
(2016) 12 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1428 of 2016 and M.P. No. 01 of 2016

S.H. Thakur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103
Writ Proceeding Rules, 1997 — Rule 24

Citation : (2017) AIR(J&K) 1

Hon'ble Judges : Mr. Ali Mohammad Magrey, J.

Bench : Single Bench

Advocate : Mr. S.H. Thakur, Advocate, for the Appellant/Petitioners; Mr. A.M. Mir, Dy AG, for the Respondents Nos. 1 to 4 and 6; Ms. Shahzana Durrani, Advocate Vice, for the Respondent; Mr. Z.A. Shah, Sr. Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Mr. Ali Mohammad Magrey, J. - Petitioner a practising Lawyer of this Court has filed the instant writ petition claiming the following reliefs:

i. One in the nature of certiorari, quashing the announcement made by the respondent no.5 as President of Private Schools Association for the

collection of the fee from month of July 2016 till date without authority, illegal, unfair and against the mandate of law and direct the official

respondents to issue an order for directing the private schools not to charge any fee from the students from 9th July till the schools will resume the

normal functioning;

ii. One in the nature of Mandamus, commanding the State respondents to implement the SRO 123 dated 18.03.2010 Education Department in

letter and spirit and seek the compliance report of the same from the respondents and allow the parents to participate in the managements of the

private educational institutes as prescribed under rules for the betterment of the children;

iii. One in the nature of continuing Mandamus, commanding the chairman fee fixation committee respondent no. 4 to issue necessary order on the

subject of the collection of the tuition fee for the period when the private schools have remained defunct and issue necessary direction for

performing its function as early as possible for the betterment of one and all. Further respondents No.47 be directed to submit the report of his

activities carried out from the date the respondent no. 5 has assumed this office and the particularly the step-s taken by the committee with regard

to the exploitation of the parents by Missionary and private schools with regard to present episode which has come to surface from July 2016.

iv. One in the nature of Mandamus, commanding the state respondents to take approached legal action against the private respondent No. 5 for

committing the multiple offences against the students and the administration of the school run by him shall be taken over by the government fore

with so that children and the immoral behaviour of the private respondent No. 5 and file compliance report before the Hon'ble court by or before

next date of hearing.

v. One in the nature of mandamus, commanding the respondents to furnish the information of the decision taken by the respondent No. 6 with

regard to the private schools for the collection of the fee from the parents the Students studying therein, and till same is done no person shall be

authorised to collected the tuition fee and bus fee during the turmoil period.

2. Petitioner has admitted his individual interest with reference to his children studying in Missionary Private School Srinagar, however pleaded the

cause of public with reference to exploitation of parents by the school management in connection with the School Education Affairs of their children

which as per petitioner, has compelled him to file the present Writ Petition. Paragraph 21 of the writ petition being relevant is extracted as under:

21. That the petitioner like other parents has been subjected to the mental assault, humiliation, economic exploitation by the respondent jointly

and severally both in the school and the through media just for the simple reason that the petitioner has taken note of the grievances of the parents

and have gathered the courage to curtail the exploitation of the missionary and

private school management thus the petitioner shall be encouraged for doing this social service.

3. Petitioner has pleaded the cause of General Public in the shape of PIL with reference to the pleadings in paragraphs 4, 5, 6, 8, 9, 10, 11, 13, 16, 17, 18, 19, and 20, which are extracted as under:

4.) That the petitioner is educated middle aged responsible citizen who is alive to his own causes and the causes of the society and general public, whose children are studying in the private educational institution and who have been exploited by the school management in connections with the education affairs of her children and she has been forced by the prevailing high handedness of the School management to form to acts against the exploitation of the parents and the wards by the private school management committees and the focus of the petitioner activities is the social service to the students community irrespective of their creed, cost, colour, Religion, residence.

5.) That the Hon'ble High court being conscious to its constitutional obligations, initiated suo moto an litigation seeking the restoration of the education activities of the state after the flood water receded and sought the report from the government on war footing basis and while doing so the conduct of the Missionary and private administered schools was also brought to the lime light by the learned counsels during the proceeding of the case and it was strongly projected before the Hon'ble court that these private administered Schools have become commercial hubs @ purely business centres rather than the educational institutions. Taking the serious note of the situations the Hon'ble Court passed some effective direction as interim measures and finally the case was settled by the Hon'ble court vide order dated 1-06-2015 and specific directions were passed while disposing of this litigation. A copy of the court order dated 1-06-2015 is annexed with this petition as Annexure-A for the perusal of this Hon'ble court.

6) That these court directions have been observed in breach by the Private school management and the President and the chairman Private schools

Association have publically misquoted the court order and collected the fee from the parents and increases annual and tuition fee with impunity in

violation to the court for which the contempt proceedings have been initiated

which are in progress.

8) That the parents are supposed to pay the tuition fee subject that their children are taught by the teacher, the school render the service of the teaching and the parents are duty bound to pay the fee, but when the service is not made available by the private schools how come they are entitled to charge the fee from the parents. The educational activities are the charity in nature and same cannot be permitted to become the commercial activity by the inaction of the state. The respondent's No. 5 without having any authority in the law is issuing the orders for the collection of the fee when he has neither the legal authority nor statutory authority to do the same and the Respondent No. 6 (Responsible authority, Public representative) Minister for the Education in the state of Jammu and Kashmir is watching as assailable spectator to act of the respondent no. 5. Indicating clearly that they are in hand and glow with each other.

11) That Each and every Missionary and private school needs the investigation with regard to the number of the students admitted by them, infrastructure, staff strength both teaching and non teaching staff, their educational qualification, their wage structure and the grant in aid and the concession extended by the state and their income expenditure so as transparency in inserted in the affairs of the school management. This job was assigned to the respondent no. 4, who is holding the office from past more than one and half year but from past one year and half year. This has not even open his mouth with regard to these issue for the reason best known to the respondent no 4. What for the fee fixation committee was constituted, one fails to understand.

13) That the petitioner is advocate and social worker and believes in the services of the humanity in General and students community in particular besides the petitioner has undertaken to fight against the evils and odds pressed in service by the administration of the Missionary Schools, private schools tuition centres, and their mushroom growth with any fruitful service for the nation and Students community.

16) That the students community of the kismet is the one and same one and all have suffered same anxiety, same pain, same loss and same span of his education carrier, which have far reaching effect on their future, immaterial

weather he is the students of Government School, missionary School of private School. The Fee remission announcements has been made for only girl students of the government Schools, which is with our any reasonable criteria and intelligible differentia. The concession to one class of the students will not mitigate the sufferings of the other class of the students when all of them have under gone the same trial during the same period of time. The decision made by the respondents no six is not only illegal and discriminatory but without application of mind as well and this benefits deserves to be extended all the students of Kashmir irrespective of the their creed cast colour, Region and place of birth and status of the school.

17) That when previous PIL, (after floods) was under consideration of the Division Bench of this Hon'ble court, the government came forwards with order for constitution of the fee fixation committee, under the control of state under the chairmanship of Hon'ble retired High court Judge with full fledged office and staff and was assigned job of fee fixation and text book sale exploitation and other form of exploitation but till date noting has come to surface from this fee fixation committee nor any report has come forward even on one aspect of the matter.

18) That the fee fixation issued and format in the daily circulation news paper GK in its publication dated 18-09-2015 seeking the information from the different schools but as per the statement of the respondent no. 5 before the divisional commissioner Kashmir in an meeting wherein the petitioner was participant, the said information seeking brochure issued by the fee fixation committee has been stayed by the high court in an petition filed by him personally. But same has been denied by respondent no. 5 and the Director School Education Kashmir, when asked by the petitioner personally. A copy of this format for private schools is annexed with this petition as Annexure-B. what the fee fixation committee has done thereafter nothing has come to surface till date and this committee is confined on to papers.

19) That it is humbly submitted with great respect and Hon'ble that performance of the Fee Fixation committee shall be monitored by this Hon'ble court and reports shall be called on monthly basis, so that some substantial service is done to the society and monthly report shall be called from the office of the fee fixation committee so as to make it functional and purpose

oriented or else it would be wastage of money and time if the fee fixation committee fails to discharge the functions for which it has been created.

20) That so far as state of Jammu & Kashmir is concerned, the educational activities are governed by the Jammu and Kashmir School Education Act 2002 read with the Jammu and Kashmir School Education Rules 2010 issued in form of the SRO 123 of 2010 dated 18-03-2010 of education department and under these rules the parents have assigned particular role in order to ensure their participation in the affairs of the school but the private respondents are denying the participation of the parents in the school affairs against the mandate of the law and practise all over the world.

per the statement of the respondent No. 5 before the divisional commissioner Kashmir in a meeting wherein the petitioner was participant, the said information seeking brochure issued by the fee fixation committee has been stayed by the high court in a petition filed by him personally. But same has been denied by the Director School Education Kashmir (Shah Fasil IAS) when asked by the petitioner about the same. The parents are not even allowed to enter the premises of the schools except they are called for the collection of the fee, and they are humiliated publicly and they have no right to know the affairs of the schools. When the fact of the matter is that tuition fee despised in the schools but the parents is the reason of their existence.

4. Relief claimed in the writ petition having reference to the pleadings projecting public cause cannot be granted in the writ petition filed by the petitioner-lawyer who has personal interest in the matter.

5. In terms of Rule 24 of the Writ Proceeding Rules, 1997, which regulates the procedure relating to filing of Writ Petition in Public Interest. A

Writ Petition in the Public Interest"" means a petition filed for and in Public Interest where and in which no particular person has got any personal

interest. Since the petitioner has got personal interest, therefore, he cannot file the Writ Petition in the Public Interest and the grant of relief claimed

in the writ petition can also be considered in the Public Interest Litigation.

6. It needs a mention here that litigations in public interest are not adversarial in nature. It is a product of realization of constitutional obligation of

the Courts. This jurisdiction has been carved out by judicial creativity in order to provide access to poor, deprived, vulnerable, discriminated and

marginalized sections of the society. Of course, it has been expanded to protection of ecology and environment and to such matters where the executive is acting in violation of law. But the basic factor remains that only such petitions are required to be entertained where the petitioner(s) is/are acting bona fide and not for personal gain, private profit, political motivation or other oblique or extraneous considerations. This petition on the face of it has been filed for oblique and extraneous considerations acting as proxy. There is catena of judgments of the Supreme Court where such practise has not only been deplored, but people filing such petitions have been burdened with costs. Reference in this regard may be made to the decision of the Supreme Court in *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402. In paragraphs 143 to 158, the judgment contains reference to its earlier decisions in *BALCO Employees' Union v. Union of India*, (2002) 2 SCC 333; *S.P. Gupta v. Union of India*, 1981 Supp SCC 87; *Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P.*, (1990) 4 SCC 449; *Neetu v. State of Punjab*, (2007) 10 SCC 614; *S.P. Anand v. H. D. Deve Gowda*, (1996) 6 SCC 734; *Sanjeev Bhatnagar v. Union of India*, (2005) 5 SCC 330; *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590; *Charan Lal Sahu v. Zail Singh*, (1984) 1 SCC 390; *J. Jayalalitha v. Govt. of T.N.*, (1999) 1 SCC 53; and *Holicow Pictures (P) Ltd. v. Prem Chandra Mishra* (2007) 14 SCC 281 wherein the Supreme Court broadly tried to curtail the frivolous public interest petitions by monetary and non-monetary methods. In *Dattaraj Nathuji Thaware v. State of Maharashtra* (supra) it was observed that Court must not allow its process to be abused for oblique considerations. In *Sanjeev Bhatnagar v. Union of India* (supra), the Supreme Court found that the petition was devoid of public interest and dismissed the petition with costs of Rs.10,000. In *Holicow Pictures (P) Ltd. v. Prem Chandra Mishra* (supra) the Supreme Court in paragraph 12 of the judgment observed as under:

It is depressing to note that on account of such trumped up proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the

laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cashews in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, person awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

7. While dealing with the case *State of Uttaranchal v. Balwant Singh Chaufal* (supra), the Supreme Court issued certain directions for

observance of the High Courts, which included the following two directions:

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court

should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation;

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing

exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

8. Petitioner has failed to make out a case for entertaining the petition on the strength of the pleadings and for the relief claimed, therefore, the writ

petition deserves to be dismissed more particularly in view of the above quoted law.

9. Since the petitioner's personal interest is involved in the writ petition, therefore, he is not competent to even file PIL.

10. In the above back ground the writ petition being meritless, shall stand dismissed along with connected MP without any costs.