
(2014) 08 DEL CK 0108

In the Delhi High Court

Case No : LPA 393/2014

Master Sahib Singh Riat

APPELLANT

Vs

Director of Education

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 145 DRJ 124

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Tanmaya Mehta and Ankit Agarwal, Advocate for the Appellant;
Yogesh Saini and Kartik Jindal for V.K. Tandon, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 24th April, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No. 3935/2013 preferred by the appellant. The said writ petition was preferred seeking a mandamus to the respondent, the Managing Committee and the Principal of the Air Force School, Subroto Park, New Delhi to issue Transfer Certificate to the petitioner and further seeking a mandamus against the respondents no. 1&2 Directorate of Education, Government of NCT of Delhi (GNCTD) to initiate action against the respondent School for not issuing and withholding the said Transfer Certificate. Reliefs of compensation and quashing of the demand by the respondent school of Rs. 30,905/- towards fee were also claimed. The mother of the petitioner, Mrs. Neena Singh, was also impleaded as respondent no. 5 to the petition. It was inter alia the case of the petitioner, a minor suing through his father Wing Commander Rana Ranjit Singh Riat:

(i) that the appellant / petitioner was a student of Class II-B in the respondent school in the academic year 2012-13;

(ii) that the appellant / petitioner had applied to the respondent School vide notice dated 26th December, 2012 for a Transfer Certificate;

(iii) that though the respondent school was under an obligation to issue the Transfer Certificate within 48 hours of demand but was not doing so;

(iv) that the appellant / petitioner after leaving the respondent school had been provisionally admitted in Class-III with Manav Mangal Smart School, Sector-64 (Phase X) , SAS Nagar (Mohali) , Punjab and which School was requiring the appellant / petitioner to produce the Transfer Certificate;

(v) that the mother of the minor appellant / petitioner i.e. the respondent no. 5 had filed a complaint dated 30th February, 2013 with the Crime against Women Cell, Delhi against the father of the appellant / petitioner and the respondent school was withholding the Transfer Certificate in collusion with the mother of the appellant / petitioner;

(vi) that the respondent school had also raised a demand for tuition fee inspite of the appellant / petitioner having left the respondent School;

(vii) that the respondent Directorate of Education, GNCTD inspite of the complaint had failed to ensure that the respondent School issues the Transfer Certificate to the appellant / petitioner.

2. The respondent school filed a counter affidavit to the writ petition, pleading, i) that the appellant / petitioner had already been informed that no application in the prescribed form bearing the signatures of both the parents of the appellant / petitioner for issuance of the Transfer Certificate had been received and for that reason the Transfer Certificate had been withheld; ii) that the mother of the appellant / petitioner had written to the school not to issue the Transfer Certificate for any of the three children; and, iii) that the appellant / petitioner was also in arrears of school fee and without clearance of which, the Transfer Certificate could not be issued.

3. The respondent no. 5 i.e. the mother of the appellant / petitioner has also filed a counter affidavit, pleading, a) that the father of the minor appellant / petitioner had shifted the appellant / petitioner to Chandigarh and got him admitted there, to deprive the appellant / petitioner of the love and care of the mother and after forcing the mother to leave the house on 12th October, 2012 in only two clothes and with a minor daughter; b) that the minor appellant / petitioner had not been shifted to Chandigarh for the benefit of the petitioner but only to subject the mother to torture and to deny her the right to meet her own child; c) that besides the minor appellant / petitioner, the parents of the minor had two elder children viz. a son and a daughter and while the daughter was with the mother, both the sons including the appellant / petitioner were with the father; and, d) that since the appellant / petitioner had been forcibly shifted / moved to Chandigarh, the mother gave an application to the respondent school not to issue the Transfer Certificate.

4. The learned Single Judge dismissed the petition observing that since the minor petitioner / appellant had been unilaterally transferred to a school in Chandigarh

without taking a Transfer Certificate and there was also an issue with regard to payment of fee, the Court was not inclined to in exercise of extraordinary jurisdiction entertain the petition. It was also observed that the appellant / petitioner's father seems to be under an illusion that if he presents a fait accompli to the Court, the Court would be left with no other option, but to uphold the same.

5. Notice of the appeal was issued and we have heard the counsel for the respondent School as well as the counsel for the mother of the minor appellant / petitioner besides of course the counsel for the appellant / petitioner.

6. Though the counsel for the respondent school during the hearing handed over a chart showing that an amount of Rs. 39,910/- is due from the appellant / petitioner to the respondent school for the period January, 2013 to March, 2013 and April, 2013 to December, 2013 with a notification that the name of the minor appellant / petitioner was struck off from the rolls with effect from 1st January, 2014 but has fairly stated that the respondent School is leaving the claim of fee to the discretion of this Court.

7. The factual position which has transpired during the hearing is:

(a) that the minor appellant / petitioner who is eight years old and who in the respondent School studying in Class-II, has since December, 2012 been studying at Chandigarh and is now in Class-IV; his admission to the Chandigarh school is provisional, subject to production of Transfer Certificate; if the Transfer Certificate is not produced, his name may be struck off from the rolls of the Chandigarh school as well;

(b) that the mother of the minor appellant / petitioner inspite of her plea of the minor appellant / petitioner having been taken away forcibly by the father from Delhi to Chandigarh in December, 2012 has till date not instituted any proceedings, for regaining the custody of the minor appellant / petitioner;

(c) that though the form prescribed by the respondent school for applying for Transfer Certificate requires the same to be signed by both the parents but there is no rule of the respondent School prescribing so;

(d) that the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973 also do not contain any provision regarding the issuance of Transfer Certificate; Rule 139 of the Delhi School Education Rules, 1973 merely provides that no student who had previously attended any recognized school shall be admitted to any aided school unless he produces a Transfer Certificate or School Leaving Certificate from the school which was last attended by him;

(e) that while the appellant / petitioner and his elder brother are in the custody of the father, their sister is in the custody of the mother;

(f) that the marriage of the parents of the appellant / petitioner subsists and there are no proceedings for dissolution thereof;

(g) that though at the time when the father of the minor appellant / petitioner moved the minor appellant / petitioner to Chandigarh, the father, who is an Air Force Officer was not posted at Chandigarh and only the paternal grandparents were residing at Chandigarh but the father of the minor appellant / petitioner is now posted at Chandigarh; and,

(h) that the Rules of the respondent School provide for one month's notice to be given in writing for withdrawal of a child and in case of a short notice period, fee for the next month is required to be paid and no Transfer Certificate is to be issued unless all the school dues are cleared.

8. Though no fault can be found with the reasoning given by the learned Single Judge, of the father of the appellant / petitioner after forcibly removing the minor appellant / petitioner from the custody of the mother being not entitled as a matter of right to the Transfer Certificate on the ground that the child already stands removed and admitted to another school, but what prevails with us, in exercise of appellate jurisdiction, to interfere with the order under appeal is the fact that the mother of the minor appellant / petitioner, inspite of such removal being now more than one and a half years old, has not taken any steps whatsoever for regaining the custody of the minor. We are however not to be understood as commenting adversely on such conduct of the mother as we, in exercise of writ jurisdiction, are not concerned with the same. What further prevails upon us to issue a direction to the respondent School to issue the Transfer Certificate to the minor appellant / petitioner is the fact that the consequence of depriving the minor appellant / petitioner of the Transfer Certificate would not be in the welfare of the appellant / petitioner. The possibility, of the new School to which the appellant / petitioner has been provisionally admitted cancelling the said admission and affecting the education of the minor appellant / petitioner if the Transfer Certificate is not produced, cannot be ruled out. If the mother of the appellant / petitioner felt that by blocking the issuance of the Transfer Certificate she will compel the father to return the minor appellant / petitioner to Delhi, saving the mother the hardships of litigation, the same has not come true as is evident from the father having not done so for the last nearly one and a half years. In fact, the resistance of the mother to the issuance of the Transfer Certificate in these circumstances reminded us of the judgment of King Solomon who by announcing his intention to split the baby between two women both claiming to be the mother, concluded the one who agreed thereto to be not the mother.

9. As far as the claim of the respondent School for fee is concerned, the rules of the respondent School do not justify the claim for the fees for the full year from January, 2013 to December, 2013. It was quite evident to the respondent School from the demand by the father of the minor appellant / petitioner for Transfer Certificate that the minor appellant / petitioner was being withdrawn from the School. The respondent School could have claimed only the fees for the month of January, 2013 and not more. The claim for the fees from January to march, 2013

is Rs. 7440/- and we accordingly find the respondent School to be entitled to only 1/3rd thereof i.e. Rs. 2,480/-.

10. We accordingly dispose of this petition as under:

(i) we direct the respondent School to within three days of the father of the minor appellant / petitioner paying the dues of Rs. 2,480/- (supra) , deliver a Transfer Certificate of the minor appellant / petitioner from the respondent School to the father of the appellant / petitioner;

(ii) the aforesaid is merely to take care of the situation prevalent today and is not to be taken as an expression of opinion by us on the entitlement of the father of the minor appellant / petitioner to the custody of the minor appellant / petitioner or condonation by us of the act of the father of the minor appellant / petitioner of removing the minor appellant / petitioner from Delhi to Chandigarh and is not to have any effect whatsoever in a proceeding if any initiated by the mother of the minor appellant / petitioner for custody / return of the minor appellant / petitioner to Delhi; and,

(iii) we are also leaving open the question of validity of the form prescribed by the respondent School for Transfer Certificate requiring the signatures of both the parents, as we are issuing this direction in exercise of our powers under Article 226 of the Constitution of India.

No costs.