

\220[CP(C) 82/15

1

ITEM NO.1+31

COURT NO.3

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CONMT.PET.(C) No.82/2015 In W.P.(C) No.631/2004

HARIJAN MAHILA (NGO) & ORS

Petitioner(s)

VERSUS

HEERA LAL GUPTA

Respondent(s)

(With appln.(s) for directions and exemption from filing O.T. and impleadment and office report)

WITH CONMT. PET.(C) No.27/2016 In W.P.(C) No.631/2004

(With appln.(s) for filing addl. paper(s) and appln.(s) for directions and appln.(s) for impleadment and office report)

CONMT. PET.(C) No.464/2016 In W.P.(C) No.631/2004

(With office report)

Date: 04/10/2016 These petitions were called on for hearing today.

CORAM :

HON&#39;BLE MR. JUSTICE DIPAK MISRA

HON&#39;BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Prashant Shukla, Adv.

Mr. Vishnu Shankar Jain, Adv.

Mr. K. Paramashwar, Adv.

Ms. Abha R. Sharma, AOR

CP(C) 27/16 & Mr. K. Paramashwar, Adv.

CP(C) 464/16 Mr. Prashant Shukla, Adv.

Mr. Vishnu Shankar Jain, Adv.

Mr. Satyajeet Kumar, AOR

For Respondent(s)

Mr. Aftab Ali Khan, AOR

Mr. Ravi Prakash Mehrotra, AOR

Mr. Satyajeet Kumar, AOR

Dr. Rajeev Sharma, AOR

Mr. Ram Anugrah Singh, Adv.

Mr. Robin Babu, Adv.

CP(C) 82/15

2

Mr. M.R. Shamshad, AOR

Mr. Andleeb Naqvi, Adv.

Mr. Vaibhav Yadadv, Adv.

Mr. Aditya Samaddar, Adv.

Ms. Harshita Deshwal, Adv.

UPON hearing the counsel the Court made the following

O R D E R

This Court on 19 th September, 2016, had passed the following order:-

â S As this matter relates to State of U.P., let it be listed on 4th October, 2016, along with connected matters. â \235

Mr. K. Paramashwar, learned counsel appearing for the petitioner has submitted that the three districts he intends to verify are, Allahabad, Kaushambi and Fatehpur. Learned counsel appearing for the State of U.P. has submitted that they are not the adjacent districts and, in fact, the petitioner in the guise of this prayer intends to sustain the prayer for appointment. Mr. Paramashwar, learned counsel for the petitioner submits that though there is a prayer seeking appointment, he does not intend to press the same.

At this juncture, Mr. M.R. Shamshad, learned counsel appearing for the State of U.P. has submitted that when the districts are not adjacent, it may be difficult. We asked him to choose one district. On a consensus, the district of Allahabad has been selected. Certain Upper Primary and Primary Schools of the district have to be verified by the

Committee. At this juncture, Mr. Parameshwar has drawn our attention to paragraph 9 of the judgment rendered in Environment & Consumer Protection Foundation vs Delhi Administration and Others [W.P.(C) No.631 of 2004]. Paragraph 9 of the said judgment reads as follows:-

CP(C) 82/15

3

â- S 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 girl, 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.â- \235

Mr. Parameshwar has also drawn our attention to the order dated 12 th

March, 2012, which has been incorporated in paragraph 6 of the said judgment. It reads as follows:-

â- S 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, then at least temporary toilet facilities were directed to be made available on or before 28 th 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.

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, Uttarakhand, Odhisha, Karnataka, Jharkhand, Himachal Pradesh, Goa, Municipapl 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.

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

CP(C) 82/15

4

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

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.

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 "STotal Sanitation Campaign" (TSC), the Central Government supplements 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, 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 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
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 of Rs.3068.51 crore approved for School Sanitation under TSC, Rs.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

CP(C) 82/15

5

29.2.2012 are tabulated and enclosed along with the 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 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
Government Schools with Girls Toilet -	6,24,074
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.

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.

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.

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.â- \235  
It is urged by Mr. Parameshwar that despite the aforesaid stand taken by the State of U.P., nothing has been

CP(C) 82/15

6

done.

In view of the aforesaid, we appoint the Committee consisting of Mr. Ashok Gupta, learned senior counsel as the Chairman of the Committee, Mr. Gaurav Agarwal and Mr. Gopal Sankaranarayanan, learned counsel as the Members of the Committee, to go to the district of Allahabad and submit us a report in the lines of the directions given for the State of Telangana. Needless to say, the State administration shall provide all the facilities to the members of the Committee and their fees shall be paid by the State. Mr. Shamshad, learned counsel for the State of U.P. shall discuss with the Committee members and determine the fees. The Committee shall initiate the visit within two weeks hence and, thereafter, submit an interim report within four weeks. The petitioner is at liberty to give a list of the Upper Primary and Primary schools to the members of the Committee.

Let the matter be listed on 28 th November, 2016.

(Chetan Kumar)

Court Master (H.S. Parasher)

Court Master