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NHRC – LC-I NATIONAL MOOT COURT COMPETITION, 2015

FEBRUARY 20-22, 2015

Organized in collaboration with
NATIONAL HUMAN RIGHTS COMMISSION

Moot Court Proposition

Constitution (Eighty-sixth) Amendment Act, 2002 added Article 21A in Part III of the Constitution of India, thereby making right to education a fundamental right of the children belonging to the age group 6-14 years. In furtherance of this right, Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.

States in India have made or are in the process of making their own State Rules under the RTE Act. X is one of the States in India which has brought into force “X State Education Rules” on 1st April, 2014 under the said Act.

The RTE State Rules are meant to be positive step towards providing free elementary education and ensuring compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group.

On 28th October 2014, 22 children died and 37 others were admitted to hospital after consuming the midday meal provided in the Government Girls School of Y District in X State.

Mr. Pannalal, a rickshaw puller, has a daughter, Naini who is 8 years old and studies in class III in the school where the incident took place. Naini luckily did not attend school that fateful day due to fever and was saved from consuming the poisonous food. After that incident, Mr. Singh did not send Naini to school fearing threat to her life due to midday meal poisoning in school.

On 10th Nov. 2014, the Education Department officials who came for school inspection in Govt. Girls School of Y District found that Naini and many other students have been absent

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from school continuously from 29th October, 2014. A notice was sent by Director of Education to Mr. Pannalal and 22 other parents/guardians on 12/11/2014 asking them to explain why fine should not be imposed under section 10 of the State X Education Rules, 2014. It was further stated that if no reply is received within the stipulated time, the authorities will proceed to implement the penalties provided in section 10 of the said Rules.

Mr. Pannalal and the other similarly placed parents/guardians gave a joint reply on 20/11/2014 to the Directorate of Education that they had not sent their children since 29/10/2014 due to the threat the children faced to their lives from the kind of midday meals provided in the school. On 24/11/2014, the Department imposed a fine of Rs. 1300 (Rs. 300 for the month of October and Rs. 1000 for the month of November, 2014) on all the concerned parents and asked them to send their children to school from the next working day.

Aggrieved by the order of the Director of Education, Mr. Pannalal and others approached the National Human Rights Commission (State X has not established State Human Rights Commission) to intervene in the matter. They wrote to the NHRC that they had been sending their children to school as it meant not only receiving education but also having one mouth less to feed during the day. But the food given to the children in the midday meal are of poor quality, highly adulterated with minimal nutrition. They stated that their children had been complaining of stomach problems every now and then ever since they started going to school. They also alleged that the teachers in the school forced the children to consume the food provided in the mid-day meals even though they themselves would not eat the same.

They, therefore, requested the Commission to intervene in the matter and relieve them from payment of such fine imposed on poor parents like them and save them from compulsorily sending their children to the jaws of death due to the imminent threat posed by such midday meals provided in schools.

On the basis of the application submitted by Mr. Pannalal, the Commission constituted a Committee to look into the quality of the midday meals provided in the government schools in State X. The Committee after conducting due survey, reported to the Commission that the food items used in the midday meals are highly adulterated with non-consumable particles such as brick powder, small pebbles etc. and have high content of pesticides than the permitted percentage. The food are cooked in unhygienic conditions and served in an unhygienic way. The risks of health hazards are much more than the nutritional content of such meal.

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NHRC, after perusal of the status report submitted by the Committee, it filed a petition against State X before the High Court of State X to strike down section 10 of State X Education Rules, 2014 as violative of the right to life and to direct the government of State X to provide nutritious midday meals in the schools before making it compulsory to send the children of the said age group to school.

The High Court upheld section 10 of the State X Education Rules, 2014 on the ground that the fundamental rights under Article 21A can be implemented effectively by using such provisions. Further it also stated that the numerous instances of child labour amongst the weaker section of the society call for such strict steps to discourage the parents/ guardians from not sending their wards to school. The High Court accepted the State government's reply that hygienic midday meals were provided in schools and passed no direction against the government on this issue.

The NHRC then filed an appeal against this order of the High Court. The appeal has been scheduled for hearing by the Apex Court on February 21, 2015.

Prepare written memorials and oral arguments for both the sides.

Drafted by K. Ratnabali, Assistant Professor, Law Centre- I, Faculty of Law, University of Delhi.

Relevant Provisions of the X State Education Rules of 2014

Section 5. Compulsory admission and attendance of child between the age of 6-14 to School.

It shall be compulsory for every child in the prescribed age group of 6-14 years to be admitted to a school in the neighbourhood to a class corresponding to the age of the child.

Section 8. Facilities to be provided by Schools

All schools, whether newly established or in existence should provide the following facilities after the coming into force of the RTE Act in order to start or continue its operation:

.....

(f) provision for adequate and proper midday meal to the children in the school

Section 10. Penalties for non-admission and/or non-attendance of wards

Any parent/guardian of a child/ward, who is in the age group of 6-14 years, is found to have not admitted or sent his/her child/ward to a school will be penalized. He or she may be fined Rs. 1000 for non-admission of his/her child/ward in an academic year and Rs 100 per day for not sending the admitted child/ward to school on a working day without any sufficient reason; but in no case the fine for non-attendance will exceed Rs. 1000 per month. Penalty for non-admission or non-attendance of a child/ward may be waived on reasonable ground to be recorded in writing.

Section 14. Implementing Authority

Officials authorized by Director of Education can inspect the non-admission to, and non-attendance of, children to school. Such authority may also be empowered to impose penalty on the erring parent/guardian for the same.