

Justice For All vs Govt. Of Nct Of Delhi & Ors on 24 August, 2020

Author: Manmohan

Bench: Manmohan, Sanjeev Narula

\$~ R-22

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3004/2020 & CM APPLs. 10415-10417/2020, 10675/2020,
12235-12236/2020

JUSTICE FOR ALL

..... Petitioner

Through: Mr. Khagesh B. Jha, Advocate with
Ms. Shikha Sharma Bagga, Secretary
of petitioner.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel
with Ms. Bhawna Kataria, Advocate
for R-1/GNCTD.

Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Amit Gupta,
Mr. Sahej Garg and Mr. Varun
Kishore, Advocates for R-2/UOI.

Mr. Amit Bansal, Advocate with
Ms. Seema Dolo, Advocate for
R-3/CBSE.

Mr. Akhil Mittal, Standing Counsel
for R-4/North DMC.

Mr. Sriharsha Peechara, Advocate for
R-5/SDMC.

Mr. Harish Kumar Khinchi, Standing
Counsel with Mr. Chetan Kumar,
Advocate for R-6/EDMC.

Mr. Anil Grover, Advocate with
Ms. Noopur Singhal, Mr. Mishal Vij
and Mr. Satish Kumar, Advocates for
R-7/New Delhi Municipal Council.

Mr. Srijan Sinha, Advocate for
R-8 (Sanskriti School).

Mr. Puneet Mittal, Sr. Advocate with
Mr. Rupender Pratap Singh
And Ms. Vasudha Bajaj, Advocates
for R-9.

Mr. Sunil Gupta, Sr. Advocate with
Mr. Kamal Gupta, Advocate with
Mr. Nikhil Kukreja and
Mr. Vaibhav Mehra, Advocates for

R-10, 17 & 18.

Ms. Yashmeet Kaur, Advocate for respondent No. 11.

Ms. Apoorva Pandey, Advocate for respondent No.12.

Mr. Vedanta Varma and Ms. Mannat Sandhu, Advocates for R-13.

Mr. Anirudh Bakhru with Mr. Ayush Puri, Advocates for R-14 & R-16.

Mr. Kapil Goyal, Advocate for R-15.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 24.08.2020 The petition has been heard by way of video conferencing. Learned counsel for the Respondents have completed their submissions. During the course of hearing, they have raised several legal grounds to oppose the Petition. These grounds given rise to several pertinent questions of law. Therefore, before we proceed to hear rejoinder submissions of Mr. Jha, for the sake of convenience and in an effort to narrow down the contentious issues, we have crystalized Respondent submission in form of questions/ points. While addressing rejoinder arguments, the counsel for the Petitioner is directed to give his focused response on the issues/points enumerated hereinbelow :-

1. Whether the RTE Act did not anticipate the Covid-19 crisis and does not deal with the unforeseen and unprecedented situation prevailing today? Whether the Court of Law cannot deal with a drastically changed situation, specially when it was not known or visualised by the Parliament?

2. If RTE Act never contemplated online education as a mode, manner and method of education, whether the Court of law should interpret the provisions of the RTE Act dynamically, according to the evolving needs of the society and extend the same to the advent of online education under the current pandemic situation ?

3. Whether online education through video conferencing is a non-

derogable facet of Article 21A and Part III of the Constitution and whether failing to provide the requisite equipment for the same would amount to violation of a fundamental right of the student?

4. In absence of any legal obligation under the Act, and because of the Government mandated shutdown of physical schools, whether imparting of education through video conferencing can be seen as a voluntary activity undertaken by private schools,? If So, whether such voluntary nature of the activity is outside the purview of the RTE Act and therefore beyond the scope of application of section 12(1)(c) and section 3 of the said Act?

5. in absence of access to a physical classroom, owing to the current pandemic situation, whether online education through video conferencing is the most efficient mode of imparting education,? If so, what would be the basic minimum standards of education that the State and consequently the schools are under an obligation to fulfil in a situation such as the present one? Whether the courts should frame guidelines on these issues that are entirely technical in nature?
6. Whether the obligations under the Act are on the State Government as the appropriate government and to what extent the Central government is under an obligation for fulfilment of responsibilities under the Act as well as under Article 21A of the constitution?
7. Whether appropriate government is under obligation under section 12(2) to reimburse expenditure incurred by the private schools in providing devices to students belonging to socially and economically backward classes in the 25% quota, in a situation where the appropriate government is not itself incurring such expenditure in providing education? Whether this obligation can be equated with the obligation of the appropriate government to reimburse the private school in respect of maintenance of infrastructure in respect of the 25% category students?
8. Whether providing different modes of imparting education to different students (especially taken into consideration difference between the 75% students and 25% student) within the same class, amounts to discrimination and hence, violation of Article 21A and fundamental rights under Part III of the Constitution?
9. Whether for the purposes of the RTE Act, private schools and government schools (both by Central government and State government) as well as different private schools can be placed at the same level?
10. in absence of any policy framework by the Parliament for dissemination of education during shutdown of school infrastructure and machinery, whether State's duty to make finances available for the purposes of providing "free and compulsory education" to all children under Article 21A, extends to making electronic devices, taking into consideration the emergency nature of the pandemic ?
11. Whether mandatory directions to private schools to provide devices to 25% students from its funds and trusts available (assuming the government fails/ refuses to reimburse the expenditure), would amount to penalizing the private schools for adhering to better standards of education?
12. If the implementation of fundamental right under Article 21A is "in such manner as the state may by law determine", as envisaged by the Parliament, whether the temporary nature (hopefully) of the pandemic places the mode of imparting education, outside the purview of the RTE Act as it stands today ?
13. Whether the application of provisions of the Act to "neighbourhood schools" takes online education outside its purview and whether absence of provisions relating to online/distance education is a casus omissus that may be supplied by the Court?

14. What would be the appropriate manner to deal with logistical and financial issues involved in providing the devices and internet connection for online synchronized education and whether Courts are equipped to deal with issues that are essentially within executive domain ?

Mr. Ramesh Singh learned counsel for respondent No.1 also prays that he be given some time to briefly address on these points. At his request list the matter on 26th August, 2020 in the category of „Regular Matters .

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J SANJEEV NARULA, J AUGUST 24, 2020 js