

JURIS OPEN MOOT PROBLEM

Shishuseva – an orphanage run by Missionaries of Jesus came into existence in the year 1978 in the State of Uttar Nagar, a state in India. Missionaries of Jesus is known for its work for upliftment of the downtrodden and poverty ridden women and children in India. Abandoned and destitute children are brought into Shishuseva and find a way out of the clutches of poverty. About 200 children who grew up at Shishuseva have found meaningful occupations and continue to help out the organisation. Today, most children who are brought in Shishuseva are either orphaned or rescued victims of child abuse. Shishuseva also shelters HIV positive children and provides treatment and care to them. HIV positive children are housed in a separate complex in Shishuseva.

Shishuseva also has a school where it provides education to HIV positive children at primary level, after which the children have to be put in another school. In June 2016, 13 HIV positive children, all orphans living in Shishuseva, were admitted in June 2016 in Std. V, VII and IX in St. Peter's High School, a nearby school in Uttar Nagar. Parents of other students from the school vehemently protested their admission and demanded that they be expelled. The school was also under pressure to expel 23 other students from various classes who are also orphans living in the same children's home, although they are not HIV positive. Parents demanded that these 23 students should also be expelled, claiming that they could put their wards at risk. Succumbing to parents' pressure, St. Peter's High School has issued leaving certificates to the 13 HIV positive students.

When contacted, the Management of the school said, "We are caught in a situation where we have to follow the norms, and at the same time are concerned about our students and their parents." The school tried to resolve the issue by addressing the Parent Teacher Association, but this was of no avail. After the meeting, on 25th November 2016, the parents and students of the school, unfazed by the School's address, staged a protest outside the school demanding that the 23 students be expelled. This incident was covered by the National and local media and sparked off a National debate on the Fundamental Rights of persons with HIV, which was telecast on different channels.

After this incident, Shishuseva contacted Balprabodini High School, situated one kilometre from St. Peter's High School with a request for admissions of all the students. However, its request was rejected by the Management of that school stating that they would prefer to avoid law and order and confrontationist issues.

The MLA from this constituency remarked, "I am taking up the issue in the Assembly as this incident should not become a precedent for other schools in the state and even in other states. The parents want us to give in writing that their children will not be HIV positive in future. It is an unreasonable demand."

Shishuseva wrote to the State Department of Education with a request to look into the matter but were informed in writing that,

"The State Department of Education cannot stop any parent from protesting or withdrawing their children from a school. The Department can only to instruct the school that they should not deny admission to any HIV positive student."

Thereafter, Shishuseva approached the State Commission for Protection of Child Rights, AIDS Control Society and the local Panchayat Smt. Malini Vaz, Chairperson of State Commission for Protection of Child Rights called for a meeting which was attended by the Director of the State Department of Education, School Management, two members of the Panchayat and members of the PTA. The meeting failed to resolve the deadlock, with as many as 40 parents resolving to withdraw

their children from the school. 25 parents have already applied for a school leaving certificate, so that they could transfer their wards to other nearby schools.

St. Peter's High School is now under pressure to expel the orphans living in Shishuseva. The Parents Teachers Association (PTA) of the St. Peter's High School, are now demanding the removal of the 23 non-HIV positive students admitted to the school, claiming their presence in school itself, could put the safety of their wards at risk. The fate of all the students of the school from Shishuseva now hangs in balance.

Shishuseva has filed a petition in the Supreme Court of India alleging violation of Fundamental Rights of children.

Prepare arguments for both sides.