
(2019) 11 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7422 Of 2019

Rudransh S/O Rajesh Tiwari And Another

APPELLANT

Vs

Central Board Of Secondary Education Through Secretary

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 11 MP CK 0039

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Archana Maheshwari, Akhil Godha, A.K. Sethi, Nilesh Jagtap

Final Decision : Dismissed

Judgement

1. The petitioners has filed the present petition praying for direction to respondents No.3 and 4 to cancel the transfer certificate and for re-admission of the petitioners.

2. The petitioners prayed relief on the ground that petitioners are minor and both are twins and have been admitted for the academic sessions 2013-14 in the School namely South Indian Cultural Association, Senior Secondary School No.2 (in short "SICA" School) Branch-Sanghi Colony, Indore. In the year 2014-15 the Teachers of the said School started abusing the petitioners and threatened them that they will give transfer certificate to the petitioners and they also insulted the petitioners in front of other students. The said complaint was made to Management of the School but even after assurance from the Management, the Teachers continued to torture the petitioners. The said news was also published in the Daily News Papers regarding torture of Teachers of SICA School due to which, Ishaan - the petitioner No.2 very scared. Father of the petitioners made complaint to the Collector, Indore on 24/04/2017. The same letter was also issued to the School. Being aggrieved by the action of respondents, the present petition is filed. It has further been alleged that during pendency of this petition, respondent No.4 on 11/04/2019 had issued transfer certificate, mark-sheet

alongwith covering letter by registered A.D. Post.

3. Learned counsel for the petitioners submit that Teachers of the said School have misbehaved with the petitioners. Both the petitioners have not committed any mistake and are innocent, therefore, it cannot be said that they have committed fault for which this huge punishment has been imposed on them. She prays for direction to respondents No.3 and 4 to cancel the transfer certificate and for re-admission of the petitioners by allowing this writ petition.

4. On the other hand, respondents No.3 and 4 have filed their reply and in the reply, respondents No.3 and 4 has taken a preliminary objection stating that respondents No.3 and 4 are private/un-aided Institution, therefore, not amenable to writ jurisdiction of this Court. Learned senior counsel further stated that respondents No.3 and 4 is the reputed Institution and has been established in the year 1974 and since then have been serving to the Society for last 44 years and have 5 Branches running under the aegis of SICA. Undoubtedly, the Institution is in the process of catering quality education in Indore City at a very reasonable fees structure with the efforts of their sincere and dedicated Teachers as well as the dedicated Management.

5. Senior counsel further contended that the Institution never indulges itself in any such activity which causes unpleasantness to its students or parents or in the smooth working of the Institution and the Institution has always thrived for catering quality education in a uniform manner to all the children admitted in the respective Classes without any biased or prejudiced approach against any individual student, as has been their approach for the petitioners Master Rudransh Tiwari and his sibling Master Ishaan Tiwari.

6. He argued that both children are twins born to their parents but with different behaviour quality, which is quite normal in any set of twins. Both the children have been studying since K.G. - I in the respondent's Institution and surprisingly there are continuous grievances raised by the parents every year against every set of Teachers, who are imparting education in their respective Classes. Incidentally in the last few years, the parents have developed a tendency to make frivolous complaints and raise baseless grievances before the Authorities and Media against every Teacher involved in educating the petitioners in each class. It is urged that grievance of the parents with respect to the control over discipline, grading, remarks exchanged with the parents are a part and parcel of the day-to-day functioning of the school. He also argued that since Mr. Tiwari admitted his two wards in the year 2013-14, he has been creating one or the other problem and causing mental torture to the teachers. Both the parents are over protective about their wards. They dictate their own terms and conditions about what is to be done and what is not to be done in the Classroom and School. All the time they keep interfering about the discipline of School and demand personal attention and special treatment for their wards. If their wishes are not fended immediately, father of the petitioners threatens about his Media connection, which in past he has already misused by printing unpleasant

information about the esteemed and well reputed Institution. Thousands of students are studying in the Institution, however, father and mother of the petitioners are the only parents with so many problems, as alleged.

7. Learned senior counsel also argued that the parents and guardian through their media contacts is habitual of filing frivolous complaints, as was filed in the year 2017 to District Education Officer, Indore and a notice was also served by his advocate which was also duly replied. An independent fair enquiry to the complaints and grievances was conducted and the matter was closed as no substantial material was found on merits of the complaint filed by the petitioners through their parents.

8. It is argued that petition has been filed by the petitioners through their parents/guardian is only to an academic interest and to tarnish the reputation of the Institution with ulterior motive and baseless allegations, as the fact not disclosed in the petition, inspite of being aware is that the academic session 2019-20 has already been commenced 7 months back from April, 2019 and to the best of the knowledge of the respondents, the petitioners are pursuing their education from another Institution in the City of Indore, therefore, it is prayed that in such circumstances, no further action is necessary against the respondents, accordingly, petition deserves to be dismissed.

9. I have heard learned counsel for both the parties and perused the entire record.

10. So far as preliminary objection raised by learned senior counsel for the respondents No.3 and 4 regarding maintainability of the petition against private Institution is concerned, the Hon'ble Apex Court in the matter of Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V.R. Rudani and others reported in AIR 1989 SC 1607, has held that mandamus can be issued. If the management of the body is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It was further held that the words "any person or authority" used in Article 226 of Constitution of India are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty.

11. Thus, as per this judgment of Hon'ble Apex Court writ of mandamus can be issued to any person or authority performing public duties. In the present case, respondents No.3 and 4 are in the poise field of education, which is a public duty, therefore, as per this judgment of Hon'ble Apex Court, arguments advanced by learned senior counsel for the respondents No.3 and 4 regarding preliminary objection of maintainability of the petition, is not sustainable in the eyes of law and it would not be applicable in the facts and circumstances of the present case, thus, discarded and held that the writ petition is maintainable.

12. Now, so far as merits of the petition is concerned, from perusal of the record,

it appears that the grievance of the petitioner with respect to the behavior of teachers and the institution raised from time to time before the Board of PTA on 26/04/2017 and 05/08/2017 and the complaints made to the District Collector has been resolved by the District Education Officer vide letter dated 16/01/2019 and also their complaint was also resolved by the M.P. Commission for Protection of Child Rights, Bhopal. The petitioners have not placed any record or documents to demonstrate the fact that the aforesaid enquiry was biased or not correct. In these circumstances, it is clear that the grievance and complaint of the petitioners has been resolved. It is also to be noted that in the present case, the factual enquiry has already been done by authorities, therefore, in these circumstances, disputed question of facts needs not to be further adjudicated by this Court in the writ jurisdiction.

13. From perusal of the record, it also appears that the action has been taken by the respondents No.3 and 4 for maintaining the discipline and the remarks mentioned in the transfer certificate "due to permanent and continuous discontentment of the parents" has rightly been given by the respondents No.3 and 4, as the petitioners are continuously raising complaints and objections before the different authorities from time to time. Thus, it is clear that transfer certificate had already been issued to the petitioners and now they are pursuing their studies in another Institution, therefore, I do not find any illegality or inaction taken by the respondents No.3 and 4/Institution in debarring the petitioners from the School, in the interest of justice. Hence, present writ petition filed by the petitioners through parents stands dismissed.