

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2016

Delivered on : 01.07.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.12350 of 2016

and

WMP.Nos.10687 and 10688 of 2016

Minor K.Aravinthan

Represented by Father & Natural Guardian

S.Kumaresan

... Petitioner

Vs.

1. The Principal,
Sainik School,
Amaravathi Nagar,
Udumalaipet Taluk,
Tiruppur District-642 102.

2. The Union of India,
Represented by its Secretary to Government,
Ministry of Defence,
New Delhi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his proceedings in No.SSA/Doc/6050 dated 26.03.2016 and 29.03.2016 and quash the proceedings dated 26.03.2016 and 29.03.2016 and consequently direct the first respondent to allow the petitioner to pursue his school education in the first respondent school.

For Petitioner : Mr.M.Sivavarthanan

For Respondents : Mr.Su.Srinivasan
Assistant Solicitor General for R1

Mr.G.Santhosh Kumar
Standing Counsel for R2

O R D E R

The father of the petitioner has sworn to the affidavit on behalf of his son, Minor K.Aravinthan and he would state that his son/petitioner is a student of first respondent school, studying VII Standard with Roll No.6050 and the said

school is functioning under the second respondent and it is one of the Sainik Schools in this country. It is further stated by the petitioner that local administration of the first respondent school is looked after by a Local Board of Administration, whose Chairman is the General Officer Commanding-in-Chief (GOC-in-C) of the concerned command, where the Sainik School is located. It is further stated that the petitioner had completed VII Standard and he is promoted to VIII Standard and on 26.02.2016, there was a scuffle between two students of the petitioner's class and the petitioner tried to pacify them and during that time, one of the student, namely Sri Bhavan Prakath accidentally fell on the ground and sustained fracture and the petitioner has nothing to do with the said incident and the said incident was also captured in Closed Circuit TV Cameras and also video footage.

2. The first respondent has called the father of the petitioner to meet him and accordingly he met him on 02.03.2016 and explained the events that took place and further that his son is innocent. The first respondent has informed the petitioner's father that a decision has been taken to dismiss the petitioner and the father of the petitioner made an appeal to withdraw the said decision with a request to permit the petitioner to continue studies in the said school. However, to the shock and surprise, the first respondent has sent a communication dated 26.03.2016 stating that the Board of Enquiry, after conducting enquiry, made a recommendation to withdraw the petitioner from the school and therefore, called his father to come to the school and to collect his Ward on or before 29.03.2016. The first respondent also issued a letter dated 29.03.2016 stating that the first respondent has decided to issue Transfer Certificate to the petitioner and his name will be struck off from the rolls and once again called upon the father of the petitioner to take back the petitioner. The petitioner, challenging the legality of the communications of the first respondent dated 26.03.2016 as well as 29.03.2016, has filed this writ petition.

3. The learned counsel appearing for the petitioner would contend that CCTV video coverage would clearly reveal that the petitioner had no role to play with regard to the alleged assault between two students and the petitioner merely intervened and pacify them and in that process, one of the students fell down and sustained fracture and it was nothing but accidental. Alternatively, it is the submission of the learned counsel appearing for the petitioner that even for the sake of arguments that the petitioner was the cause for the sustainment of fracture by the student, it was not intentional but only accidental and therefore, punishment of withdrawal of the petitioner from the first respondent school is highly disproportionate and prays for interference.

4. Per contra, Mr.Su.Srinivasan, learned Additional Solicitor General appearing for the first respondent has produced the proceedings of the Disciplinary Committee dated 27.02.2016 and would submit that fair and proper enquiry was conducted by giving opportunity and would submit that on 27.02.2016, during the break period at 12.42 hours, KR Prasanth of VIIB and Sri Bhavan Prakath of VIIA were throwing soil and pebbles on each other while they were moving from BN Hall to the classroom and Sri Bhavan Prakath, who belongs to VIIA, entered VIIB and continued arguing and manhandling KR Prasanth and he was pinned to his seat by his neck by Bhavan Prakath and when KR Prasanth was desperate and could not free himself from the clutches, he called the petitioner for help. Therefore, the petitioner ran towards them by picking up a notebook on the way and went near them and started hitting on the head of Sri Bhavan Prakath and Sri Bhavan Prakath continued squeezing the neck of KR Prasanth and the petitioner continued hitting him. Sri Bhavan Prakath chased the petitioner and the petitioner ran away and Sri Bhavan Prakath chased him and tried to kick violently and then both had a tussle and the petitioner pushed Sri Bhavan Prakath and started him with force and rage and he also tried to bang his head on the floor. Sri Bhavan Prakath freed himself and got up and again started kicking and chasing the petitioner and again there was a tussle and the petitioner pushed Sri Bhavan Prakath down with all his strength and when Sri Bhavan Prakath landed on one of his hands, it got fractured. The petitioner in the process, inflicted excruciating pain to Sri Bhavan Prakath. The Disciplinary Committee, after conclusion of the enquiry, has opined/made recommendation that Sri Bhavan Prakath as well as the petitioner exhibited violent attitude and they are a threat to their fellow students and therefore, recommends that those two students must be withdrawn from the school and their parents were also advised to do so. The Senior Master as well as the Vice Principal had also recommended that both students have to be withdrawn from the school and so also the Principal. In the light of the findings of the Disciplinary Committee coupled with the recommendations of the Senior Master, Vice Principal and Principal, a decision has been taken to withdraw both the students from the school and accordingly, the impugned orders came to be passed against the petitioner.

5. In sum and substance, it is the submission of the learned Additional Solicitor General appearing for the first respondent that the first respondent school is a Sainik School imparting training to students, who may later on become soldiers/officers guarding the country and even at an young age, the petitioner has exhibited violent attitude and therefore, on a fair and proper consideration of the entire materials, a decision has been taken to withdraw the

petitioner from the school and accordingly, the impugned orders came to be passed. It is also the submission of the learned Additional Solicitor General that in the matter of disciplinary proceedings especially concerning the students, the scope of interference by this Court under Article 226 of the Constitution of India is very limited and therefore, the impugned orders may not warrant interference and prays for dismissal of this writ petition.

6. In response to the said submission, the learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment in *Ka.Kalaikottuthayam v. State of T.N.* [(2010) 5 MLJ 1139] and would submit that in the light of the provisions of Right to Children to Free and Compulsory Education Act, 2009, the petitioner, who is moving from VII Standard to VIII Standard, cannot be sent out and instead some other punishment may be imposed by retaining him in the school.

7. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the materials placed before this Court.

8. A perusal of the proceedings of the Disciplinary Committee dated 27.02.2016 would disclose that one Sri Bhavan Prakath was the aggressor and when he tried to pin down KR Prasanth of VIIB, he called the petitioner for help and the petitioner rushed with a notebook and started attacking Sri Bhavan Prakath, who chased him and there was an altercation between them and the petitioner pushed Sri Bhavan Prakath and he landed on one of his hands and it broke. The Disciplinary Committee has also recorded the fact that the petitioner did not express any remorse for his act. The Disciplinary Committee made a recommendation that both Sri Bhavan Prakath as well as the petitioner have to be withdrawn from the school and the said recommendation was considered by the Senior Master, who opined that it is a serious issue pertaining to violence of threat and therefore, recommended for withdrawal of both the students. The Vice Principal also opined that they should be withdrawn for the interest of children's future. The Principal of the first respondent school opined that video clippings provides clear evidence of the incident and such kind of violent behaviour displayed by both the candidates indicates their potential threat/danger to other cadets, in future and in the interest of the petitioner as well as the other boy, thought fit to withdraw them from the school so that they may have love and care in their home environment which may be good for their future and also opined that continuation in residential school is not conducive for their future development and therefore, made a recommendation for withdrawal of both of them from the school.

9. In *Unni Raja v. Principal, Medical College, Trivandrum* [AIR 1983 Ker 200] it has held that the essence of the matter is that the head of the institution should in law be presumed to possess an inherent right to do such acts as are necessary in his opinion to maintain discipline in the institution and this right is incapable of an exhaustive identification. To limit it within defined confines would be to erode into his authority and fetter his discretion and to deny his right to the head of the institution would be sound the death-knell of discipline in the institution which is already a casualty, by the combination of diverse forces, from within and from without.

10. In *Sudheer v. Headmistress, H.S., Panoor* [1975 Ker LT 834], it has been held as follows:

"A pupil against whom disciplinary action has been taken by the head of an educational institution cannot insist that principles of natural justice should be strictly complied with. There is a substantial difference between an enquiry in a disciplinary action against a civil servant and that in a disciplinary action against a pupil of an educational institution. When in the former strict compliance of the principles of natural justice is imperative, in the latter if the pupil has been given a fair chance to answer the charges that is sufficient. The question is whether there has been fair play. If the head of an educational institution had not in any way acted unfairly there is no reason why the action taken cannot be sustained. In this case pupils were informed of the charges against them. Then an enquiry was conducted by a staff committee. The pupils participated in the enquiry and gave statements. The decision was taken with the approval of the staff council. The pupils' guardians were informed of the action proposed to be taken. Only thereafter the pupils were dismissed. This is more than sufficient compliance with the principles of natural justice in a disciplinary action against pupils by the head of an educational institution."

11. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S.Gandhi and Others* [(1991) 2 SCC 716], it has been held that the power of judicial review in case of student indiscipline is very limited and in such cases, the High Court does not sit in appeal over decisions of the school authorities.

12. In *Headmaster, Polikav High School, P.O.Edakkulam Quliandy v. Murali.A and Others* [AIR 1995 Ker 21] has observed as follows:

"From the above judgments, it is well settled that if a student, does not maintain discipline which is expected from him, it is not required for the college to retain him in the college. Insofar as the procedure to be followed in the matter of conducting an enquiry into misconduct or indiscipline of a student, Courts have consistently held that it is not required to have a detailed enquiry as that of a departmental proceeding in service matters. It is the consistent view of the Courts that the power of the educational institutions should not be disturbed in trying to maintain discipline in the institutions and it is suffice, that there is substantial compliance of the principles of natural justice."

13. This Court can take judicial notice of the fact that nowadays there is growing indiscipline among students and teachers are finding it extremely difficult to do anything to control the students. The judgments cited above lay down the proposition that discipline to be enforced among students is very important as it shapes the career and future welfare of the students. Though the learned counsel appearing for the petitioner placed reliance upon the decision in Ka.Kalaikottuthayam v. State of Tamil Nadu [(2010) 5 MLJ 1139], the said judgment has no application to the case on hand for the reason that the said case pertains to withholding of a student in 6th standard and in this case, it is not so.

14. The Principal of the first respondent school also, taking into consideration the violent behaviour displayed by the petitioner as well as Sri Bhavan Prakath, thought fit to observe that love and care in their home environment under close parental supervision will only channel them away from their aggressive and violent streak. In the considered opinion of the Court, the findings of the Disciplinary Committee and the recommendation made by the Senior Master and Vice Principal and approved by the Principal, cannot said to be harsh or unreasonable. Moreover, the power of this Court to interfere over the findings rendered in disciplinary proceedings, more particularly in respect of students, is very limited. It is also to be noted at this juncture that the first respondent/Sainik School is a special school imparting training and discipline to the students who are studying in the institution and shaping them in right direction so that in the event of their recruitment to the armed forces, they will perform well and defend the country in an amiable manner.

15. This Court, in the light of the above facts and circumstances, is of the considered view that no interference is warranted. Therefore, this Writ Petition is dismissed. However, it is open to the first respondent to issue Transfer

Certificate and Conduct Certificate in such a way that it may not affect the interest of the petitioner to continue his studies in some other institution. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Principal,
Sainik School,
Amaravathi Nagar,
Udumalaipet Taluk,
Tiruppur District-642 102.
2. The Secretary to Government,
Union of India,
Ministry of Defence,
New Delhi.

+1cc to Mr.Su.Srinivasan, Advocate, S.R.No.37282
+1cc to Mr.M.Sivavarthan, Advocate, S.R.No.37101
+1cc to Mr.G.Santhosh Kumar, Advocate, S.R.No.36941

W.P.No.12350 of 2016

MP I (CO)
CA(19/07/2016)

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