

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18434 of 2018

=====

“X”, son of Sri Lalit Mohan Singh, resident of Adarsh Colony, West Patel Nagar, P.O. Keshrinagar, P.S. Shastri Nagar, District Patna, PIN 800023 a minor through his father and natural Guardian Lalit Mohan Singh.

... .. Petitioner/s

Versus

1. The Central Board of Secondary Education, Shiksha Kendra, 2, Community Centre, Preet Vihar, Delhi 110092.
2. The Regional Officer, Central Board of Secondary Education, Regional Office, Ambika Complex, Behind State Bank Colony, Brahmsthan, Sheikhpura, Raza Bazar, Bailey Road, Patna- 800014.
3. The DAV College Managing Committee, Chitra Gupta Road, Type-I, Aram Bagh, Jhandewalan, New Delhi- 110055.
4. The DAV Public School, BSEB Colony, New Punaichak, Patna- 800023 through its Principal.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18435 of 2018

=====

“Y”, daughter of Sri Bijay Kumar, resident of Purandar Pur, Annie Beasant Road, P.O.- Bankipore, P.S. Pirabahor, District Patna, PIN 800004 a minor through his father and natural Guardian Bijay Kumar.

... .. Petitioner/s

Versus

1. The Central Board of Secondary Education, Shiksha Kendra, 2, Community Centre, Preet Vihar, Delhi 110092.
2. The Regional Officer, Central Board of Secondary Education, Regional Office, Ambika Complex, Behind State Bank Colony, Brahmsthan, Sheikhpura, Raza Bazar, Bailey Road, Patna- 800014.
3. The DAV College Managing Committee, Chitra Gupta Road, Type-I, Aram Bagh, Jhandewalan, New Delhi- 110055.
4. The Principal, DAV Public School, BSEB Colony, New Punaichak, Patna- 800023.
5. The DAV Public School, BSEB Colony, New Punaichak, Patna- 800023 through its Principal.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 18434 and 108435 of 2018)

For the Petitioner/s	:	Mr. Rajesh Mohan
		Mr. Vijay Kumar Sinha
For the C.B.S.E.	:	Mr. Vinay Krishna Tripathy
For Respondent Nos.3to5:		Mr. Anil Kumar Singh
		Mr. Surinder Kumar
		Mr. Sanjay Kumar Singh



=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

7 10-10-2018 The petitioners have approached this Court seeking setting aside the transfer certificates issued on 19.07.2018, by the DAV Public School, BSEB Colony, Patna. According to the petitioners, they were forced to apply for the transfer certificates and applications filed by them for transfer certificates seeking transfer certificates were not voluntary. It is there specific case that the transfer certificates have been issued on the false pretext of the wish of their respective parents.

The petitioners are, admittedly, below 18 years of age. They are students of Class XII and would have participated in the XIIth Examination to be held by the Central Board of Secondary Education, tentatively in February, 2019. They assert in the writ applications that on the basis of CCTV footage of the time when they were talking to each other in the classroom, on the allegation of indecent act, their parents were asked to obtain their respective transfer certificates, which their parents did, leading to issuance of the transfer certificates dated 19.07.2018. It is their case that issuance of transfer certificates is punitive action on the part of the school and the same cannot be said to be voluntarily obtained by their parents.



Learned counsel appearing on behalf of the petitioners has submitted that because of one act of some indiscretion, alleged against these petitioners, their whole career will be ruined if they are not allowed to pursue their +2 Classes in the School. It is their specific case that the petitioners cannot be admitted in XIIth Class in any other school in Patna on the basis of transfer certificates, issued in July, 2018, since the final examinations are to be held tentatively in the month of February, 2019.

A counter affidavit has been filed on behalf of the School. It is admitted in the counter affidavit that because of their indecent behaviour in the classroom, which was captured in the CCTV, a Disciplinary Committee was constituted and all the facts were discussed in the presence of the parents of these students, whereafter, the parents of the petitioners themselves decided to withdraw their children from the school.

Learned counsel appearing on behalf of the School has taken objection over maintainability of the present writ application under Article 226 of the Constitution of India on the plea that the School is a privately managed institution and, therefore, not a 'State' within the meaning of Article 12 of the Constitution of India.



It has accordingly been contended that no writ would issue against the School under Article 226 of the Constitution of India. Reliance has been placed, in this connection, on a Division Bench's decision of this Court dated 24.06.2013 in L.P.A. No. 1804 of 2012 (*Nutan Kumari vs. State of Bihar and Others*) wherein, the Division Bench has held the DAV Public School not to be 'State' within the meaning of Article 12 of the Constitution of India and, therefore, power of judicial review could not be invoked under Article 226 of the Constitution of India.

In my opinion, the said Division Bench decision of this Court has no application in the facts and circumstances of the present case since in that case, transfer of teacher from one School to another was in question. The Court, in that circumstance, held that matter of transfer cannot be discharge of public duty of an educational institution. The Division Bench, in that background, has observed that the dispute raised by the appellant in that case was necessarily a private dispute.

In my opinion, imparting education is a public function. The Supreme Court, in case of *Board of Control for Cricket in India vs. Cricket Association of Bihar and Others*, reported in (2015) 3 SCC 251, has clearly held that whether a



body or institution is a 'State' within the meaning of Article 12 of the Constitution of India is immaterial for exercise of writ jurisdiction under Article 226 of the Constitution of India. If a body or institution discharges a public function, such institution is amenable to writ jurisdiction of the High Court under Article 226 of the Constitution of India. The objection so raised, on behalf of DAV Public School, is accordingly overruled.

Learned counsel appearing on behalf of the petitioners have relied on a Division Bench's decision of this Court in case of *Principal, DAV Public School vs. State of Bihar*, reported in 2007(3) PLJR 808, which bolsters the view taken by me.

Reference may be made to this Court's order dated 05.10.2018, whereby, considering the age of the petitioners and the nature of allegations being made in the counter affidavit, following order was passed in the presence of the Principal of the School dated 05.10.2018:-

"The Principal of the school and the parents of the parties are present in the proceedings held in-camera taking into account the delicate aspect of the matter.

Counter affidavit has been filed on behalf of the Principal of the school. Since the averments made in the counter affidavit discloses the identity of the children, who are the petitioners and are below 18 years of age, it is directed that none of the parties in the present proceedings shall share the contents of the



counter affidavit with anyone else.

On the basis of CCTV footage, the Principal of the school has got prepared a CD of the incident. The CD is being seized by this Court for being kept in sealed cover, in the safe custody of the learned Registrar General, not to be opened unless specifically directed by this Court.

The Principal of the school is directed to ensure that no media, visual or audio shall be prepared on the basis of of the CCTV footage, which is in the custody of the school. It is also directed that if the Court finds any CD (audio or video) to have been prepared on that basis, the Court will take serious note of the matter.

List this matter on 09.10.2018, to be taken up in chambers at 2:15 p.m., on which date, the Principal of the school shall again be required to be present to tell this Court the possibility of the petitioners being taken back in the school.

This is my tentative view, formed on the basis of the averments made in the counter affidavit, that the decision of the parents of the petitioners to seek transfer certificate from the school does not appear to be voluntary, rather under compulsion since, admittedly, a disciplinary committee was constituted by the school and conduct of the petitioners was found to be an act of indiscipline.

The Principal of the school shall be at liberty to consider the possibility of the circumstance in which these petitioners can be taken back in the school.

The Court expects Mr. Tripathi, learned counsel appearing on behalf of the Central Board of Secondary Education, to seek instructions from the Chairman of the Central Board of Secondary



Education himself about the possibility of invoking Clause 7.5 (i)(c) of the Examination By-laws, non-obstante clause of which reads, as quoted below, keeping in view the better academic performance of the petitioners and to avoid undue hardship to them : -

“Notwithstanding anything contained in the rules above, the Chairman shall have the powers to allow change of school for better academic performance, medical reasons etc. to avoid undue hardship to the candidate(s).”

List this case on 09.10.2018.”

The stand taken on behalf of the School that it was simple withdrawal of the children by the parents from the School by seeking transfer certificates is not acceptable to this Court in view of the averments made in the counter affidavit filed on behalf of the School itself. Withdrawals, in my view, cannot be said to be voluntary and they are apparently punitive.

I am not giving the details of rival pleadings in the writ application and in the counter affidavit so as to protect the dignity of the petitioners, who are apparently children being below 18 years of age.

Considering the significance of the consequence, which would have ensued, had the Court not interfered with in the present facts and circumstances of the case, the Court had



required personal appearance of the Principal of the School for in-camera discussion. The Principal, apart from other issues, raised an issue that if the petitioners are taken back, they may not be fulfilling the requirement of minimum attendance to appear for the XIIth Examination to be held in 2019. On the Court's direction, he furnished the attendance of the petitioners so far, till their transfer certificates were issued on 19.07.2018. It has emerged that the petitioner "X" had attended the school on 45 days out of total of 49 days, whereas petitioner "Y" 43 days out of 49 days. Percentage attendance of the "X" has been 91.8% whereas attendance of "Y" has been 87.75%. Apparently, they remained absent from the school after the transfer certificates were issued. If the number of days, for which the petitioners remained absent, is to be taken into account up to 9th of October, 2018, their attendance comes 51.70% (for petitioner "X") and 49.42% (for petitioner "Y"). The classes, the Court has been given an impression, will continue up to January. Learned counsel appearing on behalf of the Central Board of Secondary Education has informed that the Chairman of the Central Board of Secondary Education has power to relax the requirement of 75% of attendance up to 60%. Though the Court has not gone into the calculation that if the



petitioners start attending school now and if they attend the classes on every day, whether they would be fulfilling the minimum requirement of 75% or not, the Court has been made to understand that in any case, they will be completing more than 60% of attendance.

In view of the peculiar facts and circumstances of the case, as discussed above, I direct the Principal of the school to take the petitioners back into the school. The transfer certificates issued by the school stand hereby cancelled. The petitioners shall be allowed to attend the classes from the day they present this order to the Principal of the school. This order is being passed in special circumstances in peculiar facts and circumstances of the present case, so as to protect the interest of the children, who are below 18 years of age, and save their career from being ruined.

These applications are accordingly allowed with the aforesaid direction.

The Court observes that if, because of their absence from the school during the period the transfer certificates were operative, they fall short of their attendance, the Principal of the school and the authorities under the Central Board of Secondary Education shall promptly take steps for condoning the shortage



of their attendance within the permissible limits under the Regulations governing the course in question.

The petitioners are, at the same time, warned to be careful in future. It is the duty of their parents also to ensure that they behave themselves at least in the school campus, which has otherwise effect of affecting adversely the general discipline in the school.

(Chakradhari Sharan Singh, J)

Pawan/Ragini

U			
---	--	--	--

