

(2010) 01 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 52 of 2010 and CMP No. 62 of 2010

Imtiyaz Ahmad Dar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 1 JKJ 25

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, Judge

1. Petitioner is under-trial prisoner and is presently lodged in Central Jail Srinagar. He has filed this petition with the prayer that respondents be

directed to take steps for allowing him to take the examination for the course ""Moulvi Fazi"" which is commencing from 17th Feb. 2010. It is further

prayed that respondents be directed to provide necessary medical aid to the under-trial (petitioner) as he is suffering from kidney ailment.

2. Heard Id counsel for petitioner. Considered the matter.

3. Ld counsel for the petitioner has referred to the report of the Medical officer which suggest that petitioner has 8 mm stone :n calculi of right

kidney and left kidney Gr-IIIRD hydronephrosis. Ld counsel further submitted that the petitioner-under-trial prisoner in order to save his life

requires immediate medical treatment which may include performing of surgery. It is further submitted that the petitioner under-trial has filed

application form for taking the Moulvi Fazil examination for which admit card has already been issued in his favour. The Id counsel referred to the

documents to substantiate the pleas raised.

4. A person who is facing trial is ordered to be kept in judicial custody by the court of competent jurisdiction. Directing remand of person to the

judicial custody does not mean that he is denuded of the basic human rights or guarantees available to him under the provisions contained in Part-III

of the Constitution of India as applicable to the State of J&K. The petitioner as an under-trial prisoner has all the fundamental rights available to

him subject of-course to the reasonable restrictions placed on such right by law made by the State. Petitioner has right to study and equip himself

with the educational qualifications/degrees even when he is lodged in prison. Petitioner has also right to receive medical treatment. These rights of

the petitioner are traceable to Article 21 of the Constitution of India. Respondents are duty bound to take steps and facilitate the petitioner to take

the examination of Moulvi Fazi. Respondents are also duty bound to provide medical facility which is found to be necessary to protect his life.

Respondents even under the Jail Manual and Prisons Act and Prisoners Act are duty bound to make available these facilities to the petitioner-

under-trial prisoner(s). The respondents are duty bound to honor the commitment made by them in terms of the above referred statute(s).

5. This petition is, accordingly, disposed of with the observation that respondents will take steps in accordance with the law to enable the

petitioner-under-trial prisoner to take Moulvi Fazil examination and will further take steps for ensuring that complete medical treatment in

accordance with the rules is made available to the petitioner-under-trial prisoner. Disposed of.