
(2005) 05 AHC CK 0206

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 38415 of 2005

Dwarika Prasad Pandey, Manager, Junior High School, Known
as Shri Chandra Shekhar Azad Poorv Madhyamik Vidyalay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 21A, 226, 29, 30

Citation : (2005) 5 AWC 4890 : (2005) 2 ESC 1529

Hon'ble Judges : Dilip Gupta, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : Devi Prasad Mishra, for the Appellant; C.K. (sic), S. Shukla, S.C.
Dwivedi, V.K. Singh and Anjali Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for enforcing the Government Orders dated 12.8.1981, 4.12.1984 and 18.3.1985, which place a restriction in opening a new school within 5 Kms. Area of another established and recognised school. The present petitioner claims to be the Manager of the school, which stood established long back in district Kaushambi and has been recognised. The present petition has been filed for restraining the respondent authorities from establishing any other school within 5 Kms. area, and for that purpose, an order dated 23rd April, 2004 has been passed by the respondent no. 5, namely, the District Basic Education Officer, Kaushambi restraining the other persons from raising the construction of school on the representation made by the petitioner. However as the said order is not being complied with, this petition has been filed.

2. Sri D.P. Mishra, learned counsel for the petitioner has submitted that as there is a school established by the petitioner and it is recognised by the respondents, it is not permissible for the State Authorities to open a new school in the close vicinity or within 5 Kms, of the school in view of the said Government Orders, and therefore, this Court should issue a direction to the respondents not to

construct a new school which fall within the ambit of the said Government Orders.

3. Admittedly, the petitioner runs a private school and is charging fee according to his own norms, and there is no case of the petitioner that he is imparting the education free to the children of that locality between the age of 6 to 14 years.

4. In *Bandhua Mukti Morcha v. Union of India and Ors.*, 1984 SC 802, the Hon'ble Supreme Court held that Article 21 read with Articles 39, 41 and 42 provides for protection and preservation of the health and strength also of tender age children against abuse of opportunities and further provides for providing the educational facilities.

5. In *Miss. Mohini Jain v. State of Karnataka and Ors.*, 1992 SC 1858 the Hon'ble Apex Court while dealing with this issue held that without making "right to education" under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of the large majority which are illiterate. The State is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens. The right to education, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution to provide educational institutions at all levels for the benefit of the citizens. The Educational Institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.

6. In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , the Hon'ble Apex Court considered large number of judgments on this issue and came to the conclusion that the right to education is contained in as many as three Articles in Part IV, viz., Articles 41, 45 and 46, which shows the importance attached to it by the founding- fathers. Even some of the Articles in Part III, viz., Articles 29 and 30 speak of education. The Court further held that right to compulsory and free education up to the age of 14 years is a fundamental right of every child.

7. In view to have greater emphasis the 86th Amendment in the Constitution of India was made in 2002 introducing the provision of Article 21A, declaring the right to free and compulsory education of the children between the age of 6 to 14 years as a fundamental right. Correspondingly, the provisions of Article 45 have been amended making it an obligation on the part of the State to impart free education to the children. Amendment in Article 51A of the Constitution inserting the clause-"k1 has also been made making it obligatory on the part of the parents to provide opportunities for education to their children between the age of 6 to 14 years.

8. In view of the aforesaid judicial pronouncements by the Hon'ble Supreme Court and the constitutional amendments in the provisions of Article 21A, 45, 51A(k), it is no more open to any person to approach any Court or Authority that no other person or the State should open a new school for imparting education. The Court is not competent to issue any direction which may run counter to

mandate to the Constitution of India.

9. It is well settled that the Court is not competent to issue a direction contrary to law. (Vide Union of India and Another Vs. Kirloskar Pneumatic Company Limited, ; State of U. P. and others Vs. Harish Chandra and others, ; and Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others, .

10. In State of Punjab and others Vs. Renuka Singla and others, , dealing with a similar situation, the Hon"ble Apex Court observed as under:-

"We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations."

11. Similarly, in Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors. JT 2002 (1) SC 113, the Hon"ble Apex Court has held as under:-

"The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law."

12. In Ram Ganesh Tripathi and others Vs. State of U.P. and others, , while dealing with similar Government Orders the Apex Court observed as under:-

".....This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."

13. In the instant case the Government Orders run counter to the Constitutional mandate. The same are therefore liable to be quashed as Sri C.K, Rai, learned Standing Counsel, appearing for respondent is not in a position to explain under what circumstances the said Government Orders had been passed and what was the purpose of issuing such orders.

14. In addition thereto, the case requires to be examined from another angle. In ground no. 9 the petitioner has tried to explain that opening of a new school in the same village would adversely affect the petitioners school. A question therefore arises as to whether the petitioner has a right to approach the writ Court if his income is diminished, for the reason that a new school for imparting education to the children of the same villages will be started.

15. It is settled law that a person who suffers from legal injury only can challenge the act/action/order etc. Writ petition under Article 226 of the Constitution is maintainable for enforcing the statutory or legal right or when there is a complaint by the petitioner that there is a breach of the statutory duty on the part of the respondents. Therefore, there must be judicially enforceable right for the enforcement on which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the

Court that he has a legal right to insist on such performance. The existence of the said right is the condition precedent to invoke the writ jurisdiction. (The State of Orissa Vs. Madan Gopal Rungta, ; Saghir Ahmad Vs. The State of U.P. and Others, ; The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, ; Kalyan Singh v. State of U.P., AIR 1962 SC 1183; The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, ; K. Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, ; Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others, ; Mani Subrat Jain and Ors. v. State of Haryana, AIR 1977 Supreme Court 276; Thammanna Vs. K. Veera Reddy and Others, ; State of Kerala Vs. Smt. A. Lakshmikutty and others, ; State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, ; Mithilesh Garg, Vs. Union of India and others etc. etc., ; Rajendra Singh v. State of M.P., AIR 1996 SC 2736; Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. and Others, ; Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., ; Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others, ; and Ghulam Qadir Vs. Special Tribunal and Others,

16. In Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , the Apex Court has held that only a person who is aggrieved by an order can maintain a writ petition. The expression "aggrieved person" has been explained by the Apex Court observing that such a person must show that he has more particular or peculiar interest of his own beyond that of the general public in seeing that the law is properly administered, In the said case, a cinema hall owner had challenged the sanction of setting up of a rival cinema hall in the town contending that it would adversely affect monopolistic commercial interest, causing pecuniary harm and loss of business from competition.

17. In M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, , the Hon"ble Supreme Court considered the matter at length and placed reliance upon a large number of its earlier judgments, including The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, and held that the Court must examine the issue of locus standi from all angles and the petitioner should be asked to disclose the legal injury suffered by him.

18. The "person aggrieved" means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive, and it does not include any kind of disappointment or personal inconvenience. "Person aggrieved" means a person who is injured or is adversely affected in a legal sense. (Vide K.N. Lakshminarasimaiah v. Secretary, Mysore S.T.A.T., (1966) 2 M L.J. 199).

19. Whether a person is injured in strict legal sense must be determined by the nature of the injury, considering the facts and circumstances involved in each case. A fanciful or sentimental grievance may not be sufficient to confer a standi to sue upon the individual. There must be injuria or a legal grievance as the law can appreciate and not a stat pro ratione valuntas reasons.

20. In *Thiruvengadam Vs. Muthu Chettiar and Another*, , it has been held that a person can be said to be aggrieved if apart from the general interest such a person, as a member of the public, has particular or special interest in the subject matter supposed to be wrongly decided.

21. In *Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others*, , the Full Bench of Madras High Court while considering the provisions of Madras Motor Vehicles Act, considered the issue and approved the law laid down in *Rex v. Richmond* Confirming Authority, Ex-parte *Hobbit*, 1921 (1) KB 248; and *Rex v. Groom*, ex-parte, *Cobbold*, 1901 (2) KB 157, and laid down the principle as under:-

"The true principle is to determine whether the applicant has an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered."

22. In *Gram Sabha v. Ramraj Singh*, 1968 All. WR 844, this Court held that the expression "person aggrieved" does not include a person who suffers from psychological or imaginary injury; the person aggrieved must necessarily be one whose right or interest is adversely affected or jeopardised."

23. Thus, it is evident from the aforesaid that "person aggrieved" is to be considered in context of the Act involved and is to be restricted to the person, which has wrongfully been deprived of something or wrongfully refused something or his interest/title is adversely affected, but the same does not require a very liberal and wide interpretation.

24. The term "person aggrieved" was also considered and defined in *Re Sidebotham*, 1880 (14) Ch.D. 458, wherein it has been observed as under: -

"The words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something."

25. The party has to satisfy as what is the legal injury caused by that violation of law. More so, a rival businessman does not have a right: to maintain a writ petition only on the ground that by granting another licence in the neighbouring area may break his monopoly and adversely affect his financial interest, as the same does not fall within the ambit of legal injury

26. Thus in view of the above, we are of the considered opinion that petitioner is not entitled to maintain the writ petition for restraining the respondents from opening the new school.

27. Subject to the observations made above, the writ petition is dismissed.

28. The Registry is directed to send a copy of this order to the District Collector,

Kaushambi to enforce it in the instant case forthwith.