
(2010) 03 GAU CK 0027
In the Gauhati High Court

Ng. Komon

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 21A, 226, 29, 30

Citation : AIR 2010 Guw 102 : (2010) 6 GLR 179 : (2010) 4 GLT 1035

Hon'ble Judges : T. Nanda Kumar Singh, J;K. Meruno, J

Bench : Division Bench

Judgement

T. Nanda Kumar Singh, J.—Heard Mr. R. K. Surjit, learned Counsel appearing for the appellant/writ petitioner as well as Mr. L. Shyamkishore Singh, learned Sr. counsel assisted by Mr. L. Gunindro, learned Counsel appearing for the respondents.

2. The unsuccessful writ petitioner again approach this Court challenging the judgment and order of the learned single Judge dated 10-2-2009 for dismissing the writ petition, W.P. (C) No. 632 of 2000 filed by the appellant/writ petitioner questioning the decision of the authority for shifting the Liwachangning Government Primary School to Liwachangning Khunou upper village, which is a part of the main village, Liwa Changning.

3. Factual background.

The present village, i.e. Komlathabi (Kapaam) for which the appellant/writ petitioner is the Chairman, was a part of the Liwachangning village which was sub-divided in the year, 1962 into two, namely (1) Liwa Changning Village-Komlathabi village and (2) Liwachangning Khunou Upper village, Liwa Changning Govt. L.P. School was located at Komlathabi village, which is a part of Liwachangning village. The school building of the Liwachangning was blown away by a heavy storm, as a result of which Liwachangning Govt. L. P. School was functioning in the Veterinary Office located at the Komlathabi village. The Chairman and the Members of the Village Authority of Komlathabi Village had

approached the concerned authority, i.e. Chief Executive Officer, Autonomous District Council, Chandel Manipur for constructing building of Liwachangning Govt. Primary School by filing several representations. In one of the representations dated 17-8-1999 filed by the Chief/ Chairman of the Komlathabi Village Authority to the Chief Executive Officer, Autonomous District Council, it had been mentioned that the rough estimate for construction of the school building would be Rs. 55,500/r and accordingly prayed for sanctioning the said amount for construction of the school building of the Liwachangning Govt. L.P. School at its original site, i.e. Komlathabi Village.

4. While correspondence between the Chairman/Chief of the Komlathabi Village and the concerned authority for construction of the school building of the Liwachangning L.P. at Komlathabi was in progress, the authority had decided to shift the Liwachangning L.P. School from its original site, Komlathabi to Liwachangning Khunou Upper. Accordingly, it is also stated that the Chief Executive Officer, Autonomous District, Chandel under his letter dated 21-9-99 requested Shri Ng. Mono, Chairman Liwachangning Village Authority to execute the work of construction of the school building, i.e. Liwachangning Govt. Primary School. Hence, the writ petition, WP (C) No. 632/2000 and the reliefs sought for in the writ petition are :- for a direction to the respondents not to shift the Liwachangning Govt.-L.P. School from its original site, i.e.. Komlathabi to Liwachangning Village and also for quashing the said letter of the Chief Executive Officer, Chandel Autonomous District Council dated 21-9-99 to the said Ng. Mono, Chairman Liwachangning Village Authority.

5. The respondents also filed their affidavit in-opposition wherein it has been categorically stated that there are other private schools in Komlathabi (Kapaam) Village. Taking into consideration of the requirement of having Government L.P. School in the interest of members of the Moyons tribe residing in Liwachangning village, the Govt. had taken the decision for shifting the L.P. School from Komlathabi (Kapaam) to Liwa-changning Village (Khunou). The appellant/ writ petitioner also filed rejoinder that the Komlathabi Village shall have no Govt. L.P. School in case Govt. L.P. School, Liwachangning is shifted from its original site, i.e. Komlathabi (Kapaam) to, Liwachangning Upper.

6. This Court is not entering into this serious disputed question of fact as to whether the Kimlathabi Village and the Liwachangning Village have the private schools or not. But, it is an admitted fact that the Komlathabi (Kapaam) has only one Govt. L.P. School, i.e. Liwachangning Govt. Primary School and in case Govt. L.P. School Liwachangning is shifted to Liwachangning village, there shall be no Govt. Primary school in Komlathabi village. Learned single Judge in the impugned judgment and order dated 10-2-09 passed in W.O. (C) No. 632/ 2000 was of the view that it is the executive authority, who is to decide where the school is to be located in the interest of the school going children. This Court, while invoking power of judicial review of the policy decision under Article 226 of the Constitution of India, is exercising the power of secondary reviewing authority of

the policy decision of the Government of Manipur or the competent authority inasmuch as while exercising the power of judicial review, this Court has confined to the policy making process and not to the policy decision.

7. It is now the fundamental right of the citizen of India under Article 21A of Constitution of India that the children of the age of 6 to 14 years shall have free and compulsory education. Under Article 51A(K) of the Constitution of India, it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunity for education to his child or, as the case may be, ward between the age of six and fourteen years. It is the Directive Principle of State Policy that the State shall, in particular, direct its policy towards securing that the citizens have the right to an adequate means of livelihood. Article 41, which is another Directive Principle provides, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work and education to the citizens of India.

8. Education occupies an important place in our Constitution and there has been emphasis on free and compulsory education for the children in this country for a long time. There is a strong and historical perspective. Hunter Commission in 1882-83 almost 125 years ago, recommended universal education of India. It proposed to make education compulsory for children. Thus, it is well established that the fundamental right must be construed in the light of the directive principle and also that the provisions of Parts VII and IV of Constitution of India are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in Part IV. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. Right to live with human dignity, enshrined in Article 21 derives its life breath from the directive principle of State policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities of children to develop in a healthy manner and in conditions of freedom and dignity, education facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity.

9. The Apex Court (Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., at paragraphs 142, 145, 148 and 149 of AIR held as follows:

142. In Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, this Court held that the right to life guaranteed by Article 21 does take in "educational facilities". (The relevant portion has been quoted hereinafter). Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinafter, we hold, agreeing with the statement in Bandhua Mukti Morcha, that right to education is implicit in and flows the right to

life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In *Miss. Mohini Jain Vs. State of Karnataka and others*, the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objective set forth in Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words. The importance of education was emphasised in the "Neethishatakam" by Bhartruhari (First Century B.C.) in the following words:

Translation:

Education is the special manifestation of man;

Education is the treasure which can be preserved without the fear of loss;

Education secures material pleasure, happiness and fame;

Education is the teacher of the teacher; Education is God incarnate;

Education secures honour at the hands of the State, not money.

A man without education is equal to animal.

The fact that right to education occurs in as many as three Articles in Part-IV viz. Articles 41, 45 and 46 shows the importance attached to it by the founding fathers. Even some of the Articles in Part III viz. Articles 29 and 30 speak of education.

145. In the above state of law, it would not be correct to contend that *Mohini Jain* (1992 AIR SCW 2100) was wrong in so far as it declared that "the right to education flows directly from right to life." But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? *Mohini Jain* seems to say, yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of

underserved want." Article 45 says that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." Education means knowledge and "knowledge itself is power." As rightly observed by John Adams, "the preservation of means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country" (Dissertation on Canon and Feudal Law, 1765). It is this concern which seems to underline Article 46. It is the tyrants and bad rulers, who are afraid of spread of education and knowledge among the deprived classes. Witness Hitler railing against universal education. He said; "Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction." (Rauschning, The voice of destruction : Hitler speaks). A true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. We may deal with both these limbs separately.

Right to free education for all children until they complete the age of fourteen years (45-A). It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to "endeavour to provide" the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 years - more than four times the period stipulated in Article 45 convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the "limits of its economic capacity and development" as does Article 41, which inter alia speaks of right to education. What has actually happened is - more money is spent and more attention is directed to higher education than to - and at the cost of - primary education. (By primary education, we mean the education, which a normal child receives by the

time he completes 14 years of age). Neglected more so are the rural sectors, and the weaker sections of the society referred to in Article 46. We clarify, we are not seeking to lay down the priorities for the Government we are only emphasising the constitutional provisions is beyond question. This inversion of priorities has been commented upon adversely by both the educationists and economists.

Gunnar Myrdal, the noted economist and sociologist, a recognised authority on South Asia, in his book "Asian Drama" (abridged Edition published in 1972) makes these perceptive observations at page 335:

But there is another and more valid criticism to make. Although the declared purpose was to give priority to the increase of elementary schooling in order to raise the rate of literacy in the population, what has actually happened is that secondary schooling has been rising much faster and tertiary schooling has increased still more rapidly. There is a fairly general tendency for planned targets of increased primary schooling not to be reached, whereas targets are over-reached, sometime substantially, as regards increases in secondary and, particularly, tertiary schooling. This has all happened in spite of the fact that secondary schooling seems to be three to five times more expensive than primary schooling, and schooling at the tertiary level five to seven times more expensive than at the secondary level.

What we see functioning here is the distortion of development from planned targets under the influence of the pressure from parents and pupils in the upper strata who everywhere are politically powerful. Even more remarkable is the fact that this tendency to distortion from the point of view of the planning objectives is more accentuated in the poorest countries, Pakistan, India, Burma and Indonesia, which started out with far fewer children in primary schools and which should therefore have the strongest reasons to carry out the programme of giving primary schooling the highest priority. It is generally the poorest countries that are spending least, even relatively, on primary education, and that are permitting the largest distortions from the planned targets in favour of secondary and tertiary education.

In his other book "Challenge of World Poverty" (published in 1970) he discusses elaborately - in chapter 6 "Education" - the reasons for and the consequences of neglect of basic education in this country. He quotes J. P. Naik, (the renowned educationist, whose Report of the Education Commission, 1966 is still considered to be the most authoritative study of education scene in India) as saying "Educational development...is benefiting the "haves" more than the "have nots." This is a negation of social justice and "planning" proper" - and our Constitution speaks repeatedly of social justice (Preamble and Article 38(1)), As late as 1985, the Ministry of Education had this to say in para 3,74 of its publication "Challenge of Education - a policy perspective." It is stated there:

3.74. Considering the constitutional imperative regarding the universalisation of elementary education it was to be expected that the share of this sector would

be protected from attribution. Facts, however, point in the opposite direction. From a share of 56 per cent in the First Plan, it declined to 35 per cent in the Second Plan, to 34 per cent in the Third Plan, to 30 per cent in the Fourth Plan. It started going up again only the Fifth Plan, when it was at the level of 32 per cent, increasing in Sixth Plan to 36 per cent, still 20 per cent below the First Plan level. On the other hand, between the First and the Sixth Five Year Plans, the share of university education went up from 9 per cent to 10 per cent.

Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality-at least now. Indeed, the "National Education Policy-1986" says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 years.

148. The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.

149. In the light of the above enunciation, the apprehension expressed by the counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the Courts to compel the State to provide him such education as he chooses must be held to be unfounded. The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development. Indeed we are not stating anything new. This aspect has already been emphasised by this Court in *Francis C. Mullin v. Administrator, Union Territory of Delhi* (1981) 2 SCR 516 : AIR 1981 SC 746. While elaborating the scope of the right guaranteed under Article 21, this Court stated:

But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it viz. the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must in any view of the matter, include a right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the humankind.

10. Again, the Apex Court in *Avinash Mehrotra Vs. Union of India (UOI) and Others*, held that it is the fundamental right of each and every child to receive education free from fear of security and safety. It is the imperative of the Constitution under Article 21 of the Constitution that education which is provided to children in the primary school should be in the environment of safety. The Apex Court (11 Judges) in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, held that:

73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of aid from the State. Although these institutions may have been established by philanthropists or other public spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the State. In such cases, as those of the provisional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution.

11. It is now well settled that it is the mandate of the Constitution of India to the State authorities to provide free and compulsory education to all the children of the ages 6 to 14 years. As discussed above, in the given case, there is no Government L. P. School at Komlathabi village after the Government L.P. School has been shifted to Liwachangning village Upper. In such circumstances, we are of the considered view that the fundamental rights of the children of the age of 6 to 14 years of Komlathabi village to have free and compulsory education shall be denied in case the State has not taken up steps for having Government Primary School in Komlathabi Village.

12. For the foregoing reasons, this writ appeal is disposed of by directing the appellant/writ petitioner to approach the appropriate authority of the Government of Manipur by filing a representation for providing free and compulsory education to the children of Komlathabi village of the ages from 6 to 14 years by establishing a Government Primary School within 4 (four) weeks from today and the authority concerned on receipt of the representation shall consider and dispose of the same in view of the observations made by this Court in this judgment and order and also the fundamental rights of the children under Articles 21, 21A and also the rights under Articles 39, 41, 42 and 51A(k) of the Constitution of India, within 4 (four) months from the date of receipt of the representation by passing reasoned order.

Writ appeal is disposed of with the above observations and direction.