



Environment & Consumer Protection Foundation v. Delhi Administration & Others

Writ Petition (Civil) No. 631 of 2004

Country: India

Region:

Year: 2012

Court: Indian Supreme Court

Health Topics: Child and adolescent health, Environmental health, Water, sanitation and hygiene

Human Rights: Right to a clean environment, Right to education, Right to water and sanitation

Facts

The Environment & Consumer Protection Foundation (the petitioner) was a registered charitable society, and filed the petition to the Indian Supreme Court ('the court') in 2004 by which it sought various directions to improve the conditions of government and aided schools, and schools run by local authorities so that the constitutional objective of providing free and compulsory education under Article 21 A of the Constitution of India ('the constitution') could be realized. Then after, several interim orders had been passed by the court 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 could study in clean and healthy environment.

While the case was pending, the Right of Children to Free and Compulsory Education Act (â€˜the RTE Actâ€™™) was enacted in 2009, the constitutional validity of which had been challenged and upheld by the court. The court had 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 judgment i.e., 12 April, 2012. The Court directed the Central Government to frame rules in exercise of its powers under Section 38 of the RTE Act for the proper implementation of the RTE Act, and all the State Governments to constitute State Advisory Council within three months from 12 April, 2012. The court also highlighted the necessity of constituting a proper Regulatory Authority for effective functioning of the RTE Act.

Some of the states responded by listing the details of infrastructure facilities available in the schools situated in their respective States. The court noticed that some schools failed to provide proper toilet facilities for boys and girls and some other schools didn't provide drinking water. Hence, the court passed orders on 18 October, 2011 stating that failure to provide toilet facilities in schools made parents keep their children from going to schools and thus, violated the right to free and compulsory education of children guaranteed under Article 21-A of the Constitution. The court directed all the States and the Union Territories to ensure that temporary toilet facilities were made available on 30th November, 2011 (where constructing permanent toilets would not be possible), and permanent toilets were made available by 31st December, 2011. The court also directed the Chief Secretaries/Administrators of all the States/Union Territories to file their affidavits on or before 30th November, 2011.

However, a number of states failed to do as directed and the court had given another opportunity for the affidavits to be filed within two weeks from 5 December 2011, with no further time to be granted for that purpose. Because a number of states still lagged behind, the court passed an order on 12 March 2012 directing the Chief Secretaries those states to file an affidavit stipulating that they would construct separate permanent toilets for boys and girls in all the schools in their respective States on or before 31st March, 2012. States/union Territories complying with the order indicated in their affidavits that they had either constructed the toilets for boys and girls or would complete the construction before 31st March, 2012. Learned counsel appeared on behalf of the Ministry of Drinking Water and Sanitation and handed over an affidavit. Some states, however, still failed to file their affidavit for which the court granted one more opportunity for their respective affidavits to be filed within two weeks from 3 March 2012, in failure of which the Chief Secretary of the State concerned was to be present on the date of the Court's next hearing; the court held that no further time was going to be granted.

Decision and Reasoning

The court noticed that some states had not fully implemented the directions it had given, and held that there was no reason for keeping the petition pending given the fact that it had already issued various directions for the proper implementation of the RTE Act. The court noticed that Section 31 of the RTE Act had also conferred certain functions on the National Commission for Protection of Child Rights and on the State Commissions.; It held that this statutory authority would examine and review the safeguards for the childâ€™s rights and would recommend measures for their effective implementation.

The court then disposed of the petition, directing all states to give effect to the various directions it had given before (such as the provision of toilet facilities for boys and girls, drinking water facilities, sufficient classrooms, the appointment of teaching and non-teaching staff) if they had not already been effected, within six months from 3 October 2012. The court held that this applies to all schools whether state-owned or privately owned, aided or unaided, minority or non- minority. The court decided that if the directions were not fully implemented, aggrieved parties could move the court for appropriate orders.

Decision Excerpts

".... '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'." Para. 4

"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 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." Para. 5

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