

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.147 OF 2014

NAZ FOUNDATION (INDIA) TRUST ... PETITIONER(S)

VS.

UNION OF INDIA & ORS. ... RESPONDENT(S)

O R D E R

1. The petitioner approached this Court with the following prayers :

"(a) For an appropriate writ, order or direction, declaring that no child living with or affected by HIV/AIDS shall be denied admission in any educational institution, whether public or private, solely on the ground of her/his HIV-positive status (actual or perceived) or HIV-positive status (actual or perceived) of her/his parents), guardians or any other family member.

(b) For an appropriate writ, order or direction, declaring that no child living with or affected by HIV/AIDS shall be suspended or expelled from any educational institution, whether public or private, solely on the ground of her/his HIV-positive status (actual or perceived) or HIV-positive status (actual or perceived) of her/his parents, guardians or any other or any other family member.

(c) For an appropriate writ, order or direction, declaring that there shall not be segregation of children living with or affected by HIV/AIDS in schools and that there shall be no separate schools for children living with or affected by HIV/AIDS and that children living

Signature invalid
Digitally signed by
SARITA CHIT
Date: 11.11.2014
Reason:

..2/-

with or affected by HIV/AIDS shall be supported and enabled to attend regular schools with other children.

(d) For an appropriate writ, order or direction directing the Union of India to frame and notify comprehensive guidelines under Section 35(1) of the RTE Act 2009, pertaining to children living with and affected by HIV/AIDS in schools, covering issues of right to education without any discrimination and confidentiality of their HIV-positive status to be implemented by the appropriate governments, local authorities and School Management Committees respectively.

(e) For an appropriate writ, order or direction directing the State Governments and Union Territories to issue notification under Section 2(d) of the RTE Act, declaring that children living with and affected by HIV/AIDS fall in the category of 'disadvantaged children' for the purposes of the RTE Act, like the State Governments of Andhra Pradesh, Karnataka, Uttarakhand and Manipur."

2. This Court passed the following order on 31.3.2017 :

"Certain Rights accrue to all children under the Right of Children to Free and Compulsory Education Act, 2009. Certain additional rights also accrue to children under the above Act, if they are declared as belonging to a disadvantaged group, by a notification issued by any individual State Government, under Section 2(d) of the above Act.

We are informed that 11 States and 1 Union Territory have issued such notifications, declaring children living with or affected by HIV, as belonging to a disadvantages group.

We are of the prima facie view, the State Governments need to consider the issuance, so as to include children living with or affected by HIV, to be notified as belonging to a disadvantaged group under Section 2(d), within four weeks from today. Ordered accordingly.

Such of the State Governments as are unwilling to voluntarily issue a notification as aforementioned, may file an affidavit before this Court, within four weeks, indicating the reasons why they consider it unnecessary to issue such a notification.

Respondent No.1 shall communicate the instant order to all Secretaries in States of the Department of School Education within a week from today."

3. In continuation of the directions issued by this Court, we are informed, that the Union of India addressed a communication to the Education Secretaries of all States (except the State of Jammu and Kashmir) and Union Territories (having legislatures), a letter dated 6.4.2017. The subject and text of the above letter, is reproduced below :

"Subject : Inclusion of HIV affected children within definition of "child belonging to Disadvantaged Group" as defined under Section 2(d) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009.

Sir/Madam,

I am directed to refer to the order dated 31.03.2017 of the Hon'ble Supreme Court of India in Writ Petition (Civil) No.147/2014 on the issue of HIV affected children (copy enclosed).

2. The Hon'ble Supreme Court has ordered that all children living with or affected by HIV, need to be notified as belonging to a disadvantaged group under Section 2(d) of the RTE Act, 2009 within four weeks of the order.

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3. In this regard, you are requested to take appropriate action as per the directions of Hon'ble Supreme Court and issue suitable notification under intimation to this Department.

Encl: as above."

4. None of the State Governments or the Union Territories has approached this Court, in furtherance of the liberty granted to them under the penultimate paragraph of the motion Bench order dated 31.3.2017.

5. We are therefore satisfied, that all the State Governments are agreeable to issue a notification, declaring children living with or affected by HIV, fall in the category of disadvantaged children, under Section 2(d) of the Right of Children to Free and Compulsory Education (RTE) Act, 2009. We are of the view, that some of the State Governments, other than 11 States and one Union Territory, which had not issued such notification (in furtherance of the motion Bench order dated 31.3.2017) may have issued the same in the interregnum. In the absence of any objection, we direct all other State Governments and Union Territories to issue the necessary notification, within eight weeks from today.

6. With the aforesaid directions, we are satisfied, that all the prayers raised in the instant writ petition, are taken care of.

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7. The instant writ petition is disposed of in the above terms.

.....CJI.
[JAGDISH SINGH KHEHAR]

.....J.
[Dr. D.Y. CHANDRACHUD]

.....J.
[SANJAY KISHAN KAUL]

New Delhi;
5th May, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No(s).147/2014

NAZ FOUNDATION (INDIA) TRUST

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln.(s) for directions, exemption from filing O.T.,
intervention and permission to appear and argue in person and
office report)

Date : 05/05/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Anand Grover, Sr. Adv.
 Ms. Shrinidhi Rao, Adv.
 Mr. Purushottam Sharma Tripathi, Adv.
 Mr. Mukesh Kumar Singh, Adv.
 Mr. Ravi Chandra Prakash, Adv.
 Ms. Tripti Tandon, Adv.

For Respondent(s) Mr. Maninder Singh, ASG
 Mr. Rana Mukherjee, Sr. Adv.
 Mr. R. Balasubramanian, Adv.
 Mr. T.A. Khan, Adv.
 Mr. Rajat Singh, Adv.
 Mr. Prabhas Bajaj, Adv.
 For Mr. Gurmeet Singh Makker, Adv.

State of AP Mr. Guntur Prabhakar, Adv.
 Ms. Prerna Singh, Adv.

State of Assam Ms. Diksha Rai, Adv.

State of Bihar Mr. Rudreshwar Singh, Adv.
 Mr. Gautam Singh, Adv.
 Mr. Vivek Vardhan, Adv.
 Mr. Snehil Sonam, Adv.
 Ms. Priya Mishra, Adv.

State of Mr. Aniruddha P. Mayee, Adv.
Chhattisgarh Mr. A. Selvin Raja, Adv.

State of Haryana	Mr. Sanjay Kumar Visen, Adv.
State of HP	Mr. Dinesh Kumar Thakur, Adv. (AAG) Mr. Varinder Kumar Sharma, Adv. Mr. Mohd. Shahid Hussain, Adv. Mr. Yugal K. Prasad, Adv. Ms. Parul Sharma, Adv.
State of Jharkhand	Mr. Gopal Prasad, Adv.
State of Kerala	Mr. C.K. Sasi, Adv.
State of MP	Ms. Bansuri Swaraj, Adv. Mr. Avi Pandey, Adv. Mr. C.D. Singh, Adv.
State of Maharashtra	Mr. Amol Chitale, Adv. Mr. Nishant R. Katneshwarkar, Adv.
State of Manipur	Mr. Sapam Biswajit Meitei, Adv. Mr. Naresh Kumar Gaur, Adv. Ms. Linthoingambi Thongam, Adv. Mr. Ashok Kumar Singh, Adv.
State of Mizoram	Mr. Shikhar Garg, Adv. Mr. Ganesh Bapu, Adv. For Mr. P.V. Yogeswaran, Adv.
State of Nagaland	Ms. K. Enatoli Sema, Adv. Mr. Edward Belho, Adv. Mr. Amit Kumar Singh, Adv. Mr. K. Luikang Michael, Adv. Ms. Elix Gangmei, Adv. Mr. Z.H. Isaac Haiding, Adv.
State of Punjab	Mr. Kuldip Singh, Adv.
State of Sikkim	Ms. Aruna Mathur, Adv. Mr. Avneesh Arputham, Adv. Ms. Anuradha Arputham, Adv. Mr. Amit Arora, Adv. For M/s Arputham, Aruna & Co., Advs.
State of T.N.	Mr. M. Yogesh Kanna, Adv. Ms. Nithya, Adv. Ms. Maha Lakshmi, Adv. Mr. Partha Sarathi, Adv.
State of Tripura	Mr. Gopal Singh, Adv. Mr. Rituraj Biswas, Adv. Ms. Varsha Poddar, Adv.

State of UP	Mr. Aarohi Bhalla, Adv. Mr. Shashank Dhawan, Adv. Ms. Alka Sinha, Adv. Mr. Anuvrat Sharma, Adv. For Mr. M.R. Shamshad, Adv.
State of WB	Mr. Soumitra G. Chaudhuri, Adv. Mr. Chanchal Kumar Ganguli, Adv.
No.29	Mr. Rahul Kaushik, Adv. Ms. Bhuvneshwari Pathak, Adv. Ms. Shilpi Satyapriya Satyam, Adv.
UT of Andaman & Nicobar Admn.	Mr. Bhupesh Narula, Adv. Mr. K.V. Jagdishvaran, Adv. Ms. G. Indira, Adv. Ms. Liz Mathew, Adv.
Govt. of Puducherry	Mr. V.G. Pragasam, Adv. Mr. S. Prabu Ramasubramanian, Adv.
NCPCR	Ms. Anindita Pujari, Adv. Mr. P. Venkat Reddy, Adv. Mr. Prashant Kr. Tyagi, Adv. M/s. Venkat Palwai Law Associates, Adv.
Intervenor	In person Mr. Balaji Srinivasan, Adv. Mr. T. Mahipal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The writ petition is disposed of in terms of the
signed order.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

(Signed order is placed on the file)