
(1994) 03 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 5442 of 1993

Ramchandra Tandi and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 17-03-1994

Acts Referred:

Constitution of India, 1950 — Article 21, 39

Citation : AIR 1994 Ori 228 : (1994) 78 CLT 489

Hon'ble Judges : S.K. Mohanty, J;A. Pasayat, J

Bench : Division Bench

Advocate : A.K. Nanda and Ashok Dash, for the Appellant; Addl. G.A. and Biswajit Mohanty (I), for the Respondent

Final Decision : Allowed

Judgement

Pasayat, J.—On the third Sunday of March every year World Disabled Day is observed. Petitioners are the guardians of thirty-one deaf and dumb boys, who have alleged that the State and its functionaries have turned blind to their problems and plights. These boys along with about thirty others are students of "Deaf and Dumb Section" of Physically Handicapped School situated at Bargarh. State has refused to accord recognition and provide grant-in-aid to this section. The said action is assailed by the petitioners attributing arbitrariness, and lack of concern.

2. The heart-rending background described by the petitioners is as follows:

A school for physically handicapped children was started in the year 1991 styled "phisically Handicapped School at Bargarh". The said institution has three sections, one each for the blind, the physically handicapped and the last one for the deaf and dumb. The institution was started with the active help and assistance of Janata Sangharsha Samittee, a registered organisation. By letters Nos. 100 and 107 dated 5-1-1993, the Director, Social Welfare and Additional Secretary to Government (opposite party No, 2) intimated the Collector, Bargarh

(opposite party No. 3) about recognition granted by the State to the mentally retarded and blind sections of the institution. However, no recognition was granted to deaf and dumb section. As stated above, such action is challenged in this writ application.

3. In the counter-affidavit it has been stated that direction was given to close the deaf and dumb section with effect from 30-8-1993. The plea is that since a voluntary organisation had taken up the job of running the school, it was duty bound to see its smooth continuance, and State has no obligation to provide financial assistance. It is, however, accepted that the school was started to impart education to the deaf and dumb, blind and mentally retarded children and Government has recognised the need for blind and mentally retarded school. The recognition was granted for the blind section on 1-10-1992 in respect of 22 students, and for mentally retarded section with 17 students for the purpose of grant-in-aid. It is stated that there are two other schools for the hearing impaired children in the undivided district of Sambalpur, i.e., one at Surla under the Education Department, and the other at Jhankeda in Padampur subdivision run by Gopabandhu Welfare Organisation. To avoid unnecessary financial burden on the State Government, it was decided not to recognise the deaf and dumb section. During the course of hearing, the learned counsel for State, further, stressed that if a voluntary organisation undertook the job of running the deaf and dumb section, it had the responsibility to arrange for finance, and cannot as a matter of right seek financial assistance from the State. With reference to the counter-affidavit it is stated that the deaf and dumb are not so handicapped for movement like the blind, mentally retarded students, and therefore, the other two categories stand on a different footing. The usual plea of lack of financial resources of the State and need for financial austerity is also highlighted.

4. At this juncture a reference to the letter of the Collector of undivided district of Sambalpur dated 30-3-1993 is necessary. We appreciate the approach of the said officer who had noticed that 40 children who were maintaining their livelihood through Begging were brought to the school, and their development was remarkable. They competed with the normal children on the auspicious day of 26th January, 1992 in the Parade Competition and were awarded four shields and a cup. This was a unique feature which has happened nowhere in the country. There was a stage when these children were begging to maintain their livelihood, but were able to create National Records due to proper guidance. The number of students which was 40 during the educational year 1991-92 had been increased to 62 in the educational year 1992-93. The school caters to the needs of the students belonging to Sohella, Bijapur Block of Padampur backward subdivision, Barpali, Ambabhna, Bhatli, Bheden, Attabira blocks of Bargarh subdivision. Dhenkauda of Sambalpur subdivision, Jharsuguda of Jharsuguda subdivision of Sambalpur district and Sonapur, Dunguripali blocks of Bolangir district and three Notified Areas of Barpali, Hirakud and Kuchinda. It was pointed out that the school at Gisilet (which has been referred to in the counter-affidavit to be in existence at Jhankeda) is at a distance of 150 kilometres and the other

at Burla is at a distance of 60 kilometres. Both the schools cannot fulfil the needs of the children of the area due to its situation and non-availability of seats. It is fairly accepted by the learned counsel for State that no seat was available at Burla as asserted by the learned counsel for petitioners and the school. The Collector also requested for necessary help for recognition and sanction of grant-in-aid in favour of the school to save 62 helpless deaf and dumb children.

5. We are perplexed, pained that the State has taken absolutely untenable stand of its financial instability and need for financial austerity, if austerity measures are to be taken, they are to be taken at elsewhere. It is common knowledge that large sums of money are spent in festivals, for celebrations. What do we celebrate? and what for? If we cannot provide financial assistance to 62 helpless deaf and dumb children, these are unnecessary financial extravagances. After nearly half a century of independence, it does not befit the State to take plea of unsound financial condition to deny meagre amounts needed for a few deaf and dumb children.

Article 39 of the Constitution amplifies the concept of justice by providing that the State shall in particular (that is, especially) direct its policy towards ensuring the objectives set out at Clauses (a) to (f) of that Article. Having laid down the principle which should inform all institutions of national life. Article 39 particularises certain objectives. It provides that amongst others State should direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, and that, children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment. At this juncture, the observations of Field, J. in *Munn v. Illinois* : (1876) 94 US 113 at page 142 comes to mind.

".....By the term "life" something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed."

In *Francis Coralie Mullin v. Union Territory of Delhi* : AIR 1981 SC 746, the concept of life was broadened and it was observed that right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as facilities for reading, writing and expressing oneself in diverse forms in addition to bare necessities of life such as adequate nutrition, clothing and shelter over the head.

Article 21 has been given paramount position in our Constitution. Right to life is the compendious expression of all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. The right to education flows directly from the right to life. (See *Mohini Jain v. State of Karnataka*: AIR 1992 SC 1858 : (1992) 3 SCC 666). The right to life under Article 21 and the

dignity of an individual cannot be assured unless it is accompanied by the right to education. In *Unni Krishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645 : (AIR 1993 SC 2178), it was stated that a true democracy is one where education is universal, in which people know what is good for them and the nation know how to govern themselves. Education is a preparation for living and for life here and hereafter. Though what we are faced in this case can be easily encompassed by Clauses (e) and (f) of Article 39, forming part of Directive Principles, yet it is intrinsically relatable to Article 21. They do not come in conflict with each other. As observed by Granville Austin fundamental rights and directive principles taken together constitute the "Conscience of the Constitution", (in "Indian Constitution Cornerstone of a Nation" at page 50).

6. We only remember the day to celebrate "World Disabled Day" or "Panchayat Raj Day" (incidentally Directorate of Social Welfare is a part of Department of Panchayat Raj). What is the purpose of such celebrations if there is no genuine concern or sympathy for the disabled. Helping the physically handicapped to become self-supporting and active members of the society should be one of the prime responsibilities of the Government. One essential ingredient without which no rehabilitation programme for the handicapped can be successful is awareness creation in the society about abilities and potentials of persons with disability. The students of Deaf and Dumb Section have amply demonstrated their talent. The Collector's letter amply elaborates them.

There are about one crore twenty lakhs handicapped persons in India today. Merely making welfare schemes would not be sufficient. Merely observing World Disabled Day or the like would serve no purpose, unless there is real concern for the handicapped, otherwise it would be same as discussing problems of famine ravished in star hotels, or discussing prohibition in a bar with drunkards sozzled with drinks. The number of disabled persons is staggering. But it cannot be a ground to be insensitive to the light of sixty odd deaf and dumb children. It is unfortunate that their "Artanada" cannot reach the ears of those who matter. They cannot be dumb that way. They cannot speak, but the results produced by them speak eloquently for them. It shall be inhuman to again leave them back at the place from where they were brought, i.e. the streets where they were begging. They deserve to be rehabilitated. Time has come for introspection. All our efforts should be made for rehabilitation of disabled persons, more particularly children, so that a new dimension can be given to their life to make it more meaningful. Reasons indicated for denying recognition and refusing to provide financial assistance are extremely shallow. Let financial austerities be practised at places where they are more appropriate. The observations of the apex Court in *Commissioner of Wealth Tax Gujarat II, Ahmedabad v. Shri Arvind Narottam* (indl), AIR 1988 SC 1824, in the context of desirability of paying tax honestly, come to mind, on hearing such a plea. It was observed (at p. 1829):

"It is true that tax avoidance in an under developed developing economy should not be encouraged on practical as well as ideological grounds. One would wish,

as noted by Reddy, J. that one could get the enthusiasm of Justice Holmes that taxes are the price of civilization and one would like to pay that price to buy civilization. But the question which many ordinary tax-payers very often in a country of shortages with ostentuous consumption and deprivation for the large masses ask, is does he with taxes buy civilization or does he facilitate the wastes and ostentuousness of the few. Unless wastes and ostentuousness in Government's spendings are avoided or eschewed, no amount of moral sermons would change people's attitude to tax avoidance."

7. A question is raised by the learned counsel for State about our jurisdiction. It is said that justice is blind, but Judges are not blind to the plight of the people. They are not deaf and dumb. They can hear the unspoken words of misery of the deaf and dumb boys, who need protection. Their hands are not paralysed. If the Court fails to wipe out tears from the eyes of those who deserve it, it would be handicapped. Helen Keller, the most famous handicap had said, "It is a fundamental right of everyone to realise himself, however imperfectly and contribute to the common good, however, little, "The State has a paramount duty to look after the welfare of children and more so in the case of handicapped children. Even if it is accepted that the deaf and dumb boys are not as restricted in the movement as highlighted by the State in its counter-affidavit, and its submission before Court, that is no justifiable reason for denying recognition, to the deaf and dumb section of the school, and refusal to provide financial assistance. We direct the State to grant recognition and to provide financial assistance to the said section. Let necessary steps be taken by the end of March, 1994.

The writ application is allowed with costs. Hearing fee assessed at Rs. 500/- (five hundred).

S.K. Mohanty, J.

8. I agree.