

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D-730 of 2018

(Muhammad Asim Panhwar V/S Province of Sindh and others)

Constitutional Petition No. D-2645 of 2019

(Khalid Sahoowal V/S Province of Sindh and others)

Date of hearing : 10.12.2019.

Mr. Manzoor Ahmed Panhwar, Advocate for the petitioner in C.P. No. D-730/2018.

Khalid Sahoowal, petitioner in C.P. No.D-2645/2019 present in person.

Mr. Allah Bachayo Soomro, Addl. Advocate General Sindh along with Ahsan Ali Mangi Secretary School Education Dept., Mansoor Rajput Additional Secretary Education, Dr. Hafeez Siyal Deputy Commissioner Badin, Safar Khokhar Director Education (Primary), Muhammad Aslam D.E.O. (Primary) Badin, Nizam Din Chief Engineer, Ahmed Ali Shah Executive Engineer Matiari, and Tahir Ali Dayo Executive Engineer.

ORDER

NADEEM AKHTAR, J. – Both these Constitutional Petitions are being disposed of by this common order as the questions raised therein are common.

2. The petitioners have alleged that the subject school buildings in Districts Badin and Matiari are in dilapidated and dangerous condition, and are not fit or safe for the use of children who come there regularly for education purposes. They have further alleged that respondent No.1 / Education Department, Government of Sindh, has failed to take any step for the repairs and maintenance of the said Government school buildings due to which students are forced to get education in open spaces adjacent to their schools. It is urged by them that the Education Department, Government of Sindh, has turned a deaf ear to the problems of the education sector, more particularly to the dilapidated school buildings. It is further urged that education is a fundamental right of every citizen of Pakistan, therefore, they cannot be deprived of such right guaranteed by the Constitution. Being aggrieved by and dissatisfied with the irresponsible and callous attitude of the official respondents, the petitioners have approached this Court through the instant petitions, praying that the official respondents be directed to allocate necessary funds on urgent basis for regular maintenance of the school buildings in the Province of Sindh and to utilize the same in a proper manner only for such purpose.

3. Upon notice, separate reports dated 10.12.2019 in respect of Districts Badin and Matiari have been filed by respondent No.1 and the Secretary School Education and Literacy Department Government of Sindh, who is present in the Court. By relying upon the comments filed by respondent No.2 / Commissioner Hyderabad, it was submitted by Mr. Allah Bachayo Soomro, learned Additional Advocate General Sindh, that the Government of Sindh is committed to impart education in Sindh and has already allocated necessary funds for proper maintenance of school buildings in the entire province.

4. The present cases deal with the issue of maintenance of Government school buildings situated in the interior Sindh, which are in precarious condition and need immediate repairs and regular maintenance. This aspect has not been disputed by the official respondents, particularly by the Secretary School Education and Literacy Department who is present on Court notice. According to the above reports submitted by him, there are 7,956 dangerous school buildings in the Province of Sindh, out of which 527 are in District Badin and 150 are in District Matiari ; due to limited budgetary allocation, the School Education and Literacy Department, Government of Sindh, could include only five (05) of such school buildings for repairs in the current financial year ; a fund viz. 'Maintenance and Repair Frame Work' (M & R Funds) has been created for which the Government of Sindh has allocated **Rs.3,000.00 million** which will be divided into 'Regular M & R Works' and 'Emergency M & R Works' on the basis of 90% and 10%, respectively ; a committee viz. 'M & R District Oversight Committee' has been constituted which is headed by the Deputy Commissioner of the District concerned, members whereof are the relevant District Education Officer (Primary and Secondary), Executive Engineer (EW) and District Accounts Officer ; and, the purpose, object and functions of the said committee, inter alia, are to monitor the progress of repairs and maintenance of Government school buildings. A firm and categorical assurance has been given before the Court by the Secretary Education Department that the School Education and Literacy Department of the Government of Sindh shall carry out maximum development work on merit and without any discrimination throughout the Province of Sindh, including the subject Districts of Badin and Matiari.

5. On our query as to what other steps and measures could be taken for the regular, proper and timely maintenance of Government school buildings and for proper and transparent utilization of the funds allocated for such purpose, following proposal dated 10.12.2019 has been submitted by the Secretary School Education and Literacy Department, Government of Sindh :

“1. District Development Budget.

Total District Development Budget for Districts in Sindh is Rs.20 billion, which is released and utilized at District level ; Projects are identified and implemented at District level as well. However over 80-85% of funds are normally utilized on road projects. If a certain percentage of District Development Fund is fixed for utilization on School repairs, it will ensure timely selection and fast implementation. If a percentage of 25% of District Development Fund is fixed for Schools maintenance and repair it will resolve this issue substantially.

2. Funds from (i) Bonus Production Fund (ii) Social Welfare Fund.

(i) Several Districts of Sindh have deposits of oil and gas, which are being extracted by various oil and gas companies. These companies are bound by law to deposit certain percentage of their income in above funds to be used under Corporate Social Responsibility (CSR) for the welfare of the population residing in these Districts.

(ii) These funds are being managed at District level at D.C. Office and committee comprising of local public representative and Government officials oversees its expenditures. Identification of schools for repair and utilization of funds at local level will result in better outcome.

(iii) A percentage of these funds, if fixed for schools repairs and provision of quality education will ensure substantive impact on schools buildings and provision of education.

(iv) A 25% share fixed for education sector in these funds will result in substantive improvement inschools and education outcomes.”

6. The steps and measures mentioned in the above reports submitted by the Secretary School Education and Literacy Department and the above written proposal and verbal assurance submitted by him before this Court appear to be a step in the right direction, particularly the constitution of ‘M & R District Oversight Committee’. However, mere submission of proposals and assurances by the Government will not change or improve the situation, unless the same are actually implemented and executed in letter and spirit. According to the ground reality emerged from the above reports and realistically speaking, the steps taken or to be taken by the Government of Sindh are not only inadequate, but are also too slow. As the situation is extremely alarming and sensitive, the Government of Sindh will certainly have to do better than before by taking urgent, sincere, aggressive and extraordinary measures and interest in the same manner in which an emergency is declared in a grave crisis. Thus, an emergency has to be declared by the Government of Sindh in the education sector / department of the entire Province by giving priority to education over other matters. Not only this, justice should be done by the Government with the education sector and with the people seeking or imparting education in such a manner that it should not only be done, but it should be seen to have been done. We are conscious of the fact that the repairs of 7,956 dangerous school

buildings in the Province of Sindh, as reported by the official respondents, will take considerable time, and till the time the said buildings become fully functional, presentable and safe, the safety of students, teachers and other workers of these schools shall remain at stake. Therefore, heavy responsibility lies on the Government of Sindh to ensure that this assignment is completed in all respects in the shortest possible time without wasting the academic term of the students and without compromising on the safety and quality of repairs / construction.

7. The other major concern is that the limited funds allocated for the purpose of repairs and maintenance of Government school buildings must be utilized only for such purpose, and only honest, reliable and competent officers having such reputation and unblemished record should be assigned the task to manage the funds and to oversee and monitor the works so that the funds are not misused, misappropriated or lapsed. Not only this, there must be a proper check and balance system of accountability like periodic or surprise audit of the funds and accounts under the joint supervision of the Chief Secretary Sindh, the Secretary Education Sindh and the Accountant General Sindh in order to maintain proper accounts and to ensure that the funds are utilized only for the specific purpose of repairs and maintenance of Government school buildings. We have been informed that most of the funds allocated for repairs and maintenance of Government school buildings are left at the disposal and mercy of influential and political people of the local areas. Such practice, being improper and not acceptable, is hereby strongly disapproved by this Court as the utilization and disbursement of funds must be absolutely free from arbitrary or whimsical exercise of discretion, political influence and or personal projection, interest or gain of any nature.

8. The Government of Sindh must not lose sight of the fact that the issue at hand relates directly to the fundamental right to education guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973, to every citizen of Pakistan and not just to a limited or selective class of citizens. It will be a clear discrimination, which will be against the basic spirit of the Constitution, if all citizens are not given equal treatment in education. Needless to say that discrimination in any form or at any level is not acceptable either in the Islamic jurisprudence or in the modern jurisprudence. While understanding and interpreting the fundamental rights enshrined in and guaranteed by the Constitution, it must be appreciated that the framers of the Constitution have purposely used the word "*fundamental*" for such rights in order to place such rights on a higher pedestal than other common rights available to a citizen, and also to emphasize upon their importance as being fundamental to the life and

existence of the citizens. Indeed the Constitution guarantees number of valuable fundamental rights to the citizens of Pakistan, and every such right is valuable and important in its own way, but in our humble view the right to education is one of the most important rights and is actually “*fundamental*” in its literal sense because undoubtedly education changes and improves the vision, thinking, knowledge, outlook and attitude of its recipients, and resultantly their quality of life and that of their family members improves. The other positive aspect of education is that an educated person has much more to offer and contribute in the nation-building process, which at present is the dire need of our country. Thus, the overall effect and result of growth in education and making it accessible and common for every citizen is directly linked with the positive growth of the people of the province and the country in all areas of life.

9. Under Article 25-A of the Constitution, which specifically relates to the subject at hand i.e. right to education, it is the duty of the State, which is mandatory in nature because of the word “*shall*” used in the said Article, to provide free and compulsory education to all children between the age of five (05) to sixteen (16) years in such manner as may be determined by law. The State cannot discharge this duty mandated by the Constitution without providing suitable and competitive environment and infrastructure including space / buildings, libraries, books, teaching staff, etc. However, till such time, at least the existing infrastructure must be maintained and preserved, and all resources / funds allocated for such purpose must be utilized with full honesty, sincerity, devotion and dedication so that the standard of education at the level of both students and teaching staff, which is alarmingly poor by all standards, may not deteriorate further.

10. It would not be out of place to mention here that vide order dated 27.12.2013 passed in Suo-Moto Case No.36052/2013 reported as Application by Abdul Hakim Khoso Advocate... (PLD 2014 SC 350), the Hon’ble Supreme Court was pleased to issue certain directions regarding distribution and utilization of Social Welfare Funds received from companies engaged in oil exploration and production (E&P) in Pakistan, towards the development, welfare and uplift of areas of their operation. Therefore, the respondents / District Managements of all the Districts in the Province of Sindh, including Districts Badin and Matiari, are duty-bound to utilize the said funds for the welfare and uplift of the people residing in their respective Districts, including the repairs, maintenance and uplift of the Government school buildings.

11. Learned counsel for the petitioners, learned AAG and the Secretary School Education and Literacy Department, Government of Sindh, agree that the proposal submitted before the Court by the said Secretary, reproduced in

paragraph 5 above, will facilitate the Government of Sindh in improving and maintaining the existing and future infrastructure of the Government school buildings. They have also agreed that an order in terms of the said proposal, and any other or further order as this Court may deem fit and proper, be passed. Accordingly, with their consent the following order is passed :

- A. 25% from each of the (i) District Development Fund / Budget, (ii) Bonus Production Fund and (iii) Social Welfare Fund, in respect of every District in the Province of Sindh, shall be allocated and utilized by the Government of Sindh only for the repairs and maintenance of the Government school buildings of the respective District ;
- B. The Government of Sindh and District Oversight Committee shall ensure that 25% of the above Funds, the yearly budget allocated by the Government of Sindh as well as all other aid(s), grant(s), fund(s) or assistance of any nature received for this purpose by the Government of Sindh / District Oversight Committee, are utilized only for the repairs and maintenance of the Government school buildings ;
- C. The Government of Sindh and District Oversight Committee shall ensure that only honest, reliable and competent officers having such reputation and unblemished record are assigned the task to manage the funds and to oversee and monitor the works so that the funds are not misused, misappropriated or lapsed ;
- D. The Government of Sindh and District Oversight Committee shall maintain proper accounts of the above funds at all times. The Government of Sindh shall ensure that the funds / accounts are audited on quarterly basis i.e. in March, June, September and December every year under the joint supervision of the Chief Secretary Sindh, the Secretary Education Sindh and the Accountant General Sindh ;
- E. The Government of Sindh and District Oversight Committee shall ensure that the utilization and disbursement of funds must be absolutely free from arbitrary or whimsical exercise of discretion, political influence and or personal projection, interest or gain of any nature ; and,
- F. The Chief Secretary Sindh and the Secretary Education Sindh are jointly and severally directed to submit compliance report in the above terms to this Court on quarterly basis within fifteen (15) days of the audit of every quarter i.e. latest by 15th day of April, July, October and January every year, along with audit report for the relevant quarter. The compliance

report shall be submitted by them simultaneously at the Principal Seat of this Court at Karachi through MIT-II and also at the Circuit Court Hyderabad through Additional Registrar.

12. Office is directed to issue notice along with a copy of this order to the Chief Secretary Sindh, the Secretary Education Sindh and the Accountant General Sindh for compliance.

13. Foregoing are the reasons of the short order announced by us on 10.12.2019, whereby both these petitions were allowed with the consent of the parties.

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