

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. Public Interest Litigation Petition No.3673/2013
Radha Shekhawat vs. State of Rajasthan & Ors.

Date of Order : 20.02.2015

HON'BLE THE ACTING CHIEF JUSTICE MR.SUNIL AMBWANI
HON'BLE MR. JUSTICE PRAKASH GUPTA

Ms. Naina Saraf, counsel for petitioner.
Mr. N.M.Lodha, Advocate General assisted by
Mr. Vishal Sharma, counsel for State-respondents.

1. On 26.11.2014, after noticing that several orders have been passed in the past for providing the essential facility of toilets in the schools run by the State of Rajasthan, the Court had permitted Bharat Gyan Vigyan Samiti, Rajasthan, 80/200, Patel Marg, Mansarovar, Jaipur to carry out a review survey of about 100 schools both at Jaipur and in semi rural and rural areas. The report was submitted on 17.01.2015.

2. On 26.11.2014, we had recorded our dissatisfaction on the report submitted and relied on by learned Advocate General, in which it was reported that the construction of toilets in 176 schools, where there were no toilets, and in 700 out of 1149 schools, where there was only one toilet and there was no separate provision for girls, was reported to be completed very soon. We had pointed out that we are not only concerned with the availability of toilets, but availability of proper toilet facilities, and that there is no use of such toilets for the girls, which provides for only walls to hide, without any

door, roof and any facility of water. We, thereafter, observed as follows:

“We are also pained to observe that the Government, which claims to be committed to the cause of development of girl child and her education, is not providing basic facility for them to study in schools. It is only when the courts have intervened in the matter and passed orders on such basic issues that the facts have been admitted. If there are no proper toilets available in schools for both boys and girls, the promise of school education for all the children will only be a dream.”

3. In the report submitted by Bharat Gyan Vigyan Samiti, Rajasthan on the survey of the school toilets, carried out in the Government Schools in Jaipur district, with the help of law students of various National Law Colleges including the New Law College, Bharathi Vidyapeeth New Law College, Pune; National Law University, Orissa; Dr.Ram Manohar Lohiya National Law University, Lucknow; Baroda School of Legal Studies; Gujarat National Law University as well as University of Petroleum and Energy Studies Dehradun, 154 schools in Jaipur district were covered. The total number of children, who were enrolled in 138 schools, were 23,102 of which 56.1% were girls, 31.77% of children were from SC, 15.94% belonged to the Muslim minority, 12.71% were ST, 26.55% were OBC. In these schools, only 13.04% students were found from General category. The survey has brought out interesting statistics, which shows that the government schools are mainly being accessed by the vulnerable and deprived sections of societies. The persons from general category, with better

economic conditions in the society, are preferring private schools to the public schools, run by the State Government.

4. It was observed by the law students, in their reports, which have been compiled by the Bharat Gyan Vigyan Samiti, Rajasthan, that the facility of toilets is fully inadequate. The observations, in the report with regard to availability of water, toilet infrastructure and funds as well as recommendations, are quoted as below:

"It was observed that

- 47 schools don't have any toilets for boys (36%), 74 schools have only 1 toilet for boys (54%) of the total toilets, therefore 90% of the schools have one or less than one toilet for boys. In*
- 24 schools have no toilet for girls which are approximately 20% of the total schools. 94 schools have 1 toilet which is 67% of the total schools, Therefore 87% of the schools have 1 or no toilets in schools for girls.*
- 67 which is 48% of the schools have no separate toilets for staff.*
- For boys, 41(30%) schools have no Urinals and for girls, 43(30%) schools have no Urinals and for staff in 75% of the schools have no urinals.*
- Out of 138 schools (12%) are no toilets, 34 schools (25%) of the total schools have only one toilet and 70 schools (51%) have two toilets for students. Hence more than 37% schools have one or less than one toilet and 88% schools have two or less than two toilets for students. This data does not include exclusive staff toilets.*
- Child Toilet/ Urinals Ratio: The Norms of the Water Sanitation Hygine programme for school (WASH) for toilets are, 1 toilet for 80 boys and 1 toilet for 40 girls. The findings show that for boys, 68% schools have a ratio of one toilet per 80 boys, while for girls only 28% schools have one toilet for 40 girls.*
- WASH norms for Urinal are 1 Urinal for 20 boys and 1 Urinal for 20 girls. The finding show that for boys that 18% (20 Schools) have the ratio of one urinal for 20 boys and for girls only 19%(12 schools) have a ratio of one urinal for 20 girls.*

There are fewer toilets and urinals for boys and this results in boys using any open space near the schools

or using the walls of the school building or its boundary as the place for toilets. The boys hence learn that they can urinate in any place and they do not develop any concept of cleanliness of toilets or personal hygiene (washing hands after urination).

Water availability

Water was made available in schools and in toilets through either of the sources of taps, well, hand-pump, tanks (filled by tankers, pipeline, rain-water harvesting). Rain Water harvesting was available in only two schools.

- Water in toilets was available only in 67 schools (48.55%).
- in 71 schools water was not available in toilets (51.45%)
- Water in urinals was available only in 72 schools (52.15%).
- In 66 schools water was not available in Urinal (47.85%).

Toilet infrastructure

Overall the infrastructure of the toilets and urinals was from bad to pathetic. In 90 (66%) schools the condition of the toilets was awful with either damaged toilet/ urinal buildings, damaged squatting Pans, broken pipes, roofs absent or damaged, doors missing or damaged or doors without latches inside which results in security concerns for the girls. Of these schools the toilets were still being used in 14 schools. The teachers said that urinals had been designed without roof.

Toilet Cleanliness

- Out of 138 schools there was only one school which had no toilet or any urinal.
- 104 toilets which is 75% of school toilets were found dirty and in all these schools there was no water and there were no Safi Karmachari to clean the toilets.
- Out of 138 schools, toilets in 105 schools were being used by children inspite of their poor conditions including cleanliness, non-availability of water and damaged infrastructure.

Due to the poor condition and bad cleanliness of the toilets the students go either to their homes or use open spaces and then do not come back to school after that. Girls at the time of menstruation do not come to school where the toilets are dirty and there is no running water.

The cleanliness and maintenance is dependent on the

initiatives taken by the principal and teachers besides the availability of water in toilets. Safi Karmachari is not appointed in most places for cleaning. **A serious concern that we would like to highlight is that the girls and children from the SC communities are made to clean toilets by the teachers and the administration of the school. Very obviously these children face discrimination in our public schools because they belong to the SC communities, reinforcing the evil of untouchability and caste rules of traditional societies.**

There are fewer toilets and urinals for boys hence the boys grow up with the impression that they can urinate anywhere. Separate toilets are not available for girls and even when these exist, many are poorly maintained or are inadequate in number. There are major security concerns especially for girls regarding the infrastructure of the toilets especially in schools where there are no roofs or damaged roofs, absence of latches, absence or damaged doors.

Funds

There was no clarity on the amount of funds to be received and spent for cleanliness. The schools received different amounts of money.

Recommendations

It is recommended that all schools should fulfill the norms of the student toilet/ urinal ratio for boys and girls. The schools should be given clear guidelines on the norms and standards. The funds for cleanliness should be given regularly with clear instructions. All information should be available on the SSA website.

Teachers should be oriented on how to have good standards of cleanliness and maintenance also how to focus on aspects of socializing, hygiene, sanitation in schools besides studying their course books.

It must be ensured that Separate toilets should be available for girls and water facilities are there in each school toilet and urinal. The cleaning of toilets by girls or SC communities should not be tolerated, arrangement should be made for maintain cleanliness Safi Karmachari should be contracted for cleaning.

Infrastructure of toilets should be maintained with proper roofs, absence of latches, absence or damaged doors. There are major security concerns especially for girls regarding the infrastructure of the toilets especially in schools where there are no roofs or

damaged roofs, absence of latches, absence or damaged doors. There are major security concerns especially for girls regarding the infrastructure of the toilets especially in schools where there are no roofs or damaged roofs, absence of latches, absence or damaged doors.

The urinal design of the schools should change for girls and boys, there should be roofs in the urinals for the elementary section. The present designs is faulty as it has no roof, this is a major concern for the security of the girls.

Regular monitoring by the block and district official of all departments should be undertaken. The school management committees should be oriented and they should also monitor regularly. Special efforts should be made by the principals and teachers to involve the local communities and school management committee (SMCs) for generating funds and maintenance. There should be systems of accountability put in place at every level of the administration and the teaching community towards toilets."

5. The exhaustive, so far as the requirement and availability of the toilets, cleanliness, availability of water, as well as the separate toilets for boys and girls, is an eye opener, and takes wind out of the claim of State of Rajasthan of providing toilets for children, specially girl child in the State of Rajasthan, as well as its claim for adopting and spreading awareness and working on the 'Swachh Bharat Abhiyan' launched by the Government of India. It is brought on record that the number of toilets, claimed to be provided for the students of the government schools, is extremely low, and that the available toilets in broken condition without facilities of water, and are not fit for use. We accept the report and the recommendations.

6. We may point out that the Technical Guidelines for Sanitation Facilities in Schools and Anganwadis, prepared by

the State Water and Sanitation Mission Rajasthan, Jaipur in March, 2005, provided as follows:

“Accessibility : it must be possible to reach facilities at all times and in all weather conditions especially heavy rains.

Minimum requirement of units

Every school should have at least two toilet units, one each for boys and girls. One unit consists of one lavatory and at least two urinals. Based on the requirement the number of urinals/units can be increased in the following manner:-

- Option 1- Upto 100 girls/Boys – One unit (1 lavatory + 2 urinals)
- Option 2- Upto 150 girls/Boys – One unit (1 lavatory + 3 urinals)
- Option 3- Upto 200 girls/Boys – One unit (1 lavatory + 4 urinals)
- More than 200 girls/Boys – More than one unit to be opted, base on the number of boys/girls

Example – Considering future expansion, a school has 235 students (90 boys + 145 girls)

Minimum Requirement of sanitation facilities -

- The number of units for girls – one (1 lavatory + 3 urinals) – option 2
- The number of units for boys – one (1 lavatory + 3 urinals) – option 1

Facilities available -

- Number of lavatories – 1 (common for boys & girls)
- Number of urinals – 2 (one for boys) & one girls)

Balance requirement -

Existing unit may be the considered for boys

One new unit for girls (1 lavatory + 3 urinals) – option B shall be construed.

Toilet technologies and design options

Before selecting a design option, it is necessary to know that toilet complex must consist of urinal, lavatory, junction chamber, water tank, hand washing for instance, drainage systems for urine and pit. The technologies promoted for the construction of the toilet are given below:

1. Pour flush toilet with single or two (lined or unlined) pit with rural pan

Under this technology, the water and gas of the excreta gets absorbed through the pores of the leach pit and solid gets decomposed into manure. It is a

desirable technology.

The Rural Pan

- *Diameter is less than the commercial pan (68m) so that the curvature of the trp is comparatively lesser and requires minimum quatity of water for flushing the faecal matter. Bottom slope of is very steep resulting high velocity of water and excess flushing.*
- *The cost of ½ of the commercial pan.*
- *The width of is comparatively less, which enables children to use them without fear and discomfort.*
- *The depth is more than the commercial pan so that the spillage can be avoided.”*

7. The survey of the school toilets in urban areas, shows that the accessibility of the minimum requirement of units and the availability of water is not as provided by the State Water and Sanitation Mission Rajasthan, Jaipur. The recommendations made ten years ago in March, 2005, have not been carried out even partially so far.

8. A reply has been filed by Shri Maninder Jeet Singh, Technical Officer, RCEE, Government of Rajasthan, Jaipur to the report. In the reply, Shri Maninder Jeet Singh, with the help of the information officially received from the Principals of Government Upper Primary Schools, Madrampura, Vatika and Manda, Viratnagar, has tried to meet the observations in the report of the Bharat Gyan Vigyan Samiti, Rajasthan. It is pointed out with the help of the information received from the Principals of the aforesaid schools, that the toilets are available, and that in the three schools, pointed out in the report, in fact not only there are toilets but also separate toilets have been provided for girls and boys, and that in the six

schools where there is only one toilet is reported, there are separate toilets for girls and boys. So far as the cleanliness are concerned, it is pointed out in the reply that they are making efforts for cleanliness of the toilets, for which now Rs.10,000/- per year has been given for repairs and maintenance of the toilets in rural areas.

9. We are informed that in the schools in the villages, earlier Rs.5,000/- every year was sanctioned for repairs and maintenance which has been increased to Rs.10,000/-, and in urban areas with largerer number of students in Government Schools an amount of Rs.10,000/- was sanctioned, which has been increased to Rs.20,000/-.

10. The survey report, submitted in pursuance to the orders passed by the Court, has brought on record the fact that even where there are toilets available, they are either broken or not suitable for girls, and that all most all the toilets are not being properly maintained. We have already observed that the open and unclean toilets are of no consequence, unless separate toilets are provided for girls and boys, and that each toilet has has a roof and door with a latch by which can be closed, specially for girls, water and that it is regularly cleaned.

11. Learned Advocate General may file a fresh report with regard to completion of the construction of toilets, where there were no separate toilets for girls and boys in the schools in Rajasthan. He may submit a report with regard to the statement recorded in the order dated 26.11.2014.

12. We find sufficient force in the contention of learned counsel appearing for the petitioner that apart from the school staff, who is responsible for construction and maintenance of the toilets, the responsibility should also be shared by the School Management Committee, which is chaired by the parents, and of which the Head Master is the Secretary. Learned Advocate General has also made valuable suggestions that in order to secure availability of toilets in Government Schools and its maintenance, the Sarpanch of Panchayat should also be made responsible. We find sufficient force in the suggestions, inasmuch as, the Eleventh Schedule in the Constitution of India, with reference to Article 243(G), gives the responsibility of availability of drinking water, and education including Primary and Upper Primary Schools, to village Panchayats. The right to receive education for the children guaranteed by Article 21-A of the Constitution of India, includes right to education in a hygienic conditions. The right to education remains unfulfilled, if there are inadequate class rooms, electricity, water and proper toilets in the schools.

13. In order to secure compliance of our orders, which have been passed, on the material submitted by the State Government, targets fixed and the funds allocated, we issue the following directions, as recommended by Bharat Gyan Vigyan Samiti, Jaipur in addition to the directions given earlier by this Court:

- (i) Construction of toilets in adequate number as per norms prescribed by Water Sanitation Hygiene (WASH) program for schools should be completed. This should be followed by Government School as well as in private schools with following norms:-

No. of Toilets / Urinal (Per) No.

1 Toilet 40 Girls

1 Urinal 20 Girls

1 Toilet 80 Boys

1 Urinal 20 Boys

- (ii) Budgeting provisions should be made clear to school staff.
- (iii) There should be separate toilet for school staff.
- (iv) No new school/college should be given recognition/permission or to open without having proper provisions of toilets, urinals and drinking water facility.
- (v) The PHED is directed to provide water connection to every school and the school which can't be provided over head water tanks separately for Toilets/Urinals and Drinking water.
- (vi) The PHED is directed to provide water connection to every school, and the school which can't be provided connection compulsorily be provided over head water tanks separately for Toilets/Urinals and Drinking Water.
- (vii) There should be proper drainage system for all toilets (WC latrines) and urinals.
- (viii) It should be ensuring that the toilets (WC latrines) and urinals should be properly maintained. There should be roofs, proper doors and latches in each toilet.

(ix) There should be regular monitoring by the State Commission for Protection of Child Rights (for short, 'SCPCR').

(x) As observed in order dated 26.11.2014, adequate number of Toilets and Urinals be provided in colleges also.

14. The Sarpanch of the village, will have overall supervision of the provision of toilets, and its maintenance and cleanliness in the schools in rural areas, and that the Schools Management Committee for all the schools both the urban and rural areas, will carry out overall supervision of the provision of maintenance and cleanliness of the toilets and availability of water in all the schools. It will be open to them to report the non-availability of the budget and its disbursement to the Block Development Officer in rural areas and Elementary Education Officer in urban areas.

15. It has been pointed out that the State Commission for Protection of Child Rights (for short, 'SCPCR'), is without a Chairperson for a long period of time. The issues raised in the writ petition are one of the issues, which should be looked after by the SCPCR, and thus we take this opportunity to direct the State Government to appoint a Chairperson of SCPCR, within a period of one month.

16. While reiterating our previous directions and the directions given today, let the report of the implementation of the directions be filed within two months. The report will also give the progress of the statements and progress of the

assurance, made in the order dated 26.11.2014.

List again on 28.04.2015.

(PRAKASH GUPTA),J.

(SUNIL AMBWANI),ACTING C.J.

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All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.
Mohit Tak, P.A.

RAJASTHAN HIGH COURT



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