
(2015) 02 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 277/2015

Aided Primary School, Rajgarh and Others	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 21(A), 226, 45, 51(A)
Right of Children to Free and Compulsory Education Act, 2009 — Section 6

Citation : (2015) 2 MPLJ 214

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; Sangeeta Pachauri, Dy. Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—This petition is filed by thirty three aided primary schools by invoking jurisdiction of this Court under Article 226 of the Constitution. Petitioners have called in question the legality, validity and propriety of the order dated 12.12.2014 (Annexure P/ 1) whereby the Government has given permission to establish thirty eight Govt. Primary Schools.

2. Shri Vivek Jain, learned counsel for the petitioners, contends that the petitioners being aided educational institutions are getting grant in aid from the State Govt. They are imparting education to the students till primary level. The action of respondents in establishing new primary schools in the same area is bad in law and runs contrary to Right to Children of Free and Compulsory Education Act, 2009 (RTE Act). It is submitted that as per Section 6 of the RTE Act, the Govt. / local authority can establish schools where it is not established within a period of three months from the commencement of the Act. It is submitted that since petitioners' institutions are already functioning in the same area, establishing Govt. school is bad in law. It is submitted that the right of the petitioners to get salary on the basis of 100% grant is already affirmed till Apex

court in CA No. 6362/2014. It is submitted that VI Pay Commission benefits have already been sanctioned to aided school teachers and if new schools are permitted to be opened, it may result into either discontinuance of grant in aid or closure of the petitioners' schools. It is contended that the petitioners have already preferred representation which has not been considered and decided. Reliance is also placed on a decision passed in WP No. 1833/2001 (Anudan Prapt Prathmik Vidhyalaya Kuwara and Ors. Vs. State of M.P. and Ors.)

3. I have heard learned counsel for the petitioner at length and perused the record.

4. It is apt to quote the first para of the impugned order, which reads as under:-

5. Although the respondents have mentioned that schools are decided to be opened under the RTE Act, it is apposite to remember that it is a constitutional obligation on the part of State to establish such institutions. Article 21(A) of the Constitution reads as under:-

"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."

Article 45 reads as under:-

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

6. In view of these articles, it is a constitutional mandate and a duty on the part of the welfare State to establish such institutions. Thus, Section 6 of RTE Act, by no stretch of imagination can become a hurdle for establishment of institutions. The Govt. is the best judge to decide where schools are required to be established. Such policy decision need not be interfered with by this Court.

7. The impugned order, by no stretch of imagination infringes the rights of the petitioners to impart education. It is open to the Govt. to establish more educational institution in a particular area. Merely because an aided institution is functioning in the area, there is no legal hurdle for the State to establish more educational institutions. If more educational institutions particularly Govt. institutions are established, it will be in the benefit of public at large. The judgment delivered by this court in WP No. 1833/2001(Annexure P/6) is of no assistance to the petitioners in the facts and circumstances of the present case. In the said case, the schools were directed to be shifted to another place. Before passing such order of shifting, no opportunity was granted to the school. In the said factual backdrop, interference was made.

8. Education has often called as technique of transmitting civilization. In the U.S.A., in his celebrated decision in Brown Vs. the Board of Education (1954), Chief Justice Earl Warren emphasized the importance of education in society in following words:-

Today, education is perhaps the most important function of state and local

governments.... it is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful if any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. 9. Justice S.H. Kapadia, C.J. in *Society for Unaided Private Schools of Rajasthan Vs. Union of India (UOI) and Another*, opined as under:-

A child who is denied right to access education is not only deprived of his right to live with dignity, he is also deprived of his right to freedom of speech and expression enshrined in Article 19(1)(a). In para 45 of the said judgment it was held that it is primary obligation of the State to provide free and compulsory education to all children of the specified age. Needless to mention that aided private institutions do charge fees from the students. They do not impart education to all the students free of cost. Thus, if State fulfills its constitutional obligation to impart education to all children by opening large number of schools, no flaw can be found in the same.

10. Apart from this, reason for the emphasis on Directive Principles of State Policy is because international trends point in the same direction. Certain provisions of International Covenant on Economic, Social and Cultural right (ICESCR), 1966 (to which India is a party), are almost identical to the Directive Principles of State Policy mentioned in Part IV of the Constitution of India. The relevant policy of Article 13 of ICESCR reads as under:-

1. The State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all.

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in a particular by the progressive introduction of free education.

11. Article 51(A) prescribes the fundamental duties of every citizen, which reads as under:-

(a).....

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom.

....

.....

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform.

(i).....

(j) to strive towards excellence in all spheres of individual and collective activity so that nation constantly rises to higher levels of endeavor and achievement.

12. If Govt. takes steps to follow the ideals of national struggle for freedom, it will be the duty of every citizen to support the same. Freedom fighter Shri C. Rajagopalachari in his prison diary on January 24, 1922 recorded as under:-

Hope lies only in universal education by which right conduct, fear of God and love will be developed among the citizens from childhood.

(See: We, the people, by Nani A. Palkhivala, 31st Reprint 2012, page 9)

13. A conjoint reading of various portions of article 51(A) makes it clear that it is duty of every citizen to support any such action of Government by which excellence can be achieved and efforts are made to develop the scientific temper, humanism etc. Thus, I find no justifiable reason for the petitioners to raise their eyebrows against the impugned order. No legal, vested, constitutional or fundamental right of the petitioners is violated which warrants interference of this Court in the writ petition.

14. Petition is bereft of merits and therefore, admission of the same is declined. Petition is dismissed with cost of Rs. 5,000/-.