

Supreme Court of India

Avinash Mehrotra vs Union Of India & Ors on 13 April, 2009

Author: D Bhandari

Bench: Dalveer Bhandari, Lokeshwar Singh Panta

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.483 OF 2004

Avinash Mehrotra . . . . . Petitioner

Versus

Union of India & Others . . . . . Respondents

JUDGMENT

Dalveer Bhandari, J.

1. This important Public Interest Litigation relates to a fire swept through the Lord Krishna Middle School in District Kumbakonam in the city of Madras, Tamil Nadu. The fire started in the school's kitchen while cooks were preparing mid-day meal. In order to protect the rights of life and education guaranteed to all school going children under Articles 21 and 21-A, the petitioner has prayed this Court to bring about safer school conditions.

2. It is alleged that Lord Krishna Middle School is one of the thousands of private schools that have sprung up in response to drastic cuts in government spending on education. This building houses more than 900 students in a crowded, thatched-roof building with a single entrance, a narrow stairway, windowless classrooms and only one entrance and exit.

3. The fire had sparked by dry coconut leaves used as firewood in a nearby makeshift kitchen with thatched-roof. The fire had started when the cooks were preparing mid-day meal under a Mid-day meal scheme popular in Tamil Nadu. It is alleged that the ventilation of the entire school building was extremely poor with only cement-perforated windows. It took sufficient time for the fire fighters on a crane to break these windows and rescue the few children they could with severe burn injuries. The kitchen fire rose so high that the thatched roof of the classrooms caught fire and the blazing roof supported by bamboo poles collapsed on the school children and most of them died on the spot.

4. The nearby residents started dousing the flames and trying to rescue children. The school's narrow, steep stairs and few exits apparently hampered those efforts. The crowd of volunteer

rescuers ended up blocking the main door as they tried to help.

5. According to rules, a government-certified engineer is supposed to visit these schools once every two years and issue a "stability certificate" if the building is found to be in good condition and all safety precautions are met. The engineer can refuse to issue the certificate if he finds the safety measures inadequate, losing the school its licence to operate.

6. It is mentioned in the petition that the investigations have revealed that the school in Kumbakonam was last inspected three years ago. The school had a thatched roof in severe violation of building laws. It even had a thatched kitchen close to the thatched classrooms. The fire officials had described the school as a death trap. They said that the victims had no chance of escape when the fire erupted as they were doing their lessons on the top floor. It is alleged that the incidence of Kumbakonam District is not the first of its kind. In the year 1995, a school prize-giving ceremony in a Northern Indian town turned to tragedy when a fire broke out, killing nearly 400 people, many of them children and teenagers. The fire was caused by an electrical short circuit in the town of Dabwali in the state of Haryana, about 150 miles from the National Capital.

7. Flagrant violation of school safety regulations continues in the entire country even four decades after the government pledged to enforce them after a private school building in Madurai caves in, killing 35 school girls and injuring 137.

8. The petitioner has prayed that he has filed this petition with a specific objective that:

(1) each and every child of this country can receive good education free from fear of safety and security, (2) to ensure that more stringent rules and regulations are framed keeping in mind the safety of the students, (3) to ensure that such standards of safety are at par with the highest standards set up anywhere in the world; and (4) to ensure that such standards are in fact enforced regularly for the safety and protection of children in classrooms across the country.

9. The petitioner has submitted that the concerned building by-laws and rules are not followed by most of the schools in the country causing serious safety hazards for the children.

10. In this petition, it is prayed that along with the existing rules regarding safety, some additional rules be framed to strengthen the laws to protect the children in school buildings in cases of fire and other kinds of emergencies. In the petition, the petitioner has prayed for:

(i) Developing a manual with fire safety procedures, and other safety precautions and distributing them in schools. The manual can include the ways fires can be prevented through careful design, management, and maintenance practice; and ideas for limiting fire damage, and other calamities. Marking clear and safe emergency evacuations. Making sure that all exits are marked clearly and that there are no objects obstructing the Entry and Exit of the school building.

(ii) Ensuring that the kitchen in the precincts of the school has adequate safety mechanisms. Not keeping any hazardous, inflammable material in the school precincts. Not making school buildings

with inflammable material like thatched roof, or having any exposed wires in the school.

(iii) Separating hazardous areas from the main school.

(iv) Ensuring that the schools are not exceeding the limit of the students it can admit in accordance with the facilities available for each school, ensuring proper facilities like safe drinking water, toilets, first aid boxes, proper ventilation, lighting etc is available to the students and the teachers.

(v) Schools must take appropriate safety measures and an emergency response plan that delineates staff responsibilities, communication modes, and training and updating procedures for all members of the faculty, staff and students. Assigning duties to teachers in case of an emergency like fire, earthquake, flood, a mob attack etc and training the staff to ensure that all safety precautions are followed.

(vi) Fire insurance coverage should be made mandatory for all schools. This will also help as all insurance companies will definitely inspect the school premises before agreeing to provide insurance cover, thereby ensuring adherence to the highest safety standards by the schools.

(vii) Residential schools to have proper safety measures in case of using boilers, kitchen, ensuring that there is no leakage while using or storing fuel, and that it is outside the reach of children. All school buildings must install fire extinguishing equipment and sensor alarms in case of fires. Such alarms must be able to automatically intimate the nearest local fire station so that their response times are much quicker in case of fire.

(viii) Regular fire drills to make students aware of what to do in case of a fire emergency.

(ix) The States should deal with all aspects of safety within schools pertaining to classrooms, kitchen, laboratories, and libraries and outside schools relating to playgrounds, swimming pools and field trips.

(x) There should be a policy prescribing safety audits in all schools vide which an assessment of the extent to which the stipulated safety procedures for a particular area/task are followed can be done. Audits can be used to identify weaknesses in safety norms and check compliance with set standards and reinforce positive safe behaviour.

(xi) The local authorities in both urban and rural areas should be given specific directions with regard to the safety measures by the respective State Government.

11. In the petition, it is averred that the State is duty bound to protect and secure lives of students across the country by ensuring the minimum safety standards. The State is liable to promulgate policies, which ensure the implementation of the safety laws and procedures laid down. The State must ensure that the government-certified engineer visits each and every school at least once in two years and issued a 'stability certificate'. If the building is found to be in good condition and all safety precautions are met. There should be strict supervision on those engineers who can issue these

kinds of certificates. It is alleged that most of the Indian private schools in district towns are dull, claustrophobic, cramped and often have derelict structures with no fire safety systems, playgrounds or libraries. Most of these private schools in the district towns are located in a warren of congested lanes and school authorities often lock the gates when classes are on to keep children from slipping out of the school. Most of the schools in the villages and small towns are still made of thatched roofs made from coconut leaves or other cheap and easily available materials to avoid the cost of construction in flagrant violation of the building laws.

12. It is prayed in the petition that a committee of jurists, legal experts and lawyers be constituted to formulate a comprehensive report in a time bound plan for carrying out reforms in the safety standards as prescribed in the schools and to direct all the schools to implement the plan, alternately to come forward with their own plan for providing safety measures in the schools. It is further prayed that this Court should evolve model safety standards as a part of Article 21 and for free and fair exercise of fundamental rights under Articles 14, 15 and 19 of the Constitution of India.

13. In this petition, we are called upon to determine what, if any, safety standards schools should have and how, if at all, schools have not met those standards.

14. The National Building Code of India, 2005, promulgated by the Bureau of Indian Standards, provides detailed instructions on how to construct fire-safe buildings. Tables and drawings set standard for schools particularly, including number and type of fire extinguishers, quantity of water necessary for a proper fire suppression system, and many more, providing an engineer-tested, nationally applicable set of standards that our schools could follow. In the introductory materials for the Code, the Bureau of Indian Standards affirms the petitioner's claim in this case:

"The hazards of fire in educational buildings can be considerably lowered by adoption of certain predetermined fire safety measures with regard to proper planning of buildings, choice of proper materials and components, electrical equipments and making suitable provisions for fire detection and suppression system."

15. This Court issued notice to the Union of India, State Governments and the Union Territories. Replies and counter affidavits have been received from almost all the State Governments and the Union Territories and also the Union of India. This Court appointed Mr. Colin Gonsalves, learned Senior Advocate as Amicus Curiae. He also suggested some guidelines which need to be followed by all schools in the country.

16. 27 States and Territories have filed affidavits in this Court detailing the current safety of their schools and plans for improvement. The States admit that many schools do not meet self-determined safety standards, let alone the more rigorous standards of the National Building Code. The affidavits generally focus on plans for improvement, rather than schools' current conditions, because much work remain. Where States have provided detailed counts of schools and installed safety features, it emerges that thousands of schools lack any fire suppression equipment. Thousands more schools do not have adequate emergency egress or non-inflammable roofs. Unfortunately, most States failed to provide any quantitative data in their affidavits. Instead these

States filed vague plans for future renovations and piecemeal schemes to improve schools safety. Little technical advice informs some of the plans, and few have any admitted force of law or fail-safe or follow-up mechanism from the State Government.

17. While we applaud States' efforts to improve schools, we find that States have done too little, too late. With the guidance of the National Building Code and affidavits in this case, we view Mr. Gonsalves's brief as crystallizing a minimum set of safety standards for schools. By their own admission, States have not met these standards and they have welcomed this Court's guidance in achieving improvement. We will consider in more detail the exact standards required and relief sought later in this view. It is clearly borne out from the affidavits filed by the respondents that even the basic fire extinguishing equipments have not been installed in most of the schools. Majority of the schools do not have emergency exits. The schools must realize and properly comprehend the importance of the fire safety equipments, but unfortunately most of the schools do not have fire extinguishing equipments and consequently, the schools are not following the minimum safety standards prescribed by the Building Code, the Bureau of Indian Standards.

18. Despite best intentions and frequent agreements, these codes and safety standards rarely bind builders in law or practice. State or local governments must enact Building Codes before any may have the force of law. Some Building Codes exist in law, but few states or municipalities have enacted a standard as rigorous as the National Building Code. Weak enforcement often then moots the enacted code's effectiveness, no matter the Code's intent, whether fire safety officials, routinely speak to the need for meaningful standards with real enforcement.

19. In the petition, the petitioner does not seek damages or court's finding on culpability. The main intention of filing this petition is to protect against similar future tragedies by improving the conditions of the schools in our country.

20. Education occupies an important place in our Constitution and culture. There has been emphasis on free and compulsory education for children in this country for a long time. There is a very strong historical perspective. The Hunter Commission in 1882-83, almost 125 years ago, recommended Universal Education in India. It proposed to make education compulsory for the children.

21. The Government of India Act, 1935 provided that "education should be made free and compulsory for both boys and girls." While debating in a bill in Imperial Legislation Council in 1911, Shri Gopal Krishna Gokhale strongly advocated that elementary education should be both compulsory and free.

22. Our original Framers of the Constitution placed free and compulsory education in the Directive Principles. The un-amended Article 45 provided that:

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

23. The Kothari Commission on Education set up by the Government of India in 1966 strongly recommended free and compulsory education for children up to 14 years. The Commission observed that there is no other way for the poor to climb their way out of this predicament.

24. Education occupies a sacred place within our Constitution and culture. Article 21A of the Constitution, adopted in 2002, codified this Court's holding in Unni Krishnan, J.P. & Others v. State of Andhra Pradesh & Ors. (1993) 1 SCC 645, in which we established a right to education. Parliament did not merely affirm that right; the Amending Act placed the right to education within the Constitution's set of Fundamental Rights, the most cherished principles of our society. As the Court observed in Unni Krishnan (supra), para 8:

"The immortal Poet Valluvar whose Tirukkural will surpass all ages and transcend all religious said of education:

"Learning is excellence of wealth that none destroy; To man nought else affords reality of joy."

25. Education today remains liberation - a tool for the betterment of our civil institutions, the protection of our civil liberties, and the path to an informed and questioning citizenry.

26. Then as now, we recognize education's "transcendental importance" in the lives of individuals and in the very survival of our Constitution and Republic. In the years since the inclusion of Article 21A, we have clarified that the right to education attaches to the individual as an inalienable human right. We have traced the broad scope of this right in R. D. Upadhyay v. State of A.P. & Ors. AIR 2006 SC 1946, holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education. In Election Commission of India v. St. Mary's School & Ors. (2008) 2 SCC 390, we refused to allow the State to take teachers from the classroom to work in polling places. While the democratic State has a mandate to conduct elections, the mundane demands of instruction superseded the State's need to staff polling places. Indeed, the democratic State may never reach its greatest potential without a citizenry sufficiently educated to understand civil rights and social duties, Bandhua Mukti Morcha v. Union of India & Ors., (1997) 10 SCC 549. These conclusions all follow from our opinion in Unni Krishnan. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.

27. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21A, which reads as follows, places one obligation primarily on the State:

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

28. By contrast, Article 51A(k), which reads as follows, places burden squarely on the parents:

"Fundamental duties - it shall be the duty of every citizen of India who is the parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

29. The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.

30. This Court has routinely held that another fundamental right to life encompasses more than a breath and a heartbeat. In reflecting on the meaning of "personal liberty" in Articles 19 and 21, we have held that "that 'personal liberty' is used in the article as a compendious term to include within itself all the varieties of rights which go to makeup the 'personal liberties' of man." *Kharak Singh v. State of U.P. & Ors.* AIR 1963 SC 1295, para 16. Similarly, we must hold that educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child study in a quality school, and a quality school certainly should pose no threat to a child's safety. We reached a similar conclusion, on the comprehensive guarantees implicit in the right to education, only recently in our opinion in *Ashoka Kumar Thakur v. Union of India & Ors.* (2008) 6 SCC 1.

31. The Constitution likewise provides meaning to the word "education" beyond its dictionary meaning. Parents should not be compelled to send their children to dangerous schools, nor should children suffer compulsory education in unsound buildings. Likewise, the State's reciprocal duty to parents begins with the provision of a free education, and it extends to the State's regulatory power. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right and civic duty. States thus bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education.

32. In the instant case, we have no need to sketch all the contours of the Constitution's guarantees, so we do not. We merely hold that the right to education incorporates the provision of safe schools.

33. This Court in *Ashoka Kumar Thakur's* case (*supra*) observed as under:

"It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why

the judiciary must oversee Government spending on free and compulsory education."

34. In view of the importance of Article 21A, it is imperative that the education which is provided to children in the primary schools should be in the environment of safety.

35. In view of what has happened in Lord Krishna Middle School in District Kumbakonam and other incidents which have been enumerated in the preceding paragraphs, it has become imperative that each school must follow the bare minimum safety standards, in addition to the compliance of the National Building Code of India, 2005, in particular Part IV - Fire & Life Safety and the Code of Practice of Fire Safety in Educational Institutions (IS 14435:1997) of the Bureau of Indian Standards. The said safety standards are enumerated hereinbelow:

### 3.1 FIRE SAFETY MEASURES IN SCHOOLS:

i. Provision of adequate capacity and numbers of fire extinguishers of ISI marks to be provided in eye-catching spots in each block of the school. ii. First Aid kits and necessary medicines should be readily available in the school.

iii. Provision of water tank and separate piping from the tank with hose reel to the ground floor and first floor.

iv. Fire fighting training to all teachers and students from X to XII standards.

v. Fire Task Force in every school comprising of Head of the institution, two teachers / staff members and one member from the Fire and Rescue Department should be constituted. The Fire & Rescue Department member shall monitor and make fire safety plan and conduct inspections once in every three months.

vi. Display of emergency telephone numbers and list of persons to be contacted on the notice board and other prominent places.

vii. Mock drills to be conducted regularly. Fire alarm to be provided in each floor and for rural schools separate long bell arrangement in case of emergency.

viii. All old electrical wiring and equipment shall be replaced with ISI mark equipments and routine maintenance conducted by the School Management in consultation with the Fire and Rescue Department.

ix. No High Tension lines should run inside or in close proximity to the school. Steps must be taken to shift them if they are already there.

x. The Fire and Rescue Department shall frame guidelines with "DOS and DON'Ts" for schools and issue a fitness certificate, which shall be renewed periodically.

3.2 TRAINING OF SCHOOL TEACHERS & OTHER STAFF: i. The teachers along with other staff shall be trained to handle safety equipment, initiate emergency evacuations and protect their students in the event of fire and other emergencies by the Fire and Rescue Department.

ii. They shall also be trained in providing emergency first-aid treatment.

iii. There shall be a School Safety Advisory Committee and an Emergency Response Plan drafted by the Committee in approval and consultation with the concerned Fire & Rescue Department.

iv. Emergency Response Drills conducted at regular intervals to train the students as well as the school staff. v. All schools to observe Fire Safety Day on 14th of April every year with awareness programs and fire safety drills in collaboration with the Fire and Rescue Department.

### 3.3 SCHOOL BUILDING SPECIFICATIONS:

i. The school buildings shall preferably be a 'A' Class construction with brick / stone masonry walls with RCC roofing. Where it is not possible to provide RCC roofing only non-combustible fireproof heat resistance materials should be used.

ii. The nursery and elementary schools should be housed in single storied buildings and the maximum number of floors in school buildings shall be restricted to three including the ground floor. iii. The School building shall be free from inflammable and toxic materials, which if necessary, should be stored away from the school building.

iv. The staircases, which act as exits or escape routes, shall adhere to provisions specified in the National Building Code of India 2005 to ensure quick evacuation of children.

v. The orientation of the buildings shall be in such a way that proper air circulation and lighting is available with open space all round the building as far as possible.

vi. Existing school buildings shall be provided with additional doors in the main entrances as well as the class rooms if required. The size of the main exit and classroom doors shall be enlarged if found inadequate.

vii. School buildings have to be insured against fire and natural calamities with Group Insurance of school pupils.

viii. Kitchen and other activities involving use of fire shall be carried out in a secure and safe location away from the main school building.

ix. All schools shall have water storage tanks. 3.4 CLEARANCES & CERTIFICATES:

i. Every School shall have a mandatory fire safety inspection by the Fire and Rescue Services Department followed by issuance of a 'no objection certificate' to the School as a mandatory

requirement for granting permission for establishing or continuation of a School.

i. An Inspection Team consisting of experts like a Civil Engineer, a Health Officer, a Revenue Officer, a Psychologist, a Fire Officer, a local body officer and a development officer besides the educational authorities shall carry inspection and assessment of infrastructural facilities before the commencement of each academic year. The Team shall submit its Inspection Report to the concerned district Chief Educational Officer.

iii. The building plans for schools shall be prepared only by a Government certified engineer and the PWD Executive Engineer concerned should inspect the building and award a structural stability certificate. Stability Certificates shall be issued by the State or Central Government Engineers only and shall be mandatory for granting permission for establishing or continuation of a School.

iv. In every district, one Recognition Committee headed by a retired judge shall be constituted. Officials from Revenue Department, Public Works Department, Fire Service, Electricity Board, Health and Education Department, a reputed NGO shall be members. They shall visit the schools periodically or at least the erring institutions as listed by the Chief Education Officer. v. Conditional recognition / approval shall never be resorted to for any school.

36. In this petition, we need not take any action contrary to government policy to fulfill the Constitution's mandate. Union and State officials have already filed wide-ranging plans to improve school safety. Along with the National Building Code, a combination of the better parts of these plans would bring the nation's schools to an adequate level of safety. States have also expressed enthusiasm for reform and some have asked this Court expressly for direction.

37. Many States have already begun implementation. The most forward thinking States have enacted and enforced the National Building Code in their schools. Often these States have also created, empowered and funded a state-wide emergency response office. The coordinated efforts and concentration of knowledge in these administrative units make States better able to prepare for emergencies, as much as to respond once the problem has started. For example, the State of Gujarat has established such an emergency management office. Having already settled building codes and other large issues, the State can focus on other aspects of emergency management. With the assistance of outside experts, Gujarat recently created a colouring book to teach children how to respond to emergencies. On a smaller scale, but no less vital, in the Union Territory of Pondicherry, administrators replaced all thatched roofs and allocated an additional Rs.500 lakhs to build pucca classrooms. Some States have counted their schools and know which require repairs; they provided these details in their affidavits along with detailed plans for improvement. We are encouraged by the agreement shared among States that safety must improve. Our order should provide additional stimulus for the general aims of the States' already agreed policy.

38. In the end, we should need to do little but enforce existing laws and encourage States in their own well- intentioned safety programmes. However, in the years since the fire at the Lord Krishna Middle School, some States have moved slowly and safety standards have varied in quality across States. These delays and variations have subjected millions more school children to danger from

fire, earthquakes and other causes, when simple enhancements could offer much greater protection. Articles 21 and 21-A of the Constitution require that India's school children receive education in safe schools. In order to give effect to the provisions of the Constitution, we must ensure that India's schools adhere to basic safety standards without further delay.

39. It is the fundamental right of each and every child to receive education free from fear of security and safety. The children cannot be compelled to receive education from an unsound and unsafe building.

40. In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country.

We direct that:-

(i) Before granting recognition or affiliation, the concerned State Governments and Union Territories are directed to ensure that the buildings are safe and secured from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the concerned engineers and officials must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the concerned officials.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.

41. The Education Secretaries of each State and Union Territories are directed to file an affidavit of compliance of this order within one month after installation of fire extinguishing equipments.

42. List this petition on 07.12.2009 to ensure compliance of this order.

.....J. (Dalveer Bhandari) .....J. (Lokeshwar Singh Pantia)  
New Delhi;

April 13, 2009.