



2024:JKLHC-SGR:14

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 27.12.2022
Pronounced on : 31.01.2024

Case No. WP(C) no. 840/2023
CM nos. 1987/2023
3934/2023

Maheen Showkat (Minor) age 15 yrs through her
father Showkat Hussain Thakur S/o Late
Mohammad Yousef Thakur R/o Bemina Housing
Colony, House No. 195-A Mohalla Shah-e-
Humdan Bemina Srinagar (Kashmir)

.....Petitioner(s)

Through: Mr. S. H. Thakur, Advocate.

Vs

1. Union Territory of Jammu and Kashmir through Chief Secretary, Civil Secretariat, Srinagar/Jammu. सत्यमेव जयते
2. Director School Education Kashmir, Srinagar (Kashmir).
3. Principal Tyndale B Siscoe School and Mallinson Girls School, Sheikh Bagh Srinagar (Kashmir).
4. Rahul Rex Koul, Self Styled Administrator Tyndale Biscoe and Mallinson Girls School, Sheikh Bagh Srinagar (Kashmir).
5. Parweiz Samuel Koul, S/o Shan Lal Koul Director Tyndale Biscoe and Mallinson Girls School, Sheikh Bagh Srinagar (Kashmir).
6. Koul Madam, W/o Parveiz Samuel Koul Head Mistress Mallinson Girls School, Sheikh Bagh Srinagar/Kashmir.

Respondent(s)

Through: Mr. Syed Musaib, Dy. AG for 1-2.



Mr. Sunil Sethi, Sr. Advocate with Mr. Parimoksh Seth, Advocate & Mr. Asif Mir, Advocate for 3 to 6.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The petitioner a minor has filed the instant petition under Article 226 of the Constitution of India through her father, namely, Mr. Showkat Hussain Thakur and has implored for the following reliefs:

- (a) **Commanding the private respondent to ensure the admission of the petitioner in the class 11th for the session 2022-2023 as the petitioner has been in the school from her pre-nursery classes from 2010 as denial of the admission will affect the petitioner over all development and her mindset as petitioner will be away from her classmates and friends without her fault.**
- (b) **Quashing the denial of the admission in the class 11th for the session 2022-2023 as inhuman, illegal act of harassing, humiliation, exploitation besides being against the mandate of the Article 21-A and provision of Right to Education Act.**
- (c) **Directing the respondents not to harass the petitioner directly or indirectly and allow them to pursue her studies without suppression, humiliation and exploitation till they are complete their courses in the school.**
- (d) **Directing the respondents to compensate the petitioner caused by the omissions and commissions of the private respondents by their inhuman, illegal, deviant behavior which shall be determined by the expert in the field of**



the education field as appointed by the Hon'ble Court keeping in view the status of the petitioner and his children and pass decree accordingly in favour of the petitioner.

(e) Directing the private respondents to submit the details of the information sought by the father of the petitioner in his application under law which has been retained unnecessarily by the private respondents along with details of income and expenses through the respondent no. 2 of the school on year wise basis from the year 2010.”

2. The background facts under the shade and cover of which the aforesaid reliefs have been prayed are that the petitioner claiming to be the student of a Christian Missionary School, namely, Tyndale Biscoe and Mallinson School (for short, **'TBMS'**) Srinagar, came to be denied admission in class 11th for the session 2022-23 in the said school owing to the reason that the father of the petitioner being a practising Advocate had conducted various court cases/cases against the private respondents herein and their family members for having illegally taken over the administration of TBMS as also for the alleged acts of embezzlement, misappropriation and illegally taking over the properties of TBMS having, thus, developed evil design against the father of the petitioner as also the petitioner and in the process by denying the admission violated the Right to Education of the



petitioner enshrined under Article 21 of the Constitution of India as also the provisions of Right to Education Act as the TBMS is a school receiving grant-in-aid from the Government and is affiliated and recognized by the State/official respondents, thus, amenable to writ jurisdiction of this Court.

3. **Objections** to the petition have been filed by the respondents 3 and 4 wherein it is being averred that none of the fundamental, legal and statutory rights of the petitioner have been infringed by the answering respondents and that the reliefs sought in the petition are not available to the petitioner in the light of the judgment of the Apex Court passed in case titled as “**Committee of Management, LA Martiniere College Lucknow through its Principal and anr vs. Vatsal Gupta and ors**” reported in **2016 SC Online SC 743** and that besides the petitioner, five more students in fact came to be denied admission on the basis of the recommendations of the disciplinary committee for their misconduct including indulging of the petitioner in cheating while using mobile phone during Term-I examination as also having regard to the reports/complaints of various teachers/invigilators regarding the conduct of the petitioner



and as such, the TBMS being a private unaided school decided not to grant admission to the petitioner in class 11th.

The allegations of harassment and exploitation stated to have been leveled in the petition have been denied in the reply filed by the respondents 3 and 4.

It is further stated in the reply that in order to blackmail the answering respondents, some persons have had filed baseless and vexatious complaints against the answering respondents and succeeded in setting the criminal investigation into motion which complaints and the investigations came to be called in question by the answering respondents before this Court in CRM(M) no. 112/2020 and CRM(M) No. 28/2020 wherein admittedly the father of the petitioner was representing the said persons therein and the said petitions came to be allowed by this Court and the complaints and proceedings initiated thereon came to be quashed by this court while imposing an amount of Rs. 50,000/- as cost upon the said persons/complainants.

It is further stated in the objections that it is, in fact, the petitioner and her family who were harassing the answering respondents as also the teachers and other staff



of the TBMS every now and then and it is denied that the answering respondents have received grant-in-aid from the Government in respect of TBMS and that the TBMS being private unaided school is not amenable to writ jurisdiction of this Court.

Heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner while making his submissions reiterated the contentions raised and grounds urged in the petition and, thus, would pray for the grant of reliefs as prayed in the petition whereas, on the contrary learned counsel for the respondents 3 to 6 herein while opposing the submissions of the learned counsel for the petitioner would raise a preliminary objection qua the maintainability of the petition against the respondents and would further contend that even otherwise the petition has been rendered infructuous, in that, the petitioner has voluntarily obtained the Discharge/Transfer Certificate from the TBMS which stands issued by the respondent 3 on 24.07.2023 and in this regard produced a copy of the application claimed to have been submitted by the parents of the petitioner on 22.07.2023 before the Principal/respondent no. 3 for collection of



Character/Discharge/Marks Certificate of the petitioner from the school having authorizing the brother of the petitioner, namely, Mustaqeem Hussin Thakur for the said purpose. Copy of the application submitted by the parents of the petitioner for collection of Character/Discharge/Marks Certificate and copy of the Discharge/Transfer Certificate is taken on record.

Besides counsel for the respondents 3 to 6 also contended that the father of the petitioner has filed a suit against various staff members of TBMS for compensation and damages with almost similar and identical reliefs as have been prayed in the instant petition and also produced a copy of the suit. The same is also taken on record.

5. It is significant to note here that the counsel for the petitioner did not controvert, deny or dispute the aforesaid contention of the counsel for the respondents 3 to 6 that the petitioner has obtained the Discharge/Transfer Certificate from the school as also the filing of the suit (supra), thus before proceeding further in the matter, it would be relevant and significant to refer to the reliefs sought in the suit (supra) filed by the father of the petitioner:

(a) A declaratory decree, declaring all the denial of the admission to the ward of the plaintiff as illegal and acts



with malafide and ulterior motives and product of malice by the defendants violating the right to life of the wards and plaintiff and their family besides being motivated, fraudulent and set aside the same besides the plaintiff be declared entitled to all the benefits for recovery of her fee from the date the wards of the plaintiff has been admitted to the defendants same along interests and with manse profits as determined by this Hon'ble Court and pass a decree accordingly for the same;

- (b) A mandatory injunction, directing the defendants a compensation of rupees six crore as compensation to the plaintiff and his family members including the wards a compensation for causing the injury to the life, limb, health, peace of mind, social status, psychological and mental exploitation, harassment of the plaintiff, his family and the wars which shall recovered from the person and property of the defendants. Defendants be directed to give the details of their moveable and immovable property in order to prevent this instant litigation from being fruitless litigation proceedings and pass a decree accordingly for the same.
- (c) A mandatory injunction, restating the defendant from alienating the any party of the their property including the house and other valuables belonging directly or indirectly and preserve them without using till they are handed over to the plaintiff in lue of the compensation for the injuries caused to the plaintiff and his family and ward and pass decree accordingly in favour of the plaintiff.
- (d) A mandatory injunction directing the defendants to produce the academic record of the wards and the records of the admission made by the defendants provisionally for the year 2023 in class 11th provisionally from 7th April till date for the perusal of the Hon'ble Court and not to cause any inconveniences to the ward of the applicant studying in the class other red of the Tyndale Biscoe school further



plaintiff be permitted to see and meet the school head as and when required for betterment and welfare of the children without any obstruction and objections from the defendants and pass a decree accordingly.

6. Be that as it may, it is not in dispute that the petitioner in the instant petition has sought the reliefs in the instant petition essentially against the respondents 3 to 6 while impleading them in their private individual capacity except respondent 3 who has been impleaded as a Principal of TBMS without impleading the TBMS as a party respondent.
7. Having regard to the nature of the case as set up in the petition by the petitioner coupled with the reliefs sought, it is manifest and evident that the petitioner has alleged private wrongs to have been committed by the respondents 3 to 6 herein without having any public element therein being *sine qua non* for maintaining the writ petition and seeking the reliefs/writs as have been sought in the writ petition. A reference in this regard to the judgment of the Apex Court passed in case titled as “**St. Mary’s Education Society and anr vs. Rajendra Prasad Bhargava and ors** reported in **2023 (4) SCC 498** would be relevant and germane herein.

Thus, what emerges from above is that even if a writ petition would be maintainable against an authority, body or



person yet the Court before issuing any writ has to satisfy that the action of such an authority, body, or person, which is challenged, is in the domain of public law as distinguished from private law as private law remedies are not enforceable through extraordinary writ jurisdiction even though brought against public authorities as also even if a body performing a duty making it amenable to writ jurisdiction, all its functions are not subject to judicial review except those which have a public element therein.

Therefore, where an action is essentially of private character, a writ petition would not be maintainable and this preposition of law has been reiterated by the Apex Court in case titled **“K.K. Saksena vs. International Commission on Irrigation and Drainage and ors”** reported in **2015(4) SCC 670**.

8. Even otherwise as well, the reliefs as prayed in the instant petition by the petitioner are not capable of being granted to the petitioner in view of the undeniable fact that the petitioner has already obtained Discharge/Transfer Certificate from TBMS and the petitioner ceases to be the student of TBMS so much so, the said fact has in fact been suppressed and concealed by the petitioner during the pendency of the instant petition.



9. Viewed thus, what has been observed, considered and analyzed hereinabove, this Court is not inclined to exercise discretion and display indulgence in the matter. Resultantly, the petition fails and is dismissed.

(Javed Iqbal Wani)
Judge

SRINAGAR
31.01.2024
Naresh, Secy.

Whether the order is speaking: Yes
Whether the order is reportable: Yes

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