

(2012) 03 SC CK 0069

In the Supreme Court Of India

Case No : Writ Petition (C) No. 631 of 2004

Environmental and Consumer Protect. Found

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2012) 6 AWC 5685 Supp : (2012) 4 SCALE 243 : (2012) 10 SCC 197

Hon'ble Judges : Dipak Misra, J; Dalveer Bhandari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. On 13th January, 2012 this Court inter alia passed the following order:

Right to free and compulsory education of children of the age group of six to fourteen years is part of fundamental rights guaranteed under Article 21A of the Constitution. This right cannot be enjoyed by children unless basic infrastructure is provided by the State. While keeping this in view, we in our order dated 18.10.2011 directed all the States and Union Territories to ensure that basic toilet facilities are made available in all the schools on or before 30th November, 2011. The experience and empirical survey have revealed that the parents are reluctant to send their children, particularly girls, to schools where basic toilet facilities are not available. The direct consequence is breach of children's fundamental rights guaranteed under Article 21A of the Constitution. We also made it clear in our ' order that if it is not possible to provide permanent toilets, then 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.

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.

2. 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.

3. 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 & Kashmir
8. Madhya Pradesh
9. Kerala

4. 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.

5. 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%

6. 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 `3068.51 crore approved for School Sanitation under TSC, `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.

7. 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

8. 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.

9. 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.

10. 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.

11. 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. List this matter for further directions on 9th April, 2012.