

Enforcing accessibility to basic amenities for education in India: an effective pro bono initiative by a Supreme Court lawyer

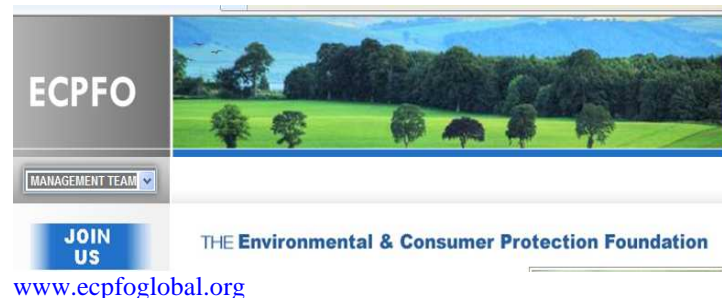
Writ Petition No.631/2004:

Environment & Consumer Protection Foundation, New Delhi Vs Delhi Administration and Union of India

The issue

This is a classic case of a writ petition filed pro bono by a senior Supreme Court lawyer as a Public Interest Litigation (PIL) before the Supreme Court of India addressing state inaction. The petition asked for Court's intervention in directing the State and Central Government of India to issue necessary guidelines all over the country for government run schools to provide basic infrastructural facilities in order to enforce the fundamental right to education as provided under Article 21-A of the Constitution of India.

The petition was filed on behalf of the Environment & Consumer Protection Foundation (ECPFO)¹ by Ravindra Bana, a senior practising lawyer with over 40 years of standing at the Bar of the Supreme Court of India and also the Founder Director of the organisation. The ECPFO is a registered charitable organisation under the Indian Societies Registration Act, 1860 and aims to promote the well accepted concept of consumer justice and improve the quality of life for millions of consumers.



Reason to act

A newspaper report titled '*This place is anything but a school*'² was published on 16 September, 2004 in a leading Indian national daily called 'The Times of India', New Delhi edition which wrote about the shocking state of affairs in a government-aided school in north Delhi comprising of more than 1300 students and getting 95% aid from the Government of India. According to the report, the school was functioning having bare rooms, broken asbestos roofs, no fans or light fixtures and no drinking water. In place of closed toilets, there were open urinals, class rooms did not have windows – only frames with bars, leaking roofs with huge gaping holes. There was only one laboratory where all the tables were broken and even the library had only 30 odd books. Children used to sit on floors and write the test papers. This spurred Ravindra Bana to take up the issue being in conformity with the aims of the ECPFO

¹ <http://www.ecpfoglobal.org/>

² <http://epaper.timesofindia.com/Archive/skins/pastissues2/navigator.asp?AW=1273078607906>

and file a writ petition as a matter of public importance before the Supreme Court of India.



Children study under abysmal conditions in a government-aided school in north Delhi.

Public Interest Litigation

The writ petition was filed as a PIL before the Supreme Court of India annexing the news article and contending inter-alia the true essence and purpose of Article 21-A of the Constitution of India that empowers the fundamental right to education for children. Article 21-A of the Constitution of India was inserted vide 86th Constitutional Amendment Act, 2002 and received the assent of the President of India on 12 December 2002 making education for children between the ages of 6 to 14 years a fundamental right.

Article 21-A reads as follows:

“21-A. Right to Education – The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine”.

The same 86th Amendment in Part IVA also provides a new corresponding “Fundamental Duty” as follows -

“51. “Fundamental Duty” – It shall be the duty of every citizen of India - (k) who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward, between the age of 6 to 14 years”.

The petition contended that mere enactment of the law was not sufficient notwithstanding that the schools were opened by the government and were being given financial aid to the extent of 95% as government-aided schools and yet there was no will or existing machinery put in motion to ensure that (i) whether adequate number of teachers were available in the schools to teach; (ii) whether the building

and infrastructure facilities were in existence and serving its purpose; (iii) whether the playing grounds were available for the children and; (iv) whether all other essential machineries that ought to be for each and every child to secure complete education were available and/or properly maintained. The aid to the extent of 95% being provided by the government to its aided schools was tax payer's money and therefore every tax paying citizen of the country had a right to know how and where the government was spending their money for its optimum utilisation and purpose. It was due to this absolute inaction on the part of the executive / supervisory agencies of the government that the petition had been filed in the Court.

The significance of the United Nations Convention on the Rights of the Child (UNCRC) was also stated in the petition. India had ratified the convention in 1992 and was bound by it under Public International Law. India has re-affirmed its commitment to act in the best interests of the children and acknowledges that children have the right to proper education, care, social security and development with right to leisure, recreation and cultural activities. It is the obligation of the Government of India to review the national and state legislation, develop proper monitoring procedures to assess progress in implementing the Convention and involve all relevant agencies in the implementation and reporting process. Additionally, the guidelines under The National Policy on Education, 1986 as well as the goals adopted under Education for All in India, 1990 confirm the country's commitment to universalising primary education.

An earlier important ruling of the Supreme Court of India in *Unni Krishnan J.P. & Others Vs. State of Andhra Pradesh & Others*³ was cited in the petition. The ruling says that the citizens have a fundamental right to education but the said right is supplementary and complementary to the Directive Principles of State Policy under Articles 41⁴ and 46⁵ of the Constitution of India. The Directive Principles of State Policy do not represent the temporary will of a majority but the deliberate wisdom of the nation expressed through the Constitution and entrusted with the paramount and permanent law of the country. The Court has reiterated that the right to education is implicit and flows from the right to life guaranteed under Article 21 of the Constitution of India and that the obligations created by Articles 41, 45⁶ and 46 can be discharged by the State either by establishing institutions of its own or by adding or recognising and/or granting affiliations to the private educational institutions.

Court takes cognizance

The Supreme Court of India heard the petitioner and admitted the plea issuing immediate notice to the relevant departments of the government for a response. On receipt of the said notice the Director of Education, Delhi Administration filed their response in the next hearing accepting the contentions stated in the petition. The Director of Education submitted that their department had issued a show cause notice to the management of the school in question and had taken over the management completely under Section 20 of the Delhi Education Act, 1973 indicating that the

³ 1993 (1) SCC 645

⁴ <http://indiacode.nic.in/coiweb/fullact1.asp?tfnm=00%2052>

⁵ <http://indiacode.nic.in/coiweb/fullact1.asp?tfnm=00%2058>

⁶ <http://indiacode.nic.in/coiweb/fullact1.asp?tfnm=00%2057>

school was now being run directly by the government and all necessary basic facilities had been provided.

Ravindra argued before the bench that taking over the management of the school in question was not the sole relief being sought by petitioner but that there were a total of 222 such government-aided schools in Delhi where 95% aid was being given by the government and therefore the Court ought to ask the status of all those schools based in the country's capital.

In accordance with the proposed contention, the Court took stock of the situation and ordered the appropriate administrative authority to conduct a complete inspection of all government-aided schools in Delhi. On completion of the inspection the Delhi Administration filed an affidavit reporting to the Court that the basic infrastructural facilities in 222 government-aided schools had been duly ascertained. All essential facilities were now being provided to these schools under the supervision of the administration. Filtered drinking water machines had been installed and electricity connection provided. A further assurance was given that class rooms had windows and all other related basic facilities were being provided.

The petitioner raised another interesting point that the availability of basic infrastructural facilities in the government-aided schools could be termed as 'complete' only when there were enough teachers available for teaching in these schools. Availability of teachers was an essential inclusive part of the basic infrastructure. The Court agreed with this argument and asked the government to respond on the status of the teaching faculty in these schools. In a shocking revelation, it came to light that the schools were being run only on approximately 60% of the sanctioned teaching posts of teachers which were lying vacant for more than 10 years. Such a state of affairs shocked the conscience of the Court and immediate directions were issued to the Education Department to take steps to fill all the vacancies in the teaching faculty of these schools.

In pursuant to the order of the Court and during the pendency of the petition before the next hearing, about 2500 vacancies in the teaching staff of the government-aided schools including the posts of school principals, vice-principals, postgraduate teachers, trained graduate teachers and teachers in other fields were filled which were lying vacant for the last 10 years.

The situation in 222 government-aided schools functioning in Delhi improved considerably. Following up on this development the petitioner sought directions of the Court to enquire on the status of the 990 schools which were under direct supervision and functioning of the government. The Court issued necessary orders and subsequently the Director of Education, Delhi Administration filed an affidavit with their response. The affidavit highlighted the fact that even though the infrastructural facilities were satisfactory in all these government run schools but as far as the teaching faculty was concerned, the schools were facing difficulty.

The Chief Secretary, Delhi Administration filed an affidavit in the Court stating that there were 5302 vacancies for trained graduate teachers, 216 vacancies for school principals, 143 vacancies for vice-principals and 465 vacancies for postgraduate teachers besides the vacancies in the subjects of music, physical education etc. These

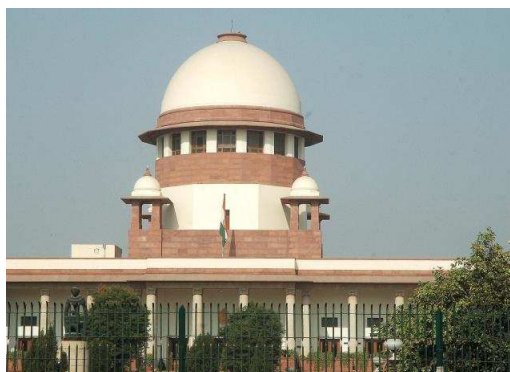
posts were just lying vacant in the government run schools since 2007 and that the necessary steps were being taken to fill up the vacancies.

On 9th March, 2010, the Court took strong exception to the fact that these vacancies were lying vacant without any sufficient reasoning and expressed its anguish over the issue. It directed the Chief Secretary to hold an inquiry and submit a report to the Court within four weeks as to why no action had been taken for filling up these vacancies and also provide a report indicating the role of the concerned officials and action proposed to be taken against them for dereliction of duty.

The Court further observed that *“We are astonished that on one hand Article 21-A of the Constitution makes free and compulsory education a fundamental right of children and on the other hand this is a an indirect way of infracting the fundamental right when posts of principals, vice-principles and teachers vacant since 2007 have not been filled till date because of total inaction of the Directorate of Education in Delhi”*.

The Director of Education has assured the Court that the vacancies will be filled in a time bound programme within the next six months.

The ECPFO counsel further submitted that *“Delhi alone was not India”* and that Article 21-A which made right of education a fundamental right under the Constitution of India applied to the whole country. The petition should not only be confined to the condition of schools in Delhi but the whole of India. He submitted an application before the Court to make the National University of Education Planning and Administration (NUEPA) as a necessary party in the writ petition. The Court entertained the application and further directed NUEPA to file its affidavit in respect of the conditions of schools spread all over the country. The NUEPA filed its affidavit before the Court and the Government of India in turn filed an affidavit annexing a report published by the NUEPA detailing statistical information of schools across India in respect of drinking water facilities, common toilets, girls toilets, boundary wall, computers etc. given in Flesh statistics as on 30 September 2009.



Supreme Court of India

Present status

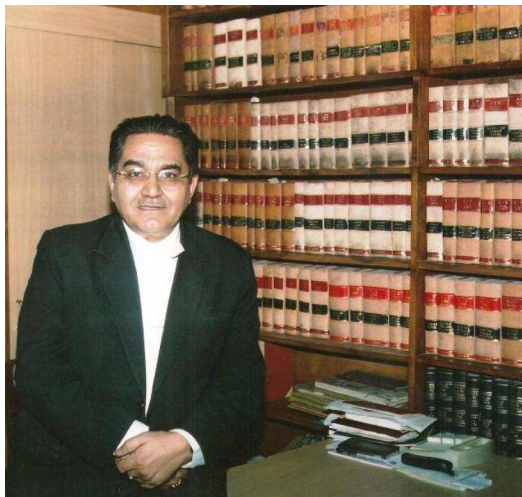
The Right of Children to Free and Compulsory Education Act, enacted by Parliament of India in August 2009 finally came into force on 1 April 2010. Education is henceforth a fundamental right for all children aged between 6 and 14 in India. This is

the first time that a fundamental right has been added to the Constitution of India since its promulgation in 1950. The Government of India is armed with wide powers to suggest, recommend, supervise and control running of schools all over the country.

Based on this development the ECPFO has contended before the Court that the Government of India should be asked to file an affidavit to provide information on what all steps it has already taken and steps it plans to undertake under the new enactment to achieve the aims and objectives of the Act so that it does not remain only on paper but is achieved in reality and in true 'letter and spirit'. The matter is in the final stages and would be coming up for hearing on a later date this year. It is being anticipated that the Court would be interested in considering this contention and asking the government to take the issue to a logical conclusion subject to a convincing response.

This case clearly once again demonstrates how the powers of the Supreme Court of India are being exercised in India and how the Court has evolved the strict rule of *locus standi* in a PIL. The rule has been relaxed and any responsible citizen acting bona fide with sufficient interest in the issue can have a *locus standi* and approach the Supreme Court to remove any violation of fundamental rights and genuine infraction of statutory provisions to secure rights of the unprivileged.

This is an ideal case where pro bono legal services have been rendered by a legal practitioner in challenging state inaction and ascertaining state accountability in public interest. This has resulted in an effective enforcement of accessibility to basic amenities for education. The role of judicial scrutiny undertaken by the Supreme Court of India has led to a significant improvement in the condition of educational institutions in the capital and will hopefully soon improve the same for the entire country.



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