
(2020) 08 MP CK 0186
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 843 Of 2020

Smt. Barkha Shrivastava

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 420

Citation : (2020) 08 MP CK 0186

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : D.S. Raghuvanshi, Ankur Mody

Final Decision : Disposed Of

Judgement

The instant writ appeal assails the final order dated 06.08.2020 passed in WP 20574/2019 by learned Single Judge while exercising writ jurisdiction under Article 226 of the Constitution disposing of the petition in question by which dual prayers were made, for direction to the respondent No.5/Institution to provide transfer certificate to the son of petitioner studying in Class IInd and for a direction to the official respondent to take strict action against respondent No.5/ Institution and close it down and impose exemplary cost in form of compensation.

The short facts giving rise to the present case are that the son of the petitioner was admitted in Class Ist at International Public School Veerpur, Gwalior/ respondent No.5. It is the contention of petitioner that after the son of petitioner was promoted to class IInd, the functionaries of respondent No.5/Institute started physical and mentally harassing the son of petitioner. It is urged that on being confronted by the petitioner, Principal and Teachers of the respondent No.5/ Institute misbehaved with the petitioner. It is also alleged that the petitioner's son on being subjected to physical cruelty on 12th July had to be hospitalized. The petitioner further alleges that police being approached by the petitioner did not take any action against the respondent No.5 and instead presurize the petitioner to withdraw her complaint. It is submitted that even request for

issuance of transfer certificate has not been acceded to till date.

The functionaries of the State filed reply to the writ petition disclosing that on receipt of complaint by the petitioner an inquiry was held. It was revealed that respondent No.5 against whom the complaint was made, was directed to submit an inquiry report of the incident. The inquiry report vide R/1 was submitted on 02.11.2019 disclosed from various sources including CCTV footage that there was no incident of mental and physical cruelty against son of petitioner took place. The reply further revealed that the complaint submitted by the petitioner to the police led to submission of report by SHO PS Girwai Gwalior after taking statements of various persons and perusing the CCTV footage, concluding that there is no incident of any assault made against the son of petitioner and the petitioner's son was in fact admitted to hospital as a patient of fever and fits. Reply also revealed that the doctor concerned also gave statement in this regard including that the MRI revealed calcified granuloma but the doctor also revealed that none of the relatives who brought the son of petitioner to the hospital complained about any assault made against him. The inquiry also revealed as per the reply of the State that no application was receipt of issuing of transfer certificate and that the school later on issued the transfer certificate on receipt of request vide P/4 but the same was refused to be accepted by the petitioner vide R/2. Thus reply sought dismissal of petition.

Learned writ court while dismissing the petition in question noted the response of the State and directed, based upon the consent of counsel for the private respondent that if the petitioner approaches respondent No.5 then transfer certificate of petitioner's son would be handed over to the petitioner. Petition with this direction was disposed of.

Learned counsel for the appellant herein submits that though the relief contained in Para 7 (i) of the relief clause stood satisfied but the relief sought in Para 7 (ii) of the writ petition for a direction to take action against respondent No.5 and close down the institution was not considered much less any attention was given in that regard.

A bare perusal of the impugned order of the learned Single Judge reveals that direction for issuance of transfer certificate in favour of petitioner on the petitioner's approaching the respondent No.5 was issued with the consent of counsel for the petitioner which implies that other prayer of seeking direction of taking action against respondent No.5 and seeking compensation was implidely given up though the counsel for the petitioner expresses his views to the contrary.

It is trite principle of law that power of judicial review under Article 226 of the Constitution ought not to be exercised if the claim is for the damages/compensation as any decision on this issue of damages/compensation requires adjudication of disputed questions of fact which is only possible in a trial before appropriate forum.

Learned counsel for the petitioner has relied upon the decision of Apex Court in Indseam Services Ltd. Vs. Bimal Kumar Kejriwal 2001 (8) SCC 15. The said judgment does not relate to the issue involved herein as in the said case the Apex Court was dealing with legality and validity of an order taking cognizance of the offence punishable u/S. 420 IPC.

After hearing learned counsel for the rival parties and going through the material placed on record, it is obvious that counsel for the petitioner was ready for disposal of the petition in question with a direction to the respondent No.5 to issue transfer certificate which implies that other prayer in clause 7 (ii) regarding damages and compensation was given up.

True it is that learned Single Judge has taken the right course available to him in the given facts and circumstances as per prayer made by learned counsel for petitioner but it is seen from record that for the grievance of the petitioner remedies are provided under the Right of Children to Free and Compulsory Education Act, 2009 and rules framed thereunder for a parent dissatisfied with the functioning of a particular school where elementary education is imparted. Undoubtedly, the son of petitioner was a student undergoing elementary education.

Accordingly, without disturbing the order of learned Single Judge, this Court extends liberty to the petitioner to avail remedies available under the Right of Children to Free and Compulsory Education Act, 2009 and rules framed thereunder against the respondent No.5 in accordance with law.

With the aforesaid observation, this WA stands disposed of.