

(1993) 08 P&H CK 0163
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8428 of 1993

Amanjot and Another

APPELLANT

Vs

Army Head Quarters Western Command (A Branch) and
Others

RESPONDENT

Date of Decision : 11-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 106 PLR 67

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : H.S. Mathewal and Ranjan Lakhanpal, for the Appellant; Sunil Gaur, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—The matter herein pertains to future of two minor children who clamour for justice with a view to safeguard their career. It is rather in unfortunate circumstances that the petitioners have come to this Court seeking a direction to be issued to the respondents and in particular to respondent No. 3 to readmit them in the school in the classes in which they were studying, after setting aside order Annexure P-5 vide which they were expelled from the school.

2. The brief facts of the case reveal that petitioners, who are brother and sister, were studying in Army Public School, Degshai. The school aforesaid is managed by the Army Headquarters Western Command (A Branch), Chandimandir. On June 3, 1993, Amandeep petitioner No. 2 was given corporal punishment by his House Perfect Sadev Preet and his House Master Rajneesh Sharma. He was caned Mercilessly and made to crawl on his elbows till the same started bleeding. He was also slapped as he could not get his Sports T-shirt issued from the clothing store. Even though he was mercilessly beaten and tortured, he was not given first aid/medical treatment and he could not have his food as he was unable to go to the dining hall due to severe pain.

3. On 5.6.1993, the parents of the petitioner visited the school to attend the annual function. They were distressed to see their child in a hopeless state. Petitioner Amandeep was shown to the Chief Guest Lt. General B.K.N. Chhibar. This visibly annoyed the Principal of the school Mr. V.K. Mehta. Amandeep was, however, brought to Chandigarh and got medically examined at General Hospital. The medical certificate issued by the doctor concerned shows four injuries which could still be detected. This incident of beating was also highlighted by the Press, i.e. The Tribune in its news item which appeared on 7.6.1993, copy whereof, has been annexed as Annexure P3 with this writ petition. The news item with its heading is "Beaten till he limped". The father of the petitioners reported the matter to Union Territory Administration vide his letter dated 13.6.1993. It appears that when the news item aforesaid and complaint addressed by the father of the petitioners came to the notice of the Principal, the petitioners were expelled by issuing them registered letter on that behalf on 30.6.1993. Alongwith the letter of expulsion, transfer certificates were also sent to the petitioners, the same were counter signed by the District Education Officer, Chandigarh Administration. It is pleaded that after expulsion from the A.P.S. Dagshai School, the petitioners were on the road and have not been admitted else where. No notice or letter was ever received by the petitioners before taking the extreme step of expelling them from the school in mid term. On the aforesaid facts, it is pleaded and so argued by Mr. Mattewal, the learned Senior Advocate that the career of the petitioners could not be ruined for no fault of theirs. There was nothing against them which could confer power and jurisdiction with the authorities to expel them from the school. This expulsion would not only waste their one academic year but the parents of petitioners would suffer loss of substantial amount of Rs, 50,000/- which they spent on admission and study for some months when they were in the school. It is further argued that in case some action was to be taken against the petitioners, an opportunity should have been given to them by alleging some activity done by the petitioners that might be prejudicial to the school or its reputation.

4. The cause of the petitioners has been opposed through written statement filed by respondent No. 3 more on technical pleas than on merits of the case. By way of preliminary objections, it is pleaded that this Court has no territorial jurisdiction as the impugned order expelling the petitioners were passed in the State of Himachal Pradesh. It is further pleaded that the writ petition is not maintainable as the same could not lie against a school which was a private registered Society maintaining itself out of its own funds. In that context it is further pleaded that the Board of Governors consists of senior officers of the Armed Forces who are honorary members. The third preliminary objection is that the petitioners have alternative effective remedy of appeal under School Regulation 226 which has not been availed of by them.

5. In so far as the merits of the case are concerned, all that has been pleaded in paragraph 8 of the written statement is that since the parents of the petitioners gave exaggerated version of the incident to the press and or that brought to the

school, action was taken against their children.

6. After hearing the learned counsel for the parties and going through the records of the case, I am of the considered view that the respondent-authorities have acted in this case in absolutely arbitrary manner. It is not denied that petitioner Amandeep was beaten, even though there is some dispute with regard to number and nature of injuries suffered by him. The action has still been taken against Amandeep, who was only a victim and also his sister, who was studying in the school and this action is sought to be supported on the solitary ground that reputation of the school had come under a cloud on account of news item that appeared in the Press. Under the given circumstances, this Court is of the view that no action could be taken against Amandeep, who was all through innocent and his sister, who was not even involved in this episode. It is rather surprising to note that the Principal of the school instead of putting the things right and having some sympathy with the petitioners, had felt pinched about the reputation of the school. The Principal instead should have set his own house in order. The matter does not end there as even if it is assumed that there was some exaggeration in the news item that was published in the Tribune and the same had brought down the reputation of the school, the petitioners, who were teenaged students, could not be held responsible for the same. It is the pleaded case of the respondents themselves that the news item was authored by the father of petitioners and it was he who would have feeded the Press. Further more, no notice of any kind was ever served upon the petitioners or their father and without knowing their view point with regard to the news items and the person who was responsible for leaking it, extreme step of expelling petitioners was taken and that too in the mid stream that is, when the session had progressed substantially when the petitioners could not be admitted anywhere else. The Principal, instead of setting his own house in order, has proceeded to take action against petitioners which has to be held not only to be arbitrary but also an act of high-handedness.

7. So far as the preliminary objections are concerned, it appears that the respondents are unmindful of the provisions of Article 226 of the Constitution of India which, in turn, provides jurisdiction to a Court where cause of action even in part has taken place. That apart, case of the petitioners is that respondent No. 3 is managed by Army Head Quarters, Western Command (A Branch), Chandi Mandir and the same is admittedly within the territorial jurisdiction of this Court. Mr. Mattewal relies upon the decision recorded in Civil Writ Petition No. 1375 of 1988 (Maluk Singh v. The Union of India and Anr.) to contend that the Court, where even a part of action arises, would have jurisdiction to entertain the writ petition.

8. In so far as second preliminary objection is concerned, the same deserves to be rejected in view of ratio of judgment rendered by the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, where it has been held that

"If the rights are purely of a private character, no mandamus can issue, if the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. "It was further observed that "the law relating to mandamus has made the most spectacular advance, Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose. The term "authority" used in Article 226, in the con text, must receive a liberal meaning unlike the term in Article 12". It has been further held that "the "words" any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. It is not disputed that while imparting education, the school is performing public duty.

9. Insofar as third contention of alternative remedy is concerned, the same also deserves to be rejected. If the petitioners are relegated to alternative remedy of appeal under the School Regulation 226, then in the very nature of things it will take a long time and meanwhile at least one academic year of petitioners would be lost. Further, it has not been mentioned as to before which authority of the school the appeal is competent. If the Appellate Authority also consists of the Principal of the school, even as one of its members, it would be an appeal before the person who shall have to judge his own action.

10. For the reasons stated above, this writ petition is allowed and a direction is issued to the respondents and in particular respondent No. 3 to forthwith readmit both the petitioners. Any loss of time that petitioners may have suffered on account of illegal expulsion will not be taken into account for any purpose. They will be permitted to take examination of the classes in which they are studying on the strength of lectures they could possibly attend. This writ petition deserves to be allowed with exemplary costs which are quantified at Rs. 10,000/-.

11. Before I Part with this judgment, I would like to observe, in all fairness to the counsel for respondents, that when I was half way through in dictating judgment, Mr. Gaur said that the Principal will withdraw the order and will admit the petitioners. The proposal was put to the father of the petitioners who was present in the Court and for the reason that he explained to me, I am satisfied that this course of withdrawing the order at this stage should not be permitted. Order Dasti.