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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1185/2016 & C.M.No.5184/2016**

MR A AND ORS

..... Petitioners

Through

Mr.Rajiv K.Nanda with Ms.Mercy
Hussain, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through

Ms.Sarika Singh, Advocate for R- 1
& 2.

Mr.Vardhman Kaushik with

Ms.Megha Singh, Advocates for R-
4.

Mr.Anuj Aggarwal, ASC with

Mr.Shubhanshu Gupta, Advocate for
R-5.

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Date of Decision : 1st April, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed with the following prayers:-

a) That Respondent no.4 be directed to take back the vehicle in question as full and final settlement which was financed to Petitioner no.1 by Respondent no.4 or in the alternative; and extension of the loan tenure and waiver

- of interest;*
- b) Directing the respondent no.1,2,3 & 5 to provide adequate financial assistance for the education and upbringing of Petitioner no.3 & 4 in accordance with National Child Policy and Article 21 of the Constitution of India;*
- c) Any other further relief which this Hon'ble Court may deem fit and proper may also be passed.*

2. On 11th February, 2016, this Court passed the following order:-

“CM Appl. 5185/2016 (exemption) in W.P.(C) 1185/2016

Allowed, subject to just exceptions.

W.P.(C) 1185/2016 & CM Appl. 5184/2016

Present writ petition has been filed seeking a direction to the Financier-respondent No.4 to take back the vehicle of the petitioner No.1 in full and final settlement as well as a direction to respondents No.1, 2 and 5 to provide financial and educational assistance for the upbringing of petitioners No.3 and 4 in accordance with the National Child Policy and Article 21 of the Constitution of India.

In the petition, it has been averred that the petitioner No.1 purchased a commercial vehicle financed from respondent No.4 for Rs.21 lacs. The petitioner No.1 is stated to have paid Rs.4 lacs as down payment and the rest was to be paid in equated monthly instalments of Rs.61,680/- per month.

Petitioner No.1 is stated to have regularly paid six equated monthly instalments from October, 2013 to March, 2014.

Mr. Rajiv Nanda, learned counsel for petitioners states that thereafter petitioner No.1 and his wife-petitioner No.2 tested Positive for HIV and could not look after their business of plying of the truck. He further states that as of now a significant amount of petitioner's income is spent on medication and treatment.

Due to non-payment of equated monthly instalments, respondent No.4 has filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, which is pending adjudication before the Additional District Judge, Patiala House Courts, New Delhi, wherein the said respondent is seeking re-possession of the vehicle.

Mr. Nanda, learned counsel for petitioners states that the directions as prayed for, be issued as petitioner No.1 and 2's health is fast deteriorating and they are now confined to their bed. He points out that petitioner no. 1's weight as of today is 26 kg. He also states that the minors being petitioners No.3 and 4 are at the risk of being abused and neglected if left to fend for themselves.

When asked as to what is the immediate relief that the petitioners' require, Mr. Nanda states that he would be satisfied if the petitioners No.3 and 4 are granted admission in Kendriya Vidyalaya Sangathan in Airforce Station, ArjanGarh, New Delhi and some immediate financial assistance is provided to the petitioners.

Issue notice.

Ms. Sarika Singh, learned counsel accepts notice on behalf of respondents No.1 and 2.

Mr. H.S. Parihar, learned counsel accepts notice on behalf of respondent No.3.

Mr. Siddharth Dutta, learned counsel accepts notice on behalf of respondent No.5.

They pray for and are permitted to obtain instructions and verify facts within a period of one week.

Also issue notice to unserved respondents by registered post and dasti, returnable for 25th February, 2016.

In the meantime, the Section 9 proceeding under the Arbitration and Conciliation Act, 1996 being Arb. No.1663/2014 pending before Mr. S.S. Rathi, Additional District Judge, Patiala House Courts, New Delhi, is stayed.

Order dasti under the signature of Court Master.”

3. On 25th February, 2016, this Court passed the following order:-

“Today, learned counsel for respondent no. 4 enters appearance.

Learned counsel for respondents pray for and are permitted to file their counter-affidavits within two weeks.

Rejoinder, if any, be filed before the next date of hearing.

Mr. Sanjay Jain, learned Additional Solicitor General has been requested to find out if petitioner nos. 3 and 4 can be granted admission in Kendriya Vidyalaya Sangathan school at Air Force Station, Arjan Garh, New Delhi.

Mr. Rahul Mehra, learned senior standing counsel for Govt. of NCT of Delhi has also assured this Court that whatever genuine assistance is required by petitioner nos. 3 and 4 shall be provided by the Delhi Government.

List on 1st April, 2016.

Interim order to continue.

Order dasti.”

4. Today learned counsel for the petitioners states that the disputes with respondent no.4 have been amicably resolved and the possession of the vehicle has been surrendered in full and final settlement. In view thereof, respondent nos. 3 & 4 are deleted from the array of parties.

5. Learned counsel for respondent no. 1-UOI states that Kendriya Vidyalaya Sangathan has informed the Ministry of Human Resource Development that there are no vacancies in Classes 5 and 8 to which admission has been sought.

6. It is also stated by the learned counsel for UOI that as per the Right to Education Act, it is the duty of the State Government/Union Territory to provide opportunity of admission to all children of 6 to 14 years age in a government school.

7. In view thereof, the GNCTD is directed to grant admission to the two minors namely Ms.Tanya Lohiya and Master Randeep Lohiya in any Senior Secondary School in the vicinity of Aaya Nagar, New Delhi.

8. The Ministry of Women and Child Development has also filed an affidavit in which it is stated that the children of HIV/AIDS victims can be placed in Foster Care by the Child Welfare Committee, and the said Committee can also grant assistance of Rs.2,000/- per month per child.

9. Consequently, learned counsel for the petitioners is given liberty to file an application seeking payment of Rs.2,000/- per month if the circumstances so exist. The Child Welfare Committee will decide such an application, if filed, in accordance with law.

10. With the aforesaid directions, the present writ petition and the application stand disposed of.

MANMOHAN, J

APRIL 01, 2016/KA