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**(2008) 06 MP CK 0012**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No's. 9800 of 2007 (Jabalpur) and 2066 of 2002 (Indore)

S.P. Anand

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision :** 26-06-2008

**Acts Referred:**

Constitution of India, 1950 — Article 21A, 45

**Citation :** (2009) 1 MPLJ 338

**Hon'ble Judges :** A.K. Patnaik, C.J;A.M. Sapre, J

**Bench :** Division Bench

**Advocate :** Party in Person, for the Appellant; A.S. Kutumble, Additional Advocate General, Umesh Gajankush, Government Advocate for State of M.P. and Vinay Zelawat for Union of India, for the Respondent

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## Judgement

A.K. Patnaik, C.J.

The petitioner claims to be a life member of the Indian Law Institution and has filed this writ petition as a Public Interest Litigation for appropriate directions to the respondents for enforcing the right to free and compulsory education for children upto the age of 14 years in the State of Madhya Pradesh. He has stated in the petition that in a Government owned publication the literacy rate for persons above the age of seven years are as follows :

Madhya Pradesh Persons Male Female

Total in M. P. 44.20% 58.42% 28.85%

In Rural M. P. 35.87% 51.04% 19.73%

In Urban M. P. 70.81% 81.32% 58.92%

The aforesaid figures of literacy rate, according to the petitioner clearly show that free and compulsory education has not been provided to persons upto the age of 14 years. The petitioner has therefore prayed that appropriate directions be issued to the respondents to provide free and compulsory education to

children who have not completed the age of 14 years and in particular to take immediate steps to provide schools in every village and habitation where there is no school and to equip such school with all facilities for teaching.

At the hearing of the petition, the petitioner appearing in person submitted that before the Constitution (Eighty-sixth Amendment) Act, 2002, the Directives Principles of State Policy in Article 45 of the Constitution stated that the State shall endeavour to provide, within a period of ten years from the commencement of Constitution, free and compulsory education for all children until they complete the age of fourteen years. He submitted that notwithstanding the aforesaid provision in Article 45 of the Constitution, the State Government has not been able to provide free and compulsory education to the children upto the age of 14 years. The petitioner further submitted that in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, the Supreme Court has further held that right to free and compulsory education upto the age of 14 years is a fundamental right. He submitted that by the Constitution (Eighty-sixth Amendment Act, 2002) Article 21A of the Constitution was introduced which states that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. He argued that since the right to free and compulsory education for children between the age of 6 to 14 years has now become a fundamental right guaranteed by Article 21A of the Constitution, the Court can enforce this fundamental right to education by appropriate directions. He vehemently argued that in the replies filed by State of Madhya Pradesh a clear admission has been made that 72,000 children are not attending school and are not getting any free and compulsory education and therefore appropriate directions be given by the Court to ensure that these 72,000 children also attend school and get free and compulsory education.

Mr. Ashok Kutumbale, learned Additional Advocate General, appearing for State of Madhya Pradesh submitted that as per the census of 1991 the literacy rate in the State of Madhya Pradesh was 44.67% and as per the census of 2001 the literacy rate was 64.11% and thus there has been a growth of 19.44% in the literacy rate in the State of Madhya Pradesh during the decade 1991 to 2001. He further submitted that the literacy rate of 64.11% in the State of Madhya Pradesh is very close to national literacy rate of 65.35% as per the 2001 census. He further submitted relying on the reply to the rejoinder filed by the petitioner that the State has enacted the "Jan Shiksha Adhiniyam, 2002 (for short "the Adhiniyam") for enforcing the right of every child to get elementary education. He submitted that the Adhiniyam purports to give free and compulsory education to all children between the age of 6 to 14 years. He submitted that in the years 2006-07 as many as 2,284 primary schools and 8017 middle school have been constructed and as per the survey made in the year 2006-07 1.55 Crores of children are enrolled in the schools. He further submitted that free text books have been provided to 1.1 Crore children and about 51.36 lacks girls child studying in Class I to Class VIII have been provided uniforms free of cost. He

further submitted relying on the reply to the rejoinder that the State Government has initiated a drive under the banner "School Chale Hum Abhiyan" and pursuant to the drive out of 2.72 lakhs children who were not going to school, 2.01 lakhs children were enrolled in the school during the year 2006-07. Regarding the 72,000 children who are not attending school, Mr. Kutumbale relying on an affidavit filed on 29-4-2008 submitted that the number of such children not attending school is fast reducing on account of the following measures taken by the Government:

- (a) "Back to School" campaign organised under "School Chale Hum Abhiyan";
- (b) Residential Bridge Course conducted for out of school children upto 8.14 years age group in habitations having less than ten such children;
- (c) None Residential Bridge Course conducted for out of school children of 8-14 years age group in habitations having ten or more such children;
- (d) Human Development Centers run by urban out of school/working children;
- (e) Incentives like mid day meal, uniform to girls and free text books have been provided to out of school children who have come to the mainstream;
- (f) Parent Teacher Associations formed in all schools and entrusted with the responsibility of enrolling out of school children. He submitted that despite these measures, some children who fall under the Hard to reach Category have remained out of school due to the following reasons:
  - (i) Parents reluctance;
  - (ii) Prolonged illness;
  - (iii) Work in field as agriculture Labour or Labour;
  - (iv) Sibling Care;
  - (v) Migration;

The Union of India has also filed a reply stating therein that in recent years steps have been taken through Centrally Sponsored Schemes to provide quality education to all children in the age group 6-14 years throughout the country including Madhya Pradesh and some of the steps have been indicated in the reply. Para 7.1 of the reply of the Union of India which deals with the steps taken by the Central Government under title "Sarva Shiksha Abhiyan" is extracted herein below:

#### SARVA SHIKSHA ABHIYAN

- (a) A comprehensive centrally sponsored scheme for universalisation of elementary education, entitled Sarva Shiksha Abhiyan (SSA) is already being implemented throughout the country since 2001-02 with the following goals :-

All children in schools, Education Guarantee Centre, Alternate School, "Back-to-

School" camp by 2003. All children complete five years of primary schooling by 2007. All children complete eight years of elementary schooling by 2010. Focus on elementary education of satisfactory quality with emphasis on education for life. Bridge all gender and social category gaps at primary stage by 2007 and at elementary education level by 2010. Universal retention by 2010.

(b) The expenditure on the programme of Sarva Shiksha Abhiyan is shared in the ratio 85:15 during the IX Plan, 75:25 during the X Plan, and 50:50 thereafter, between the Central Government and State Government.

(c) The programme covers the entire country and addresses the needs of 192 million children in 11 lakh habitations. 8.5 lakh existing primary and upper primary schools and 33 lakh existing teachers would be covered under the scheme. The programme seeks to open new schools in habitations which do not have schooling facilities and strengthen existing school infrastructure through provision of additional class rooms, toilets, drinking water, maintenance grant and school improvement grant. Existing schools with inadequate teacher strength would be provided additional teachers under the programme. The capacity of existing teachers would be built by extensive training, provision of grant for developing teaching-learning material and development of academic support structure. SSA has a special focus on girls and children of weaker sections. A number of initiatives, including free textbooks, target these children under the programme.

(d) The approach is community-owned and village education plans prepared in consultation with Panchayat Raj Institutions will form the basis of district elementary education plans. The Sarva Shiksha Abhiyan covers the entire country with a special focus on educational needs of girls, Scheduled Castes and Scheduled Tribes and other children in difficult circumstances.

(e) Figures of Central assistance approved during Tenth Plan under SSA for the country as a whole and for M.P. are as follows :-

(Rupees in crores)

| Item                                           | All India | M.P.    |           |           |        |
|------------------------------------------------|-----------|---------|-----------|-----------|--------|
| 2002-2003                                      | 2003-2004 | Total   | 2002-2003 | 2003-2004 | Total  |
| Total Amount Approved under SSA (Rs. in crore) |           |         |           |           |        |
| 1558.28                                        | 2698.38   | 4256.66 | 110.17    | 352.38    | 462.55 |

(f) Major items for which the above assistance has been approved are as follows :

| Item                  | All India | M.P.     |           |           |        |
|-----------------------|-----------|----------|-----------|-----------|--------|
| 2002-2003             | 2003-2004 | Total    | 2002-2003 | 2003-2004 | Total  |
| No. of new schools    |           |          |           |           |        |
| 19,699                | 67,247    | 86,946   | 4,935     | 27,233    | 32,168 |
| No. of Addl. Teachers |           |          |           |           |        |
| 42,890                | 4,03,390  | 4,46,280 | 9,880     | 15,434    | 25,314 |

New School 16,944 42,546 59,490 301 13148 13,449

Addl. Class Rooms 39,523 72,729 1,12,252 2,616 2,149 4,765

Toilets in schools 50,829 51,760 1,02,589 7,399 14,319 21,718

Drinking water facility in schools 33,395 41,214 74,609 5,273 5,273 10,546

No. of teachers for whom Teacher grant sanctioned @ Rs. 500/- per teacher  
30,13,959 33,37,851 63,51,810 78,182 2,21,656 2,93,838

No. of Schools for which School grant sanctioned (it} Rs. 2000/- per school  
8,68,972 8,29,446 16,98,418 9,672 80,207 89,879

No. of Schools for which maintenance grant sanctioned @ Rs. 5,000/-per school  
6,15,700 7,75,133 13,90,833 Nil 69,562 69,562

No. of children for whom free text books sanctioned 4,52,26,663 5,81,000,00  
10,33,26,663 34,94,807 68,14,613 1,03,09,420

After perusing the writ petition and replies filed by the respondents and after hearing learned counsel for the parties, we find that the State Government of Madhya Pradesh as well as the Central Government are making all efforts to provide free and compulsory education to children between the age of 6 and 14 years. There may be some individual lapses on the part of the authorities in not sincerely enforcing this important right to education now guaranteed under Article 21A of the Constitution and it is for the highest authorities of the State Government and the Central Government to correct such lapses and monitor from time to time the measures which have been initiated by the State Government and the Central Government to provide free and compulsory education to all children between the age of 6 and 14 years. We also find that the State of Madhya Pradesh has already made a law determining the manner in which the State shall provide free and compulsory education to all children between the age of 6 to 14 years as stipulated under Article 21A of the Constitution, namely the Madhya Pradesh Jan Shiksha Abhiyan, 2002 and the Madhya Pradesh Jan Shiksha Niyam, 2003. It is for the authorities to enforce the Adhiniyam, 2002 and the Niyam, 2003 with all earnestness so that free and compulsory education for children between the age of 6 to 14 years becomes a reality and no child in the State of Madhya Pradesh goes without education.

With the aforesaid observations and directions, this writ petition is disposed of.