

A ENVIRONMENT & CONSUMER PROTECTION
FOUNDATION

v.

DELHI ADMINISTRATION & ORS.
(Writ Petition (Civil) No. 631 of 2004)

B OCTOBER 3, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

EDUCATION:

C *Schools - Infrastructure facilities - Held: States directed to give effect to various directions already issued by the Court for providing toilet facilities for boys and girls, drinking water facilities, sufficient classrooms, appointment of teaching and non-teaching staff etc. - The directions are applicable to all schools: i.e. Government, aided, unaided, minority and non minority schools - Further, the statutory authorities u/s. 31 of RTE Act will examine and review the safeguards for the child's right and recommend measures for their effective implementation - Right of Children to Free and Compulsory Education Act, 2009 - s.31 - Constitution of India, 1950 - Arts.21A and 32.*

The petitioner, a registered Charitable Society, filed the instant writ petition seeking various directions to improve the conditions of Government and aided schools and schools run by local bodies. The Court by several interim orders directed the States and the Union Territories to provide in the schools basic infrastructure facilities like toilet facility, drinking water, classrooms, appointment of teachers etc. During the pendency of the writ petition the Right of Children, to Free and Compulsory Education Act, 2009 was enacted by Parliament. In the case of *Society for Unaided Private Schools, Rajasthan*¹, the Supreme Court while upholding

1. (2012) 2 SCR 715.

the constitutional validity of the RTE Act gave various directions to take steps for full implementation of the Act. In compliance with the said directions, some of the States responded by furnishing the details of infrastructure facilities available in the schools in the respective States. The Court gave further directions to provide proper toilet facilities for boys and girls and drinking water in all the schools. In the subsequent proceedings the Court noticed that some of the States did not fully implement the directions issued in the case of Society for Unaided Private Schools, Rajasthan as well as the provisions of the RTE Act.

Disposing of the writ petition, the Court

HELD: 1.1. Section 31 of the Right of Children to Free and Compulsory Education Act, 2009 has also conferred certain functions on the National Commission for Protection of Child Rights and also on the State Commissions These statutory authorities will also examine and review the safeguards for the child's rights and recommend measures for their effective implementation. [Para 8] [1070-A-D]

1.2. All the States are directed to give effect to the various directions already given by this Court* like providing toilet facilities for boys and girls, drinking water facilities, sufficient class rooms, appointment of teaching and non-teaching staff etc., if not already provided, within six months. It is made clear that these directions are applicable to all the schools, whether State owned or privately owned, aided or unaided, minority or non-minority. [para 9] [1071-B-C]

**Society for Unaided Private Schools of Rajasthan vs. Union of India and Anr. (2012) 2 SCR 715 = (2012) 6 SCC 1 - referred to*

A **Case Law Reference:**

(2012) 2 SCR 715 referred to para 2

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 631 of 2004.

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Under Article 32 of the Constitution of India.

Ravindra Bana, Rono Mohanty for the Appellant.

C A. Mariarputham, AG, Ashok Bhan, T.S. Doabia, Manjit Singh, Dr. Manish Singhvi, Anil Grover, AAGs, Sunita Sharma, Sudarshan Singh Rawat, Sushma Suri, W.A. Qadri, A. Deb Kumar, Purnima Bhatt, Zaid Ali, B.V. Balramdas, D.S. Mahra, Khwairakpam Nobin Singh, Sapam Biswajit Meitei, Anil Shrivastav, Ritu Raj Biswas, K.N. Madhusoodhanan, M.T. D George, Vivekta Singh, Tarjit Singh, Kamal Mohan Gupta, Hemantika Wahi, Nandini Gupta, Genefer B., G.N. Reddy, M. Rambabu, S. Nagarajan, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, Sanjay Kharde, Asha Gopalan Nair, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Irshad E Ahmad, C.D. Singh, Abhimanyu Singh, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Sunil Fernandes, Vernika Tomar, Astha Sharma, R. Sharma (for Corporate Law Group), Abhishek Atrey, Amitesh Kumar, Prerna Mehta, Ravi Kant, Aruna Mathur, Yusuf Khan, Movita (for Arputham Aruna & Co.) Noopur Singhal, F Sunil Satyarthi, Sanjiv Sen, P. Parmeswaran, Bina Madhavan, Praseena E. Joseph, A.V. Rangam, A. Subhashini, Raja Chatterjee, Abhijit Sengupta, B. Balaji, P. Krishnamoorthy, K. Enatoli Sema, Amit Kr. Singh, Manpreet Singh Doabia, G. Prakash, Gopal Singh, Naresh K. Sharma, Pratibha Jain, Surya Kant, Shrish Kumar Misra, Tara Chandra Sharma, S. Rajappa, G Krishanand Pandeya, Ramesh Babu M.R., Radha Shyam Jena, Jagjit Singh Chhabra, Vibha Datta Makhija, Kuldip Singh, S. Thananjayam (for Bhaita & Co.) for the Respondents.

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The Judgment of the Court was delivered by

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K.S. RADHAKRISHNAN, J. 1. This Court's jurisdiction under Article 32 of the Constitution of India has been invoked by the petitioner, a registered charitable society, seeking various directions to improve the conditions of Government and aided schools and also school run by the local authorities so that the constitutional objective of providing free and compulsory education under Article 21A of the Constitution of India would be a reality. A B

2. The Writ Petition was filed in the year 2004 and since then, several interim orders have been passed giving directions to the States and the Union Territories to provide the basic infrastructure facilities like toilet facility, drinking water, class rooms, appointment of teachers and all other facilities so that children can study in a clean and healthy environment. While the matter was pending before this Court, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (in short 'the RTE Act'). The constitutional validity of the RTE Act was challenged before this Court and this Court, vide its Judgment dated 12.4.2012 in *Society for Unaided Private Schools of Rajasthan v. Union of India and Another* (2012)6 SCC 1, upheld its validity and gave various directions, some of which are as follows: C D E

- (a) In exercise of the powers conferred upon the appropriate Government under Section 38 of the RTE Act, the Government shall frame rules for carrying out the purposes of this Act and in particular, the matters stated under sub-Section (2) of Section 38 of the RTE Act. F
- (b) The directions, guidelines and rules shall be framed by the Central Government, appropriate Government and/or such other competent authority under the provisions of the RTE Act, as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment. G H

- A (c) All the State Governments which have not constituted the State Advisory Council in terms of Section 34 of the RTE Act shall so constitute the Council within three months from today. The Council so constituted shall undertake its requisite functions in accordance with the provisions of Section 34 of the Act and advise the Government in terms of clauses (6), (7) and (8) of this order immediately thereafter.
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- C (d) Central Government and State Governments may set up a proper Regulatory Authority for supervision and effective functioning of the Act and its implementation.

D 3. This Court, therefore, directed the Central Government, appropriate Government and other competent authorities functioning under the RTE Act to issue proper directions/guidelines for its full implementation within a period of six months from the date of the pronouncement of that judgment. This Court also directed all the State Governments to constitute State Advisory Council within three months from the date of that judgment. Advisory Councils so constituted were directed to discharge their functions in accordance with the provision of Section 34 of the RTE Act and advise the Government in terms of Clauses (6), (7) and (8) of this Court's order. The necessity of constituting a proper Regulatory Authority for effective functioning of the RTE Act and its implementation was also highlighted. The Central Government was also directed to frame rules, in exercise of its powers under Section 38 of the RTE Act, for proper implementation of the RTE Act.

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G 4. On the basis of directions issued by this Court in this Writ Petition, some of the States have responded by furnishing the details of infrastructure facilities available in the schools situated in their respective States. This Court noticed that some of the schools have not provided proper toilet facilities for boys and girls and in some of the schools, it was noticed, that there

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is no provision for drinking water as well. Detailed interim orders were passed by this Court on 29.4.2011 and 22.9.2011. On 18.10.2011, this Court passed the following order:

"We have heard the learned counsel for the parties. It is imperative that all the schools must provide toilet facilities. Empirical researches have indicated that wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools. It clearly violates the right to free and compulsory education of children guaranteed under Article 21-A of the Constitution.

We direct all the States and the Union Territories to ensure that toilet facilities are made available in all the schools on or before 30th November, 2011. In case it is not possible to have permanent construction of toilets, at least temporary toilets be provided in the schools on or before 30th November, 2011 and permanent toilets be made available by 31st December, 2011.

We direct the Chief Secretaries/Administrators of all the States/Union Territories to file their affidavits on or before 30th November, 2011."

5. Again, on 5.12.2011, this Court reiterated the directions as follows:

"In our previous order dated 18.10.2011, we clearly indicated that it is imperative that all the schools must provide toilet facilities; empirical researches have indicated that wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools. It clearly violates the right to free and compulsory education of children guaranteed under Article 21-A of the Constitution. Office Report dated 3rd day of December, 2011 indicates that despite opportunity granted, the States of Tamil Nadu, Gujarat, Chhattisgarh,

A Meghalaya, West Bengal, Arunachal Pradesh, Punjab,
Goa, Tripura and Union Territory of Lakshdweep have not
filed their affidavits. One more opportunity is granted to
these States/Union Territory to file their affidavits. Let the
affidavits be filed within two weeks from today. No further
B time shall be granted for this purpose.

We are told that the Ministry of Drinking Water and
Sanitation is the concerned ministry. We request the
learned additional Solicitor General appearing on behalf
of the Union of India to take instructions from the Ministry
C of Drinking Water and Sanitation and file an affidavit within
four weeks from today, indicating therein the latest position
about the problem of drinking water in the country.”

6. The situation that we get in few States has been
D elaborately dealt with by this Court in its interim order dated
13.1.2012. Some of the States have taken some positive steps,
but some the States still lag behind. Taking note of all those
aspects, this Court passed an order on 12.3.2012, the operative
portion of which reads as follows:

E “The Chief Secretaries of various States were
directed to ensure that separate permanent toilets for boys
and girls are constructed in all the schools in their
respective States on or before 31st March, 2012 and in
case it was not possible to construct permanent toilets,
F then at least emporary toilet facilities were directed to be
made available on or before 28th February, 2012 and it
was directed than an affidavit to that effect shall be filed
by the Chief Secretaries on or before 28th February,
2012.

G In pursuance of the aforesaid directions of this Court,
affidavits have been filed by the States of Uttar Pradesh,
Assam, Meghalaya, Mizoram, Chhattisgarh, Punjab,
Nagaland, West Bengal, Andhra Pradesh, Maharashtra,
H Uttarakhand, Odhisha, Karnataka, Jharkhand, Himachal

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Pradesh, Goa, Municipal Corporation of Delhi and the Union Territory of Lakshadweep. These States/union Territories in their respective affidavits have indicated that they have either constructed the toilets for boys and girls or they would complete it before the stipulated date that is before 31st March, 2012.

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According to the Office Report dated 3rd day of March, 2012, following States have not filed their affidavits:

1. Tripura
2. Tamil Nadu
3. Sikkim
4. Gujarat
5. Bihar
6. Rajasthan
7. Jammu and Kashmir
8. Madhya Pradesh
9. Kerala

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In the interest of justice, we grant one more opportunity to these States to file their respective affidavits within two weeks from today, failing which the Chief Secretary of the State concerned shall remain present in this Court on the next date of hearing. No further time shall be granted.

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Learned counsel appearing on behalf of the Ministry of Drinking Water and Sanitation has handed over an affidavit of Sujoy Mojumdar, Director (Water), Ministry of Drinking Water and Sanitation, Government of India. In the affidavit it is mentioned that under the "Total Sanitation Campaign" (TSC), the Central Government supplements

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A the efforts of the States in providing sanitation facilities in
 the rural areas, including identified existing rural
 Government schools and Anganwadis by providing them
 with financial assistance and technical support. It is further
 submitted in the affidavit that under the TSC, at present,
 B School Sanitation Hygiene Education Programme is
 operational in 607 districts spread across 30 States and
 Union Territories and a total of 11,99,117 school toilets
 have been financially assisted under the TSC. The
 cumulative progress of school toilets unit blocks financially
 C assisted under the TSC in the entire country till 29.2.2012
 are as follows:

	Project Objectives	-	13,14,636
	Project Performance	-	11,99,117
D	Percentage-wise progress	-	91.21%

In paragraph 9 of the said affidavit it is stated that
 provision of sanitation facility in Government schools is
 made by States within their TSC allocation. Out of the total
 E of Rs.3068.51 crore approved for School Sanitation under
 TSC, s.2268.28 crore (cumulative) has been reported as
 expenditure and utilized by the States. The State-wise
 details of financial progress and utilization under TSC till
 29.2.2012 are tabulated and enclosed along with the
 F affidavit.

In paragraph 10 of the affidavit it is mentioned that
 as per information provided by the Department of School
 Education and Literacy, Ministry of Human Resource
 G Development, the number of Government schools with
 sanitation facility available, as per their District Information
 System for Education (DISE) 2010-11 is as under:

	Total Number of Govt. Schools	-	10,96,064
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Government Schools with Girls Toilet - 6,24,074 A

Government Schools with Boys/Common Toilet - 8,24,605

Let copies of this affidavit be supplied by the Registry to the learned counsel appearing for the States/Union Territories within one week from today. B

Mr. Ravindra Bana, learned counsel appearing on behalf of the petitioner submits that after this Court has dealt with the problem of electricity, potable drinking water and toilets for boys and girls in the Government schools, the other main problem which is still persistent in most of the schools is regarding teachers and infrastructure. In order to ensure compliance of Article 21A of the Constitution, it is imperative that schools must have qualified teachers and basic infrastructure. C D

Learned counsel appearing on behalf of the National University for Educational Planning and Education undertakes to file a comprehensive affidavit giving therein up-to-date position about the availability of teachers and infrastructure in schools. E

Let a comprehensive affidavit be filed by all the States/Union Territories regarding teachers and infrastructure in schools within three weeks from today, with an advance copy to the learned counsel for the petitioner and the counsel for the States/Union Territories." F

7. We notice that some of the States have not fully implemented the directions issued by this Court in *Society for Unaided Private Schools of Rajasthan* (supra) as well as the provisions contained in the RTE Act. Considering the facts that this Court has already issued various directions for proper implementation of the RTE Act and to frame rules, there is no reason to keep this Writ Petition pending. G

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A 8. We also notice that Section 31 of the RTE Act has also conferred certain functions on the National Commission for Protection of Child Rights and also on the State Commissions. Section 31 reads as follows:

B *"31. Monitoring of child's right to education.-* (1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:—

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- (a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
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- (b) inquire into complaints relating to child's right to free and compulsory education; and
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- (c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

F (2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

G (3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in Clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed."

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We are confident that those statutory authorities will also examine and review the safeguards for the child's rights and recommend measures for their effective implementation. A

9. We are, inclined to dispose of this Writ Petition with a direction to all the States to give effect to the various directions already given by this Court like providing toilet facilities for boys and girls, drinking water facilities, sufficient class rooms, appointment of teaching and non-teaching staff etc., if not already provided, within six months from today. We make it clear that these directions are applicable to all the schools, whether State owned or privately owned, aided or unaided, minority or non-minority. As the writ petition is disposed of, no orders are required to be passed on applications for intervention and impleadment and the same are disposed of. B C

10. We make it clear that if the directions are not fully implemented, it is open to the aggrieved parties to move this Court for appropriate orders. D

R.P.

Writ Petition disposed of.