

(2006) 07 CAL CK 0063
In the Calcutta High Court
Case No : Writ Petition No. 15010 (W) of 2006

Purushottam Lal Singhanian	Vs	APPELLANT
Delhi Public School and Others		RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : AIR 2006 Cal 313

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Arunava Ghosh, Biswaroop Bhattacharyya and Arjun Ray Mukherjee, for the Appellant; Sadhan Roy Chowdhury and Rajarshi Basu, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—Counsel for the respondents has raised a preliminary objection that the writ petition against the unaided private school is not maintainable. I permitted the parties to exchange affidavits regarding the objection; accordingly opposition and reply have been filed.

2. On the strength of the Apex Court decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., counsel for the petitioner argues that since right to education is a fundamental right, the school, discharging a public duty, is amenable to the writ jurisdiction. He contends that by issuing the transfer certificate to the petitioner's son arbitrarily and in violation of principles of natural justice, it has infringed his fundamental right to education. His contention is that if a fundamental right is even remotely affected, the aggrieved person is entitled to approach the writ Court against the violator, public or private whatever it be.

3. Counsel for the respondents disputes the position. By referring me to the regulations framed by the Council for the Indian School Certificate Examinations he argues that they do not govern the cases regarding discipline and conduct of the students at the school. He contends that even if the school has been discharging some public duty, it cannot be said that disciplinary action taken

against the son of the petitioner was taken in the discharge of such public duty, or that it has any connection with the public duty it is supposed to discharge.

4. The first question, therefore, is whether son of the petitioner (not yet fourteen) has a fundamental right to education. I think answer to this question is readily available in the Constitution, Article 21A, which provided, "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." The next question which arises is whether the school involved in the present case is under the same obligation that is cast on the State by that article.

5. I do not think as a matter of blanket proposition it can be said that the school is under the same obligation that is to be discharged by the state. I would rather say that the school is not entitled to say that it will not give admission to a student who being otherwise eligible according to its rules and regulations want to take admission. Here the question that has actually arisen is whether decision of the school issuing transfer certificate by way of disciplinary action, to the petitioner's son, can be subjected to judicial review of the writ Court.

6. Now turning to the issue in question. I find that there is no statutory provision that is to govern the matters regarding disciplinary action that the school may take against its students. The regulations of the Council that granted affiliation to it do not govern them as well. They fall within the domain of its pure administrative power. In my view, the student's fundamental right to education under Article 21A cannot be extended to include a right to seek judicial review of the decision taken by the school in exercise of its such power.

7. I do not think the 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. An exercise undertaken for such examination will amount to a judicial review of the decision. 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. 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. In my view, by simply alleging infringement of fundamental right, the student does not acquire a right to automatic admission of his writ petition. 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. 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. The remedy (if any) of the petitioner (necessarily for the student concerned), in my view, is available before the ordinary civil Court. The writ petition is

dismissed. There shall be no order for costs in it.

10. Urgent certified xerox copy of this order and also copy authenticated by AR(C) or ACO shall be supplied to the parties, if applied for.