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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.242 of 2015**

1. Shirish Pathak S/o Shri Prabhash Pathak Aged About 6 ½ years. Petitioner no.1 is a minor and is represented through his natural father Shri Prabhash Pathak.
2. Prabhash Pathak S/o Shri Pandit Kanti Kumar Pathak aged about 43 Years, occupation Journalist (Press Reporter). Both the petitioners are R/o Rohinipuram Gate, Behind Ayurvedic College, G.E.Road, Raipur, Post R.S. University, PS Saraswati Nagar, tehsil Raipur, Revenue & Civil District Raipur, Chhattisgarh.

---- Appellants**Versus**

1. Union Of India through Secretary Ministry of Human Resource Development, Department Of School Education and Literacy, Room No. 429-A, C Wing, Shastri Bhawan, New Delhi.
2. State of Chhattisgarh through Secretary, School Education Department, Mahanadi Bhawan, Naya Raipur, Revenue & Civil District Raipur, Chhattisgarh.
3. District Education Officer Raipur, Revenue & Civil District Raipur, Chhattisgarh.
4. Nodal Officer Mayaram Surjan, Government Girls Higher Secondary School, Choubey Colony, Raipur, Revenue & Civil District Raipur, Chhattisgarh.
5. Collector, Raipur Revenue & Civil District Raipur, Chhattisgarh.
6. Raj Kumar College Through its President, Managing Committee, G.E.Road, Raipur, Revenue & Civil District Raipur, Chhattisgarh.
7. Principal Raj Kumar College, G.E. Road, Raipur, Revenue & Civil District Raipur, Chhattisgarh.

---- Respondents

For Appellants	:	Dr. N.K. Shukla, Senior Advocate with Shri Sarfaraj Khan, Advocate.
For Respondent No.1	:	Shri R.K. Kesharwani, Advocate.
For Respondent/ State	:	Shri B. Gopa Kumar, Deputy Advocate General.
For Respondents No.6 & 7:	:	Shri Sanjay S. Agrawal and Ms. Akanksha Jain, Advocates.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Order On Board

Per NAVIN SINHA, C.J.

23/6/2015

1. Learned Counsel for the Appellants submits that he has filed necessary documents on 19.6.2015 pursuant to order dated 16.6.2015 after serving it on the other side also. The same is not available on record. We are of the opinion that the Registry has had more than sufficient time to place the original on record. In future the Registry shall ensure that such additional filings are brought on record within a maximum period of 48 hours. We requested Counsel for the Appellants to make available his copy to us for perusal, so that the matter may not have to be adjourned for that reason. The office shall ensure that the original filed on 19.6.2015 is placed on record.

2. The present appeal arises from order dated 25.3.2015 dismissing Writ Petition (C) No. 1811 of 2014. The Learned Single Judge declined to interfere with the order for cancellation of the admission granted to Appellant No.1, the minor son of Appellant No. 2, against the 25% quota for those 'Below the Poverty Line' in the private institution under 'The Right of Children to Free and Compulsory Education Act, 2009' (hereinafter referred to as 'the Act'), as defined in the State notification dated 23.8.2011, No. F13-73/20-3/11 issued pursuant to Section 2(e) of the Act.

3. Learned Senior Counsel for the Appellant submitted that on 13.7.2012, the School Education Department issued directions to Respondents No.6 & 7 for grant of admission against the 25% quota meant for under the privileged as day scholar under the Act. Denial of admission to Appellant No.1, led to the institution of Writ Petition (C) No. 870 of 2013. The District Education Officer was directed to hold enquiry with regard to his eligibility. On 12.6.2014, the District Education Officer held that the Appellant was eligible in view of the Ration Card possessed

by his mother which was accepted as sufficient for eligibility and directions were given to the private school for grant of admission. The District Education Officer on 5.7.2014 canceled his own order which led to the cancellation of the admission itself.

4. Learned Senior Counsel for the Appellant submitted that under Section 2(e) of the Act “child belonging to weaker section” means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government, by notification. No notification had been issued by the State Government quantifying what was the minimum limit of income prescribed under the Act. Unless the minimum limit of income was specified there was no basis for determining the annual income as 'below' that limit. The notification dated 23.8.2011 does not provide for any minimum limit of annual income for deciding eligibility. Once the District Education Officer after enquiry had determined eligibility, there was no justification for him to cancel the same.

5. Learned Counsel for the private Respondents has opposed the appeal submitting that the order under challenge calls for no interference.

6. Section 2 (e) of the Act provides that the child belonging to the weaker section means one whose parents possess annual income lower than the minimum limit specified by the appropriate Government. If the Government has chosen to specify the minimum limit by linking it to those 'Below the Poverty Line', we find no infirmity in the same. In any event, the notification dated 23.8.2011 had not been challenged in the writ petition for lacking compliance with Section 2(e) of the Act.

7. Whether a person was 'Below the Poverty Line' or not, is a question of fact. The District Education Officer in his order dated 12.6.2014, held that Appellant No.1, did not fall in category of 'Below the Poverty Line'. He yet gave directions for admission by taking extraneous matters into

consideration. He therefore committed no wrong in subsequently canceling the same. If an enquiry has been held and a determination arrived at that the parents of Appellant No.1 did not fall below the poverty line, the jurisdiction under Article 226 of the Constitution of India shall be confined to the decision making process only and not the merits of the decision itself. The Court shall not sit as an appellate authority over the decision.

8. The Learned Single Judge further noticed that in the report lodged after cancellation of the Ration Card of the mother of the Appellant it was stated that Appellant No.2 – Prabhash Pathak was a Journalist and owned a Nano Car. He owned a building in Raipur Town apart from 12 acres of agricultural land in the neighboring district. We have gone through the pleadings in the writ application. If Appellant No.2 was the owner of a Nano Car, obviously he has to be an income-tax payee with a PAN number. There is no statement that Appellant No.2 is not an income-tax payee.

9. As early as in Writ Petition (C) No. 870 of 2013 a finding had been arrived at by the Court that Appellant No.2 had failed to establish that he was 'Below the Poverty Line'. Only because it related to the education of his minor son, taking a compassionate view further enquiry was directed. Earlier, Appellant No.2 had approached the Child Rights Commission against the denial of admission to his son prior to the filing of the writ petition from which the present appeal arises. The Child Rights Commission after examining the matter held that the Appellant did not fall 'Below the Poverty Line' by an order dated 13.6.2013. The order was not challenged and has attained finality. These facts were not mentioned in the writ petition and it was left for the Respondents to bring the same to our attention. The writ jurisdiction is discretionary in nature. It is the foremost and fundamental duty of a litigant coming to Court to disclose all

facts necessary whether in its favour or against and then seek an adjudication. Withholding or suppression of relevant information by a litigant and attempting to obtain an order on that basis amounts to polluting the stream of justice. It cannot be permitted and the discretionary jurisdiction under Article 226 of the Constitution shall not be exercised at the behest of such person. We therefore find no reason to interfere with the order under appeal.

10. If during the present academic session Appellant No.2 approaches the private Respondents and offers to continue admission of his son as a regular student, it is expected that the institution will consider the same in accordance with law without being prejudice by the present order.

11. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE

