

(2018) 07 CAL CK 0102
In the Calcutta High Court
Case No : WP 180 of 2018

Dave Aditya Jefferson Sengupta, Minor, Rep. By Father	APPELLANT
Vs	
Council For Indian School Certificate Exam & Ors.	RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Citation : (2018) 07 CAL CK 0102

Hon'ble Judges : SHEKHAR B. SARAF, J

Bench : Single Bench

Advocate : P. Verma, T. Guray, Chandan Mondal, Sanjoy Kumar Baid, Arunima Lala

Final Decision : Allowed

Judgement

The Court : Heard learned Counsel appearing for both the parties.

Â The writ petition deals with issues with regard to a child of Class-IX in Don Bosco School, Park Street.Â The child has been granted a Transfer

Certificate by the school authorities on several grounds including the fact that a child is suffering from depression and has a habit of injuring himself in

front of his school mates.Â The respondent school authorities submit that keeping the child in the school may result in harm to the other children.Â

They submit that they have received several complaints of parents from other students who are concerned with regard to their ward's safety.Â

Mr. Baid, learned Advocate appearing on behalf of respondent nos. 4 and 5 relies on a judgment of this Court being Purushottam Lal Singhania v.

Delhi Public School reported in AIR 2006 Cal 313, wherein a coordinate Bench had held as follows:

â??7. I do think that writ petition can be entertained for examining whether the

disciplinary action taken by the school is vitiated by arbitrariness or by violation of principles of natural justice.Â An exercise undertaken for such examination will amount to a judicial review of the decision.Â In my view, if it is held that the decision in question can be judicially reviewed by the Writ Court, then it will necessarily follow that the school is amenable to the jurisdiction of the Writ Court with respect to its every action and decision.Â I think such a proposition cannot be laid down for maintaining a writ against an unaided private educational institute.

8. I am unable to agree with counsel for the petitioner that since an allegation has been made regarding infringement of fundamental right, the writ petition has to be entertained just as a matter of course.Â In my view, by simply alleging infringement of fundamental right, the student does not acquire a right to automatic admission of his writ petition.Â In my opinion, it is the duty of the Court to see whether a prima facie case of infringement of fundamental right has been made out.Â In my view, in this case the petitioner has failed to make out any prima facie case of infringement of his son's fundamental right to education.

9. For these reasons, I hold that the present writ petition is not maintainable.Â The remedy (if any) of the petitioner (necessarily for the student concerned), in my view, is available before the ordinary civil Court.Â The writ petition is dismissed.Â There shall be no order for costs in it.Â

Relying on the above judgment, he submits that the writ Court should be extremely slow in entertaining such a writ petition that deals with a student-school relationship.Â He submits that the action of granting the Transfer Certificate to the writ petitioner was keeping in mind the child's welfare. According to him, the child requires to attend a special needs school.Â Granting the Transfer Certificate also allows the child to continue his studies in the next class i.e. class-X.Â In view of the above, he submits that he wants to file an affidavit in support of his submissions bringing on record the various complaints etc. that have been received by other parents.Â On the contrary, learned Counsel on behalf of the petitioners submits that the child is being targeted and the actions of the school authorities is mala fide.

However, after perusal of the documents on record, prima facie I do not find any mala fide action on behalf of the school authorities.Â In light of the

