
(2019) 07 RAJ CK 0069
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8990 Of 2016

Jule Khan Bai And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-07-2019

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 2(d)(e),
2(f), 3, 6, 7, 8(b), 8(c)
Right Of Children To Free And Compulsory Education Rules, 2010 — Rule 6
Constitution (Eighty-Sixth Amendment) Act, 2002 — Article 21A, 45

Citation : (2019) 07 RAJ CK 0069

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : R.J. Punia, K.K. Bissa

Final Decision : Allowed

Judgement

1. By way of this writ petition, the petitioner has questioned legality of order dated 14.6.16 issued by the Joint Secretary, Elementary Education,

Government of Rajasthan, whereby inter alia Government Primary School, Rikhiyani has been merged in Government Upper Primary School,

Sagoroliya.

2. A perusal of the order impugned reveals that the decision to merge Government Primary School/Upper Primary School in other schools on account

of insufficient enrollments of the students in the school as also non availability of a separate teacher for each class in such schools. It is pertinent to

note that the merger of one school into another school for the aforesaid reason was sought to be made in the school situated in same revenue village.

3. Learned counsel appearing for the petitioners contended that vide order dated 21.1.13 (Annexure 3) issued by the District Collector (Land Record),

Barmer, after division of the revenue village Sagoroliya, a new revenue village Rikhiyani has already been created and thus, the order impugned issued

for merger of Government Primary School, Rikhiyani purportedly in the same revenue village is ex facie contrary to the policy decision. Learned

counsel submitted that Government Upper Primary School, Sagoroliya is situated 8 kms. away from revenue village Rikhiyani and thus, the decision of

the State Government in merging the Government Primary School, Rikhiyani in Government Upper Primary School, Sagoroliya and depriving the

residents of village Rikhiyani from a school in a near vicinity is ex facie violative of the provisions of Section 3 of Right of Children to Free and

Compulsory Education Act, 2009 (for short â??the RTE Actâ??).

4. Learned Additional Government Counsel appearing for the respondents submitted that during the academic year 2015-16, only 22 students were

enrolled and thus, keeping in view insufficient enrollment, the decision taken for merger of the school cannot be faulted with. However, the factum of

creation of the revenue village Rikhiyani was not disputed by the learned Additional Government Counsel.

5. I have considered the rival submissions of the learned counsel for the parties and perused the material on record.

6. Admittedly, as per the policy decision of the Government, the schools where there were insufficient enrollment of the students, were sought to be

merged in yet another school in the same revenue village. It is not disputed that as on the date merger was ordered, the village Rikhiyani was not part

of the revenue village Sagoroliya rather, the same was declared a separate revenue village and thus, the purported merger of the school situated at

Rikhiyani in yet another school situated in revenue village Sagoroliya, is ex facie contrary to the policy decision of the Government.

7. Indisputably, the right to education is basic human right, essential for empowerment and development of an individual and the society as a whole. In

the first instance, by way of Article 45, a duty was casted upon the States to make endeavour to provide, within a period of ten years from the

commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years. Later, by way of

Constitution (Eighty-Sixth Amendment) Act, 2002 (â??the Amendment Act, 2002â??), the Article 45 was substituted in terms that the State shall

endeavour to provide early childhood care and education for all children until they complete the age of 6 years. But, at the same time, vide

Amendment Act, 2002, the Right to Education was recognized as fundamental right by inserting Article 21A in the part III of the Constitution, which

reads as under:

â??21A. Right to education.- The State shall provide free and compulsory education all children of the age of six to fourteen years in such manner as

the State may, by law, determine.â??

8. For enforcement of the fundamental right enshrined in Article 21A of the Constitution of India as aforesaid, the Parliament enacted the RTE Act,

providing for free and compulsory education to all children of the age of six to fourteen years. As per Section 3 of the RTE Act, every child of the age

of six to fourteen years including a child referred to in clause (d) or clause (e) of Section 2, i.e. child belonging to disadvantaged group and child

belonging to weaker section, shall have right to free and compulsory education in a neighbourhood school till the completion of his or her elementary

education i.e. the education from first class to eighth class [Section 2(f)] and for that purpose, no child is liable to pay any kind of fee or charges or

expenses which may prevent him or her from pursuing and completing the elementary education.

9. By virtue of provisions of Section 6 of the RTE Act, a duty is casted upon the appropriate Government and local authority to establish the school

within such area or limits of neighbourhood as may be prescribed. As per Section 7, the financial and other responsibilities for carrying out the

provisions of RTE Act, are required to be borne by the Central Government and the State Governments concurrently. As per provisions of Section

8(b) & (c) of the RTE Act, it is the responsibility of the appropriate Government to ensure availability of neighbourhood school as specified in Section

6 as also to ensure that a child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented

from pursuing and completing education on any grounds.

10. Thus, keeping in view the mandate of the provisions of the RTE Act, the State is under an obligation to provide school to the children of village

Rikhiyani in the neighbourhood, which as per the provisions of Rule 6 of the Right of Children to Free and Compulsory Education Rules, 2010 (for

short (the Rules) for classes from 1 to 5 needs to be established within a walking distance of 1 km. of neighbourhood and thus, the merger of the

Government Primary School, Rikhiyani in Government Upper Primary School, Sagoroliya is ex facie violative of provisions of Section 6 of the RTE

Act read with Rule 6 of the Rules. Obviously, providing a school to the children of the age 6 to 14 years at the distance of about 8 kms. amounts to

denying them the right to education as mandated by Article 21A of the Constitution of India and the RTE Act.

11. In view of the discussion above, the order impugned is not sustainable in the eyes of law.

12. In the result, the writ petition is allowed. The order impugned issued by the Joint Secretary, Elementary Education, Government of Rajasthan,

directing merger of the Government Primary School, Rikhiyani in Government Upper Primary School, Sagoroliya, is quashed. Needless to say that

while restoring the Government Primary School, Rikhiyani, the respondents shall ensure that the children of the age 6 to 14 years of village Rikhiyani

are imparted free education upto class VIII, as mandated by the provisions of RTE Act. No order as to costs.