot be integrated in a normal classroom and have special needs are taught in a special classroom by an exclusively trained teacher within the normal school so that they also attend the normal school and are not isolated from other normal children. The initiative to have three paid employees in every taluk called the ‘Inclusive Education Resource Teacher’ (IERT) and 3 volunteers with honorarium to look after "Children with special needs" has been discontinued in our state instead of being enlarged.
2. It is humbly requested that this Hon’ble Court may be pleased to issue direction to the government to re-instate the IERTs to meet the needs of “Children with special needs”.
3. It is also humbly suggested that the requirements of “Children with special needs” may be given greater consideration in the Rules by incorporating the suggestions given in **Annexure W** into the Rules.

**Penalties to be notified on Attendance Authorities and employers**

1. We humbly request that this Hon’ble Court may be pleased to issue directions to the government to notify within the Rules penalties on Attendance Authorities failing to ensure that all children are in school in their jurisdictions.
2. We humbly request that this Hon’ble Court may be pleased to issue directions to the government to notify in the Rules a minimum age for general employment of children in any occupation as 14 years to coincide with the age at which the age of compulsory education ends. This is a requirement mandated by the UN Committee on the Rights of the Child to India. This age may be gradually raised to 16 and later to 18 in a phased manner.
3. We also humbly request that this Hon’ble Court may be pleased to issue directions to the government to include in the Rules penalties on employers who engage children under 14 years of age in any kind of employment.
4. We are grateful that a committee to plan the structures and procedures to ensure that all children are in school has been set up under the chairmanship of the Chief Secretary and that the Committee also had its first meeting on 16.09.13.

**Children cannot wait for schools to become perfect**

1. The thrust of the government at this meeting was that the main reason for children dropping out or never enrolling themselves is that the children are not achieving minimum levels of learning due to poor quality of teaching in the schools and that all effort should be made to improve the quality of teaching before compelling children to attend schools.
2. It is humbly submitted that one cannot wait for all schools to become perfect before compelling all children to go to school. This reasoning goes against the UNCRC which India has ratified and the Right to Education Act which declares that all children have a fundamental right to ‘compulsory education’ and that they must and should be in school.
3. Also, if the government school is lacking in infrastructure and that is the reason for children dropping out, it is humbly requested that this Hon’ble Court may be pleased to fix a deadline within which all government schools in the State shall meet the norms spelt out under the RTE Act for the number of teachers, classrooms, toilets, drinking water, teaching and learning equipment, compound wall with gate, etc.
4. It is also humbly submitted that the reason why children of first generation learners often do not achieve the minimum levels of learning is because they are often irregular in attendance and sometimes migrate for short or long periods with their parents, missing out on lessons. If a child is regular, there is no reason why he cannot achieve minimum levels of learning as the teachers in the government schools are better trained and better paid than teachers in private schools. Children of migrating parents need to be compulsorily lodged in hostels before parents migrate.

**Duty of state does not end in merely providing school**

1. It was also felt at the meeting of the Committee under the Chief Secretary that the duty of the state ended with providing a school with all facilities within the neighbourhood and that the state could not do anything if a child still did not come to school. It is humbly suggested that the duty of the state does not end with merely providing a school with all facilities and that it is the duty of the state to ensure that every single child is in a formal learning situation.

**Study of scholarship schemes**

1. As requested by this Hon’ble Court, the undersigned has undertaken a study of the effectiveness of the scholarship schemes of the government. The following observations are humbly submitted as the findings of the study.
2. The statistics provided by the Department of Women & Child Development and Social Welfare are herewith submitted as Annexures

**General remarks on scholarship schemes**:

1. **BPL criterion riddled with inclusion and exclusion errors**: The eligibility criteria for many scholarship schemes and for placement of a child in a free government hostel or residential school require the Below Poverty Line (BPL) ration card issued by the Food & Civil Supplies department as a criterion. There used to be a very low annual household income criterion of Rs. 12,000 for rural and Rs. 17,000 for urban areas in Karnataka for a family to be considered as BPL. These were recently removed and new exclusion criteria have been stipulated which are very confusing and are likely to lead to large-scale errors of inclusion and exclusion. The issual of these BPL ration cards is also riddled with corruption and political influences. Hence the selection of children for award of scholarships or placement in a free hostel or residential school when linked to the BPL ration card will also be riddled with the same inclusion and exclusion errors and the genuinely needy child may get left out of the support.
2. **Some schemes have generous eligibility criteria***:* While the BPL criterion for some schemes excludes a large number of vulnerable children whose parents may not have obtained the BPL card, some other schemes have very generous criteria going up to Rs. two lakh annual incomeof household as the eligibility criterion. This again causes discrimination between equally vulnerable children.
3. **All those eligible do not receive scholarships:** Having generous annual income criteria for some schemes however does not mean that all eligible children who qualify under these criteria get the scholarship as the amounts allocated for the scheme is very often not adequate to cover all those who are eligible (Minority Department). The reason given for the lower number of applications approved than those eligible is that a ceiling is placed by the Centre on the amount of money that can be given under each scholarship each year. Thus, even if several lakhs of students are eligible for the scholarship as per the criteria fixed, selection of the beneficiaries is prioritised for those applicants with the lowest income and only a few of those eligible will be given the scholarships. Thus even though the eligibility criterion is Rs. 2 lakh annual household income (Minorities Scholarships), the cut-off income limit for securing the scholarship has been given as Rs. 8,000 to Rs. 10,000 annual income for Muslim households, etc. Thus while the number of applications received in a year may be 7 lakhs or more, the number of scholarships approved may only be about 2 lakhs. Thus the announced eligibility criterion of Rs. 2 lakh annual income is misleading. The cut-off annual income of Rs. 8,000 to 10,000 is too low to really benefit all those deserving the scholarship and hence is a disincentive for the poor children to attend school.
4. The undersigned humbly prays that this Hon’ble Court may kindly direct the government to issue scholarships to all those found eligible as per the government’s eligibility criteria and not restrict it to a few of the applicants only.
5. **Meagre and differing amounts as scholarships:** Many of the scholarship amounts are so low, in the range of Rs.250 to Rs. 750 per year (SC/ST scholarship under Social Welfare dept.), that it often costs the parent more money to produce the relevant documents, such as income and caste certificates, to prove the child’s eligibility, than the amount received as scholarship. The annual income limit prescribed for some of these scholarships is Rs. 2 lakh per annum. It is a moot point whether a parent earning Rs. 2 lakh per year would even apply for a scholarship that is a mere Rs. 250 per year. While some schemes have very low amounts as scholarships, some others have more substantial amounts up to Rs. 1,000 or more per year. This again causes discrimination between equally vulnerable children.
6. **Money allocated may not be disbursed:** Even when a large amount of money has been allocated for a scholarship scheme, all of it may not be disbursed as only some percentage of the allocated money is released and again, only some of the released money may be disbursed, resulting in huge lapsing of funds, while poor children drop-out and are denied support.
7. **Money may not reach the child or reach in a timely manner:** It is noted that very often the applications for scholarships are not processed even after one year. If the child does not receive the benefit in time and the parents have to invest in the education of the child and wait for re-imbursement, it is a strong disincentive for the parent to continue the child’s education and rather an incentive to engage him in labour. Also, manual disbursal of scholarships through a long chain of officials, gave scope for corruption and rent-seeking, reducing further even the meagre benefits offered by the scholarships. One positive feature noted is that through computerisation of all details of scholarship beneficiaries and Direct Cash Benefit Transfer through bank accounts, the Women & Child Development and Social Welfare Departments have reduced the time for processing and disbursal of funds to one month from the begin of the academic year.
8. **Elementary school children not eligible for some scholarships:**  Some schemes provide scholarships right from the 1st Std, but some scholarship schemes (for example the Building & Other Construction Workers’ Welfare Board scheme scholarships) are given only from VIII std onwards and not for children in the compulsory school age in elementary school. The elementary stage should have priority as it is a fundamental right which secondary education is not. It needs to be noted that studies have shown that many children from the lowest quintile of the population fail to complete even elementary schooling of eight years’ duration and hardly any child from this quintile ever reaches tertiary education level to benefit from the generous scholarships available at these levels. It is ironical that the Building & Other Construction Workers’ Welfare Fund has accumulated funds worth more than Rs. 1,500 crores in Karnataka alone collected as cess on builders but is not supporting the compulsory education of eight years of its construction workers’ children.
9. It is humbly requested that this High court may be pleased to set this right by directing the Board to cover elementary school children also with scholarships so that the accumulated funds are also usefully and meaningfully deployed.
10. **Some scholarships are being reduced or discontinued:** The Beedi Workers’ Welfare Fund is a Central scheme which used to provide scholarships from the 1st Std. to children of beedi workers. But though the funds in the welfare fund remain largely unused, the Centre has been reducing the allocation for the scholarships year by year and last year decided to discontinue the scholarship scheme against which the beedi workers protested. Earlier there was a backlog of scholarship amount of Rs.60 crore in the year 2008-09, which was somewhat cleared during 2009-10 when the Ministry of Finance had allotted an additional budget of Rs.40 crore. In the year 2010-11, it was further reduced to Rs.107 crore in Revised Estimate under scholarship head and during 2011-12 again it was reduced to Rs.77 crore.
11. It is humbly requested that this Hon’ble court may be pleased to direct the Central Labour Welfare Commissioner not to discontinue and, in fact, enhance the scholarships for the beedi and other workers’ children as these workers belong to the poorest sections of the population.
12. **No clear estimation of eligible base population of children: T**here does not seem to be an accurate way of estimating the number of eligible children for every scholarship scheme. Hence an ad hoc amount seems to be allocated which may or may not get used. In the reverse case, the allocation may be too little to cover all those eligible . There needs to be a way of gauging realistically the estimated number of children requiring support and budgeting the necessary amount for that.
13. **Lack of initiative to converge services by education dept. officials:** There are committees at the third tier of government level headed by elected representatives which select the children who shall be admitted to the free government hostels and residential schools in the area from applications received from them. But these seats are not being reserved or given on priority to the out-of-school children as education department officials are not guiding or helping the parents of child labourers and other out-of-school-children to apply for these seats. Due to lack of awareness among such poor parents about the existence of these facilities, they may not be applying for these seats for their children. Hence it is likely that creamy layers or those with political influence are cornering these seats.

It is humbly requested that this Hon’ble Court may be pleased to direct Education department officials to create awareness among parents about the facilities available in the hostels and residential schools and proactively liaise with these committees, submit applications on behalf of the OOSC and ensure that they are given seats in these institutions on priority basis. A booklet may be provided to every parent of vulnerable children containing all the incentive schemes, details of hostel and residential schools available to children, their location, the eligibility criteria, the mode of applying for the same and also the list of beneficiaries.

1. **No institutionalised mechanism for convergence:**  Though the right to education is an inalienable right, all children denied education are not being dealt with by the Women & Child Development under the Juvenile Justice Act which mandates the department to ensure all child rights. Only those OOSC, such as those who are also runaway, street or trafficked children, are being dealt with by the Women & Child Development Dept. Education Department officials are also not liaising with their women & Child development department counterparts and the institutions under the JJ Act, such as the Child Welfare Committee to bring all out-of-school children before the CWC which would enable the OOSC to access several benefits of various departments.
2. It is humbly suggested that this Hon’ble Court may be pleased to direct the government to set up an institutionalised mechanism at the grassroots level of Grama Panchayat/Ward or taluk level to bring about convergence and to direct the Women & Child Development Department to include the role of the Child Welfare Committees, set up under the Juvenile Justice Act, in enquiring into all cases of out-of-school children and deciding on the kind of incentives to be provided to the parents/child.

**General suggestions for improving incentive schemes**

1. **Revise definition of vulnerable children**: To overcome all above-mentioned difficulties in assisting vulnerable children, it is humbly submitted that it is essential to de-link the award of scholarships from the possession of BPL ration card criterion. There is a need to re-define who shall be eligible for scholarships or for placement in a free hostel or residential school under the RTE Act. In order to reach the genuinely needy and vulnerable child, the definitions of “child belonging to weaker section” and “child from disadvantaged groups” in the RTE Act need to be re-defined taking into consideration the family’s social, occupational and locational vulnerabilities.
2. **“Child belonging to disadvantaged group”** may be re-defined as “Child belonging to e Scheduled Caste, the Scheduled Tribe, the Backward Class as specified by the Government of Karnataka., by notification under clause(d) of Section 2 of the Act; it also includes orphan, migrant and street child, child with special needs, HIV affected/infected child; child from single woman-headed household, child belonging to landless labourer, rag-picker, domestic worker, street vendor, or other casual worker in the informal sector, child living in a slum, hut, tent without basic amenities, child with disabled parent or sibling, or belonging to family run by the elderly with no other support, etc.
3. **“Child belonging to weaker section”** may be re-defined as a “Child belonging to such parent or guardian whose annual income is lower than the annual salary of a regular Class IV employee of the government as revised every year as per rise in cost of living”.
4. All the above categories of children may be identified and awarded the scholarship at the time of enrolment itself as a preventive measure so as to ensure their continuous attendance and pre-empt their dropping out.
5. **Need for uniform amounts and uniform criteria**: It is humbly submitted that it may be better to have a uniform scheme of scholarships within the Education Department exclusively under the RTE Act for all identified vulnerable children as per above-mentioned criteria. They can all get the same amounts and the eligibility criteria may also be common. The amount of scholarship may be at least Rs. 1,200 per year (for both boys and girls), along with a bond of Rs. 10,000 in child’s name which matures to Rs. 1 lakh when child turns 14 or 18 years, to be issued on condition that the child attends school for all eight years on the lines of the Bhagyalakshmi Scheme for girl children from BPL families).
6. They may apply for scholarships from other departments if those are more advantageous for them in which case the education department scholarship may be discontinued.
7. **Pooling of all scholarship funds may be thought of:** It is humbly suggested that, alternatively, all departments may be asked to pool their scholarship amounts in a common fund and the money distributed therefrom equitably to all vulnerable children.