

(2012) 10 SC CK 0057

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 631 of 2004 (Under Article 32 of the Constitution of India)

Environment and Consumer Protection Foundation

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Commission for Protection of Child Rights Act, 2005 — Section 14, 14(1), 15, 17, 24
Constitution of India, 1950 — Article 21A, 32
Right of Children to Free and Compulsory Education Act, 2009 — Section 31, 34, 38, 38(2)

Citation : AIR 2013 SC 1111 : (2012) AIRSCW 5367 : (2012) 6 AWC 5685 : (2013) 1 CDR 223 : (2013) 115 CLT 634 : (2012) 6 CTC 207 : (2012) 4 JLJR 363 : (2012) 10 JT 55 : (2013) 2 LW 200 : (2012) 7 MLJ 405 : (2012) 9 SCALE 692 : (2013) 1 WBLR 357

Hon'ble Judges : K.S. Panicker Radhakrishnan, J; Dipak Misra, J

Bench : Division Bench

Advocate : A. Mariarputham, AG, Ashok Bhan, T.S. Doabia, Manjit Singh, Manish Singhvi, Anil Grover, AAGs, Sunita Sharma, Sudarshan Singh Rawat, Sushma Suri, W.A. Qadri, A. Deb Kumar, Purnima Bhatt, Zaid Ali, B.V. Balramdas, D.S. Mahra, Khwairakpam Nobin Singh, Sapam Biswajit Meitei, Anil Shrivastav, Ritu Raj Biswas, K.N. Madhusoodhanan, M.T. George, Vivekta Singh, Tarjit Singh, Kamal Mohan Gupta, Hemantika Wah, Nandini Gupta, Genefer B., G.N. Reddy, M. Rambabu, S. Nagarajan, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, Sanjay Kharde, Asha Gopalan Nair, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Irshad Ahmad, C.D. Singh, Abhimanyu Singh, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Sunil Fernandes, Vernika Tomar, Astha Sharma, R. Sharma for Corporate Law Group, Abhishek Atrey, Amitesh Kumar, Prerna Mehta, Ravi Kant, Aruna Mathur, Yusuf Khan, Movita for Arputham Aruna and Co., Noopur Singhal, Sunil Satyarthi, Sanjiv Sen, P. Parmeswaran, Bina Madhavan, Praseena E. Joseph, A.V. Rangam, A. Subhashini, Raja Chatterjee, Abhijit Sengupta, B. Balaji, P. Krishnamoorthy, K. Enatoli Sema, Amit Kr, Singh, Manpreet Singh Doabia, G. Prakash, Gopal Singh, Naresh K. Sharma, Pratibha Jain, Surya Kant, Shrish Kumar Misra, Tara Chandra Sharma, S. Rajappa, Krishanand Pandeya, Ramesh Babu M.R., Radha Shyam Jena, Jagjit Singh Chhabra, Vibha Datta Makhija, Kuldeep Singh and S. Thananjayan for Bhatia and Co., Ravindra Bana and Rona Mohanty, for the Respondent

Judgement

K.S. Panicker Radhakrishnan , J.—This Court's jurisdiction under Article 32 of the Constitution of India has been invoked by the Petitioner, a registered charitable society, seeking various directions to improve the conditions of Government and aided schools and also school run by the local authorities so that the constitutional objective of providing free and compulsory education under Article 21A of the Constitution of India would be a reality.

2. The Writ Petition was filed in the year 2004 and since then, several interim orders have been passed giving directions to the States and the Union Territories to provide the basic infrastructure facilities like toilet facility, drinking water, class rooms, appointment of teachers and all other facilities so that children can study in a clean and healthy environment. While the matter was pending before this Court, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (in short 'the RTE Act'). The constitutional validity of the RTE Act was challenged before this Court and this Court, vide its judgment dated 12.4.2012 in *Society for Un-aided Private Schools of Rajasthan Vs. Union of India* (UOI) and Another, upheld its validity and gave various directions, some of which are as follows:

(a) In exercise of the powers conferred upon the appropriate Government u/s 38 of the RTE Act, the Government shall frame rules for carrying out the purposes of this Act and in particular, the matters stated under Sub-section (2) of Section 38 of the RTE Act.

(b) The directions, guidelines and rules shall be framed by the Central Government, appropriate Government and/or such other competent authority under the provisions of the RTE Act, as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.

(c) All the State Governments which have not constituted the State Advisory Council in terms of Section 34 of the RTE Act shall so constitute the Council within three months from today. The Council so constituted shall undertake its requisite functions in accordance with the provisions of Section 34 of the Act and advise the Government in terms of Clauses (6), (7) and (8) of this order immediately thereafter.

(d) Central Government and State Governments may set up a proper Regulatory Authority for supervision and effective functioning of the Act and its implementation.

3. This Court, therefore, directed the Central Government, appropriate Government and other competent authorities functioning under the RTE Act to issue proper directions/guidelines for its full implementation within a period of six months from the date of the pronouncement of that judgment. This Court also

directed all the State Governments to constitute State Advisory Council within three months from the date of that judgment. Advisory Councils so constituted were directed to discharge their functions in accordance with the provision of Section 34 of the RTE Act and advise the Government in terms of Clauses (6), (7) and (8) of this Court's order. The necessity of constituting a proper Regulatory Authority for effective functioning of the RTE Act and its implementation was also highlighted. The Central Government was also directed to frame rules, in exercise of its powers u/s 38 of the RTE Act, for proper implementation of the RTE Act.

4. On the basis of directions issued by this Court in this Writ Petition, some of the States have responded by furnishing the details of infrastructure facilities available in the schools situated in their respective States. This Court noticed that some of the schools have not provided proper toilet facilities for boys and girls and in some of the schools, it was noticed, that there is no provision for drinking water as well. Detailed interim orders were passed by this Court on 29.4.2011 and 22.9.2011. On 18.10.2011, this Court passed the following order:

We have heard the Learned Counsel for the parties. It is imperative that all the schools must provide toilet facilities. Empirical researches have indicated that wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools. It clearly violates the right to free and compulsory education of children guaranteed under Article 21A of the Constitution.

We direct all the States and the Union Territories to ensure that toilet facilities are made available in all the schools on or before 30th November, 2011. In case it is not possible to have permanent construction of toilets, at least temporary toilets be provided in the schools on or before 30th November, 2011 and permanent toilets be made available by 31st December, 2011.

We direct the Chief Secretaries/Administrators of all the States/Union Territories to file their affidavits on or before 30th November, 2011.

5. Again, on 5.12.2011, this Court reiterated the directions as follows:

In our previous order dated 18.10.2011, we clearly indicated that it is imperative that all the schools must provide toilet facilities; empirical researches have indicated that wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools.

It clearly violates the right to free and compulsory education of children guaranteed under Article 21A of the Constitution. Office Report dated 3rd day of December, 2011 indicates that despite opportunity granted, the States of Tamil Nadu, Gujarat, Chhattisgarh, Meghalaya, West Bengal, Arunachal Pradesh, Punjab, Goa, Tripura and Union Territory of Lakshadweep have not filed their affidavits. One more opportunity is granted to these States/Union Territory to file their affidavits. Let the affidavits be filed within two weeks from today. No further

time shall be granted for this purpose.

We are told that the Ministry of Drinking Water and Sanitation is the concerned ministry. We request the learned additional Solicitor General appearing on behalf of the Union of India to take instructions from the Ministry of Drinking Water and Sanitation and file an affidavit within four weeks from today, indicating therein the latest position about the problem of drinking water in the country.

6. The situation that we get in few States has been elaborately dealt with by this Court in its interim order dated 13.1.2012. Some of the States have taken some positive steps, but some the States still lag behind. Taking note of all those aspects, this Court passed an order on 12.3.2012, the operative portion of which reads as follows:

The Chief Secretaries of various States were directed to ensure that separate permanent toilets for boys and girls are constructed in all the schools in their respective States on or before 31st March, 2012 and in case it was not possible to construct permanent toilets, then at least temporary toilet facilities were directed to be made available on or before 28th February, 2012 and it was directed that an affidavit to that effect shall be filed by the Chief Secretaries on or before 28th February, 2012.

In pursuance of the aforesaid directions of this Court, affidavits have been filed by the States of Uttar Pradesh, Assam, Meghalaya, Mizoram, Chhattisgarh, Punjab, Nagaland, West Bengal, Andhra Pradesh, Maharashtra, Uttarakhand, Odisha, Karnataka, Jharkhand, Himachal Pradesh, Goa, Municipal Corporation of Delhi and the Union Territory of Lakshadweep. These States/union Territories in their respective affidavits have indicated that they have either constructed the toilets for boys and girls or they would complete it before the stipulated date that is before 31st March, 2012.

According to the Office Report dated 3rd day of March, 2012, following States have not filed their affidavits:

1. Tripura
2. Tamil Nadu
3. Sikkim
4. Gujarat
5. Bihar
6. Rajasthan
7. Jammu and Kashmir
8. Madhya Pradesh
9. Kerala

In the interest of justice, we grant one more opportunity to these States to file their respective affidavits within two weeks from today, failing which the Chief Secretary of the State concerned shall remain present in this Court on the next date of hearing. No further time shall be granted.

Learned Counsel appearing on behalf of the Ministry of Drinking Water and Sanitation has handed over an affidavit of Sujoy Mojumdar, Director (Water), Ministry of Drinking Water and Sanitation, Government of India. In the affidavit it is mentioned that under the "Total Sanitation Campaign" (TSC), the Central Government supplements the efforts of the States in providing sanitation facilities in the rural areas, including identified existing rural Government schools and Anganwadis by providing them with financial assistance and technical support. It is further submitted in the affidavit that under the TSC, at present, School Sanitation Hygiene Education Programme is operational in 607 districts spread across 30 States and Union Territories and a total of 11,99,117 school toilets have been financially assisted under the TSC. The cumulative progress of school toilets unit blocks financially assisted under the TSC in the entire country till 29.2.2012 are as follows:

Project Objectives - 13,14,636

Project Performance - 11,99,117

Percentage-wise progress - 91.21%

In paragraph 9 of the said affidavit it is stated that provision of sanitation facility in Government schools is made by States within their TSC allocation. Out of the total of Rs. 3068.51 crore approved for School Sanitation under TSC, Rs. 2268.28 crore (cumulative) has been reported as expenditure and utilized by the States. The State-wise details of financial progress and utilization under TSC till 29.2.2012 are tabulated and enclosed along with the affidavit.

In paragraph 10 of the affidavit it is mentioned that as per information provided by the Department of School Education and Literacy, Ministry of Human Resource Development, the number of Government schools with sanitation facility available, as per their District Information System for Education (DISE) 2010-11 is as under:

Total Number of Govt. Schools - 10,96,064

Government Schools with Girls Toilet - 6,24,074

Government Schools with Boys/Common Toilet - 8,24,605

Let copies of this affidavit be supplied by the Registry to the Learned Counsel appearing for the States/Union Territories within one week from today.

Mr. Ravindra Bana, Learned Counsel appearing on behalf of the Petitioner submits that after this Court has dealt with the problem of electricity, potable drinking water and toilets for boys and girls in the Government schools, the other

main problem which is still persistent in most of the schools is regarding teachers and infrastructure. In order to ensure compliance of Article 21A of the Constitution, it is imperative that schools must have qualified teachers and basic infrastructure.

Learned Counsel appearing on behalf of the National University for Educational Planning and Education undertakes to file a comprehensive affidavit giving therein up-to-date position about the availability of teachers and infrastructure in schools.

Let a comprehensive affidavit be filed by all the States/Union Territories regarding teachers and infrastructure in schools within three weeks from today, with an advance copy to the Learned Counsel for the Petitioner and the counsel for the States/Union Territories.

7. We notice that some of the States have not fully implemented the directions issued by this Court in *Society for Unaided Private Schools of Rajasthan* (supra) as well as the provisions contained in the RTE Act. Considering the facts that this Court has already issued various directions for proper implementation of the RTE Act and to frame rules, there is no reason to keep this Writ Petition pending.

8. We also notice that Section 31 of the RTE Act has also conferred certain functions on the National Commission for Protection of Child Rights and also on the State Commissions. Section 31 reads as follows:

31. Monitoring of child's right to education.-

(1) The National Commission for Protection of Child Rights constituted u/s 3, or, as the case may be, the State Commission for Protection of Child Rights constituted u/s 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:-

(a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;

(b) inquire into complaints relating to child's right to free and compulsory education; and

(c) take necessary steps as provided Under Sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under Clause (c) of Sub-section (1), have the same powers as assigned to them respectively Under Sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in Clauses (a) to (c) of Sub-section (1),

constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

We are confident that those statutory authorities will also examine and review the safeguards for the child's rights and recommend measures for their effective implementation.

9. We are, inclined to dispose of this Writ Petition with a direction to all the States to give effect to the various directions already given by this Court like providing toilet facilities for boys and girls, drinking water facilities, sufficient class rooms, appointment of teaching and non-teaching staff etc., if not already provided, within six months from today. We make it clear that these directions are applicable to all the schools, whether State owned or privately owned, aided or unaided, minority or non-minority. As the writ petition is disposed of, no orders are required to be passed on applications for intervention and impleadment and the same are disposed of.

10. We make it clear that if the directions are not fully implemented, it is open to the aggrieved parties to move this Court for appropriate orders.