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To,
The Chief Justice
High Court of Rajasthan
Jaipur

Dear Hon'ble Chief Justice,

This is to draw your kind attention to a matter of grave concern regarding the blatant violation of the Fundamental Right to "free and compulsory education" granted to every child in the age group of 6-14 years under Article 21A, as a consequence of 'The Constitution (Eighty-Sixth Amendment) Act, 2002'. It is with respect to the Notice dated 02.12.2005 issued by the Jaipur Development Authority (JDA) to DIGANTAR (i.e. Digantar Shiksha Evam Khelkud Samiti), an innovative educational institution of national repute, to move its Bandhyali School located on village land near Jaipur and vacate the land forthwith. I understand that the JDA has reserved this land for allotment to a "Mahima Shiksha Samiti" for setting up a private university. DIGANTAR moved the Hon'ble High Court of Rajasthan and got a stay order directing the JDA to first consider its long-pending application for allotment of land.

The Bandhyali School was established in 1992 with financial support from the Ministry of Human Resource Development, Govt. of India and this support continued until 2003. The school was shifted to the present land in 1993 that was decided upon by the village communities of Kho Nagoriyan and Bhavgarh Bandhya. The building, constructed with the help of the local people and funds from the Ministry of HRD, comprises 14 classrooms, two toilets and one hand pump. There are 325 children in the school, more than 200 of them being girls. All of the children are from educationally and socio-economically disadvantaged sections of society such as *Malis*, *Muslims* and *Gujjars*.

The Bandhyali School is known nationally for its innovative curriculum and pedagogy and is visited annually by a large number of educationists, teachers and voluntary organizations. It was on the basis of this rich experience that Shri Rohit Dhankar of DIGANTAR was invited to become a member of the National Steering Committee constituted by NCERT in 2004-05 to prepare the new curriculum framework for the nation. Shri Dhankar's insight and vision, rooted in Bandhyali School and DIGANTAR's other neighbouring schools, enabled him to contribute in a major way to the drafting of the National Curriculum Framework – 2005. As a member of the same National Steering Committee, I was myself a witness to this national contribution that was made possible due to the experience drawn from a group of village schools run by DIGANTAR near Jaipur of which the Bandhyali School is a prominent member.

The reason why the said JDA's Notice amounts to a blatant violation of the Constitution is because the Bandhyali School has been **providing absolutely free education up to elementary level** (i.e. Class VIII) to disadvantaged village children in the 6-14 age group from its inception in 1992. The task becomes even more significant since the majority of the children benefiting from the school are girls. It may be noted that the state government has failed to fulfill its obligation towards guaranteeing the Fundamental Right under Article 21A as Rajasthan is one of the most educationally backward states in the country. The failure of the state government also needs to be viewed in the context of Supreme Court's Unnikrishnan Judgement (1993) which ruled that the original Article 45 of Part IV must be read in harmonious conjunction with Article 21 since Right to Life loses its meaning if it is deprived of education. In this sense, the Bandhyali School is acting **as an instrumentality** of the state government for fulfilling the latter's Constitutional obligation of providing free education to children in the 6-14 age group.

In this context, we may also take note of the recommendation of the Group of Experts (popularly known as the Tapas Majumdar Committee), constituted by the Govt. of India, to assess the financial requirements for operationalising the free and compulsory education legislation. The Group of Experts in its Report (January 1999) stated:

“From being an *incremental* developmental goal in the process of education for all, UEE [Universalisation of Elementary Education] has, in consequence of the [Unnikrishnan] judgment, now become a *justiciable entitlement* of every Indian child entitlements sanctioned by the Constitution cannot be deferred by the State *at its convenience* The State has to make the necessary reallocation of resources, by superseding other important claims, if necessary, in a manner that the justiciable entitlement can become a reality. This may call for restructuring of all government spending, forcing the State to cut down even on spending that it would otherwise consider as essential, but which was not covered by any of the Fundamental Rights guaranteed by the Constitution. (italics added)”

It follows, therefore, that neither the state government nor any of its agencies/ authorities can be allowed to **supersede a claim under the Fundamental Right to education in favour of a claim that is not covered by any of the Fundamental Rights**. A cause like allotment of land for a private university, as per JDA's decision, is not covered by any of the Fundamental Rights since it is meant to provide commercialized education to students **over 18 years of age** and who will be, by and large, **drawn from the privileged sections of society**. More than half of the nation's children do not finish even class VIII and almost 80-85% of SC girls and 90% of the ST girls do not finish class X. There is no question, therefore, of any benefit flowing from a *profit-oriented* private university to the vast majority of the population of Rajasthan. The decision of JDA, therefore, to give greater priority to “Mahima Shiksha Samiti” for setting up a private university than to DIGANTAR for providing free elementary education through Bandhyali School amounts to a major violation of the Constitution, as it constitutes denial of Fundamental Right to education. JDA's action is further aimed at promoting education as a commodity to be traded in the market, rather than supporting DIGANTAR that has been acting since 1992 to develop education as a means of egalitarian social development in consonance with the Preamble to the Constitution and in fulfillment of Fundamental Right under Article 21A read along with Articles 15 (1), 16 (1), 19 (1) (a), 21 and 24 respectively.

If the JDA is allowed to succeed in implementing its Notice dated 02.12.2005, it would then amount to rendering the 86th Constitutional Amendment meaningless. It would also mean that the very purpose with which the Govt. of India drafted the “Right to Education Bill, 2005” as required by Article 21A and is going to bring it to the Parliament, will stand defeated. I say this with personal knowledge since, as Head & Dean, Faculty of Education, University of Delhi, I took the initiative in December 1997 to convene a national consultation of political parties and academics to debate the previous version of the 86th Constitutional Amendment viz. the 83rd Constitutional Amendment (Dr. Manmohan Singh, the present Prime Minister, had himself represented the Congress Party in this consultation). Further, I was a member of the committee constituted by the Central Advisory Board of Education (CABE) in September 2004 that drafted the aforesaid Bill and presented it to CABE in July 2005 for finalisation by the Govt. of India. More recently, as Co-chairperson of the People’s Campaign for Common School System, I was involved in organizing a ‘National Convention on Right to Education’ in Delhi on 09.12.2005. The Convention was addressed by Justice (Retd.) J.S. Verma, former Chief Justice of the Supreme Court of India and former Chairperson, National Human Rights Commission, who concurred with the view expressed above with regard to the Constitutional obligation of the State to assign priority to a Fundamental Right, particularly when it concerns free education for the children in the 6-14 age group.

Let me conclude, Hon’ble Sir, by quoting Justice (Retd.) V. R. Krishna Iyer who wrote recently (The Hindu, 26 November 2005, page 11) as follows:

“The authoritative interpretation by the Supreme Court holds that dignity and equality of status and opportunity are integral to the right to lifethat education is a cardinal component of human dignity and, therefore, the basic structure of the Constitution the right to education derives an ideational activism, which judicial construction cannot burke or jettison based on the subconscious impact of the dubious mantra of privatization. An integrated value-vision obligates the court to [take] care to remember that the Preamble, Articles 14 and 21 are inviolable, being part of the basic structure of our Founding Deed. This alone gives judges power controlled by its humanist philosophy, which contradicts commercializing and colonializing of education. Commercialisation of the right to education may tend towards cadaverisation of the Constitutional right to life in dignity.”

With this lofty vision of the Constitution, I plead with you to kindly treat this letter as a PIL in the aforesaid matter of JDA’s Notice to DIGANTAR in order to prevent both the Rajasthan State Government and the JDA from acting in violation of the notion of Fundamental Right that is interwoven into the basic structure of our Founding Deed.

With regard,

Yours faithfully,

Anil Sadgopal
Co-Chairperson
People’s Campaign for Common School System