
(2012) 03 MP CK 0153

In the Madhya Pradesh High Court

Case No : Writ Petition (PIL) No. 6850 of 2011

R.K. Upadhyay

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 37, 38(1), 39, 41

Citation : (2012) 3 JLJ 184 : (2012) 3 MPHT 456

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Sameer Kumar Shrivastava, for the Appellant; Raghvendra Dixit, Government Advocate for State, for the Respondent

Judgement

S.K. Gangele, J.—This Public Interest Litigation has been filed for issuance of directions for implementation of the Rules, named as "M.P. Adim Jati Tatha Harijan Kalyan Vibhag Chhatravas Niyam, 1966-67", hereinafter referred to as the "Rules of 1966". The petitioner further sought a direction to the State Government to the effect that the ST/SC category students living in Post-Matric Hostels be provided mess facility by the State Government. Petitioner is an Advocate, practising at the High Court of Madhya Pradesh, Bench Gwalior. He has no personal interest in this matter. As per petitioner, he had visited the Post Matric Hostels of Gwalior city in which SC/ST category students including girls students, who have been prosecuting their studies at college level including courses, i.e. Engineering, Law, Medical and other faculties, are residing. In the aforesaid hostels no facility of mess has been provided by the Government. Even though, the students have not been paid the amount of scholarship, it is contrary to the provisions of Rules of 1966 as well as Articles 21, 39 and 46 of the Constitution of India.

2. The respondent-State in its return pleaded that there are two types of hostels run by Tribal Welfare Department. One is Pre-Matric Hostels, where boarding and lodging facilities are being provided to the SC/ST category regular students who

are studying up to Class 12th. Another type of hostels are Post-Matric Hostels where only boarding facility is being provided to the students, who are prosecuting their studies in colleges and other higher education faculties. The students of post-matric hostels are being paid scholarship of Rs. 1,500/- per month including mess charges. The student of pre-matric hostels are also getting scholarship, however, it is paid to the Superintendent of the hostel and the students can adjust the amount against food charges. The post matric students are at liberty to make arrangements for his/her own food from the scholarship because food charges are included in the scholarship. It has further been submitted by the respondent-State that the Government also provides facility of reimbursement of fees of SC/ST category students at certain rates considering the income of parents of the students.

3. The State of M.P. framed Rules in order to regulate hostels managed by Adim Jati Tatha Harijan Kalyan Vibhag, named as "M.P. Adim Jati Tatha Harijan Kalyan Vibhag Chhatravas Niyam, 1966-67". The hostels provide lodging and boarding facilities to SC/ST category students. Section 18 prescribes mode of payment of scholarship (Shishyavritti) to the students residing in the hostel. As per section 18(Sa) a student has to deposit the amount of food charges with the Superintendent of the hostel, which is required for the purpose of providing food facility. The relevant provision is as under :

4. Rule 20 of the Rules of 1966 prescribes that it is mandatory for every student residing in the hostel to pay a part of his/her Shishyavritti towards mess charges and if he/she is not getting scholarship, then he/she has to pay the mess charges from his/her own source. The relevant rule is as under:

5. The Government of India, Ministry of Tribal Affairs (Education Section) also framed scheme for post matric scholarships to the students belonging to Scheduled Tribes for studies. The object of the scheme is to provide financial assistance to the Scheduled Tribes students pursuing post matriculation courses and post secondary courses to enable them to complete their education.

6. Apart from scholarship, the students are also eligible to get reimbursement of full amount of fees, if they are studying in Government colleges and if the student is studying in a private college, the extra amount of fees, if the fees is higher than the fees of Government colleges, then he/she has to borne the extra amount of fees by himself/herself.

7. The mode of payment of scholarship of Rs. 1,500/- fixed by the State Government, which is being paid to the SC/ST category students residing in the hostel had not been fixed. On 16th May, 2011 the Deputy Secretary, M.P. State, Finance Department, issued a circular to all the departments of the State of M.P. that post matric scholarship be deposited directly in the account of concerned students and the scholarship of students studying in 9th and 10th Classes be also paid in their bank accounts and the scholarships of the students, who are studying in class 6th and above 90 per cent amount be paid in the joint account

of the student and Superintendent of the Hostel and 10 per cent amount be paid directly in the bank account of the students. The Collector (Adim Jati Kalyan Vibhag), Gwalior also issued a circular in this regard on 5.7.2011 to all the officers of Adim Jati Harijan Kalyan Vibhag.

8. From the return, filed by the respondents, it is clear that mess facility has not been provided to the students who are residing in post matric hostels. The reason mentioned by the respondents to this effect is that the students are getting scholarships of Rs. 1,500/- per month and they can arrange their own food from the amount of scholarship. However, rule 20 of the Rules of 1966 makes it mandatory to all the students to be a member of mess and charges of mess has to be deposited from the amount of scholarship. From the aforesaid rule, it is clear that it is mandatory for every hostel to have a mess whether it is pre matric hostel or post matric hostel. It is in consonance with the provisions of Articles 21, 39 and 46 of the Constitution.

9. Article 39, which is a part of Chapter IV Directive Principles of State Policy, is as under :

39. Certain principles of policy to be followed by the State. -- The State shall, in particular, direct its policy towards securing -

(a) that the citizens, men and women equality, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) 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 evocations unsuited to their age or strength;

(f) 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.

10. Article 46 also casts a duty on the State in regard to promotion of education and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. Article 46 is as under :

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. -- 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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

11. Hon"ble the Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , has held as under, in regard to right of education :

144. It is argued by some of the counsel for the petitioners that Article 21 is negative in character and that it merely declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Since the State is not depriving the respondents-students of their right to education, Article 21 is not attracted, it is submitted. If and when the State makes a law taking away the right to education, would Article 21 be attracted, according to them. This argument, in our opinion, is really born of confusion; at any rate, it is designed to confuse the issue. The first question is whether the right to life guaranteed by Article 21 does take in the right to education or not. It is then that the second question arises whether the State is taking away that right. The mere fact that the State is not taking away the right as at present does not mean that right to education is not included within the right to life. The content of the right is not determined by perception of threat. The content of right to life is not to be determined on the basis of existence or absence of threat of deprivation. The effect of holding that right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law.

145. In the above State of law, it would not be correct to contend that Miss. Mohini Jain Vs. State of Karnataka and others, , 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 undeserved 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 fuedal 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 policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question. Thyis 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, sometimes 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 benefitting 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 in 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.

146. This does not however mean that this obligation can be performed only through the State schools. It can also be done by permitting, recognising and aiding voluntary non-Governmental organisations, who are prepared to impart free education to children. This does not also mean that unaided private schools cannot continue. They can, indeed, they too have a role to play. They meet the demand of that segment of population who may not wish to have their children educated in State run schools. They have necessarily to charge fees from the students. In this judgment, however, we do not wish to say anything about such schools or for that matter other private educational institutions except "professional colleges". This discussion is really necessitated on account of the principles enunciated in *Miss. Mohini Jain Vs. State of Karnataka* and others, , and the challenge mounted against those principles in these writ petitions.

12. If rule 20 of the Rules of 1966 is to be read in the light of Directive Principles of State Policy, particularly, Articles 39 and 46 and Fundamental Right of Equality guaranteed under Article 21 of the Constitution, it means, that it is necessary to the department to provide mess facility to the students of SC/ST category residing in hostels. The students can reimburse the amount of hostel expenditure from their scholarship, if it is reasonable, because the students have to spent some amount on their studies, conveyance and clothes, if parents of the students are below poverty line (BPL Card holders). It is also a fact that large number of posts are lying vacant in the State Government services of SC/ST candidates due to non-availability of suitable candidates. Even, looking to the specific provisions of reservation made in the Constitution for SC/ST and backward class candidates, due to their financial status from centuries, it is obligatory on the part of the State to bear expenses in regard to food facility of students up to certain extent.

13. The petitioner in the additional affidavit has stated that he visited the post matric hostels at Gwalior city and found that not a single student is getting any food because there is no mess facility provided in those hostels. The respondent-State in its return also admitted the fact that it is not obligatory or mandatory on the part of the State to provide mess facility in the post matric hostels. In our opinion, provision of mess facility is necessary in order to provide proper education to students of SC/ST category.

14. Rule 18 of the Rules of 1966, quoted above in this order, prescribes that there should be mess facility in each and every hostel, whether it is pre-matric or post-matric. The mess facility is also necessary in view of Article 39 of the Constitution.

15. Consequently, this petition is disposed of with a direction that the respondents shall provide the mess facility to each and every post-matric hostel and for the aforesaid purpose an amount of Rs. 500/- (Rupees Five hundred) only from Scholarship of the students could be deducted and, if any further amount is required, then, it has to be paid by the department. It will be mandatory to the respondents to provide two meals and morning breakfast from the mess to every student residing in the hostel. This order would be applicable to the hostels situate within the jurisdiction of this Bench and be complied with within a period of six weeks. A compliance report to this effect be submitted to the Registry of this Court. Looking to the facts of the case, and the fact that the petitioner has brought a good cause before this Court, hence, the respondent-State is directed to pay a cost of Rs. 10,000/- (Rupees Ten thousand) only to the petitioner.