

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4803 OF 2015
with
CIVIL APPLICATION No. 621 OF 2018

Mrs. Vandana Vijay Wabale. ..Petitioner.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. Siddesh Pilankar i/b Mr. Uday Warunjikar for the Petitioner.

Mrs. M. P. Thakur, AGP for the Respondent-State.

Mr. Deepak More for Respondent No. 3.

Mr. Harsh Behani, Jayesh Rathod i/b Maniar Srivastava Associates for
Respondent No. 5

Coram : Ranjit More &
Smt. S. S. Jadhav, JJ.

Date : **March 16, 2018.**

P. C. :

1. The writ petition is filed for following reliefs :

"a. This Honourable Court be pleased to call for the record and certificate of transfer issued by the last two Respondents Exhibit-N dated 22.4.2014 and after going through the same and satisfying about the legality validity and propriety of the same be pleased to quash and set aside the same under Article 226 of the Constitution of India, 1950.

b. This Honourable Court further be pleased to issue a writ of mandamus directing the Respondent Nos.1 to 3 to take appropriate action against the Respondent Nos. 4 and 5 for various breaches, lapses and intentional commission of various acts and commission of certain acts which are mentioned in the memo of the petition.

b1. Be pleased to direct the Respondents to allow the son of the Petitioner to continue to study in 9th standard and direct to treat the candidature of the student as regular student for all academic purposes

including admission, study exam etc.

- c. This Honourable Court be pleased to direct the Respondent No. 1 to 3 to recover an amount of Rs.25,00,000/- from the Respondent No. 4 and 5 as compensation for the academic loss of the son of the Petitioner and further be pleased to direct to pay the same to the Petitioner."

2. The petition was placed before this Court on 14th July 2015. On that day, after hearing the parties, this Court passed following order :

" Rule, returnable on 11/08/2015.

2. The Respondent/school is stated to be minority management, imparting education since long. The Petitioner's son had been studying in the school from 1st Standard, till the date of expulsion. The Petitioner, along with other parents, propel the fee hike issues. The dispute/conflict resulted into allegations and counter allegations. That also resulted into ugly turn of filing various representations to third persons, complaints and stated threats to life. All these issues are pending including of fee hike. The Education Officer also except a letter unable to resolve the disputes/conflicts. The criminal proceedings initiated by both the parties. The Petitioner has not paid fee arrears also. This resulted into expulsion of Petitioner's son. The respondents, though no asked for, issued a transfer certificate dated 22/04/2015, with endorsement "Fee Hike" to the petitioner's son and thereby no permitted him to appear in the classes. All these actions were without following the basic principle of natural justice. The allegations and counter allegations – complaints and counter complaints are pending revolving around the petitioner's misbehaviour. The complaint of threat is also lodged by the petitioner. Therefore, the respondents are also under threat and pressure. The issues of enhancement of fee structure are also pending. Though the matter adjourned from time to time, the parties are unable to settle the matter. Therefore, at this stage, in the interest of student's career, pending the agitation and/or conflict between the parents and the management and/or with the State Government with regard to their right to enhance the fee structure, we are

inclined to pass the ad interim order, pending final decision of the writ petition.

3. In nutshell, the facts involved in the petition are that though the petitioner not asked for transfer certificate in respect of her son, the respondent-institution No.5 has issued transfer certificate dated 22/04/2015 with endorsement "Fee Hike" and further not permitted her son to appear in 9th std. Prima facie, we are of the view that all such actions on the part of respondent-institution appears to be without observing principles of natural justice.
4. We have heard the submissions advanced at length by the learned Counsel appearing on behalf of the respective parties and further perused the pleadings and precedents of law as relied by learned Counsel for the parties in support of their respective submissions. On due consideration of their submissions, we are of the view that the petition raises number of questions of law having far reaching effect. We are, therefore, of the view that the petition deserves to be admitted. The broad issues/points which fall for our consideration are as under : -
 - (i) Whether the writ petition seeking issuance of writ of mandamus or any other order/direction is maintainable against unaided institution (minority or non-minority)?
 - (ii) Whether such institutions/schools imparting education are not performing function involving public element and amenable to writ jurisdiction U/A 226 of the Constitution of India?
 - (iii) Whether the grievances of citizen as to enhanced fees, arbitrariness in admitting or expelling students and other related aspects can be subject matter of exercise of writ jurisdiction U/A 226 of the Constitution of India?
 - (iv) Whether any effective and efficacious remedy or mechanism is available to aggrieved person to challenge such issues relating to hike in fees & issues related thereto with the management including the act of expelling students from college/institution?
 - (v) Whether any guidelines or provisions are required to

be made to deal with issues relating to disputes between students / parents with management, so as to specifically deal with aspects of admission and or expulsion of students from school / college / institution / management?

- (vi) Whether it is obligatory on the part of private unaided school / college / school management to follow the principles of natural justice before taking any adverse action against the students / parents?
- (vii) Whether any provisions / guidelines are required to be made to protect or to empower to schools / college / management / institution to deal with the parents and or such other person who try to interfere, disturb or affect the discipline as well as day to day working affairs, peace, harmony and smooth administration of school / colleges run by unaided private schools / college / management / institution?
- (viii) Whether the schools / colleges / management / institutions are entitled to expel any students for non-payment of requisite fees or on account of any dispute as to payment of any fees or any other amount charged and demanded by such school / college / management / institution?
- (ix) Whether the school/college/management/institution are entitled to expel the student on account of any misconduct or objectionable behaviour of parents of any student?
- (x) Whether the action of respondent-institution is justified in issuing transfer certificate with endorsement "fee hike" to son of petitioner without issuance of any show-cause notice and opportunity of hearing is sustainable in law?

5. Since the issues stated above require detailed consideration, the fate of the son of petitioner cannot be kept pending till disposal of the petition. The education session has already begun in the month of March-April 2015. We are, therefore, of the view that pending disposal of the petition the son of the petitioner be allowed to prosecute the study for the academic year 2015-16 on certain terms and conditions. We are,

therefore, inclined to pass the following ad interim order.

ORDER

- [1] Pending disposal of petition, respondent No. 5/School is directed to readmit son of petitioner in 9th std. For the academic year 2015-16 and allow him to prosecute his study as a regular student on par with other students, in same standard/class, on following conditions.

(a) Petitioner shall deposit Rs.61,865/- on or before 16/07/2015, towards arrears of fees of academic year 2014-15 and further deposit fees of Ist & IInd semester i.e. total amount of Rs. 48,170/- within two weeks from the date of this order and further to pay fees of IIIrd semester in the month of November – 2015 as per the date notified by the school.

(b) Pending disposal of the petition petitioner and any person claiming through her including her husband shall not involve and indulge into any act and activities thereby bring disrepute to reputation of respondent No. 5 - institution or commit any act amounting to defame the institution and/or interfere with the working of school / management / teaching and non- teaching staff of the school run by respondent No. 5.

(c) Pending disposal of petition the petitioner and persons claiming through her including the husband of petitioner shall refrain themselves involving into any activities, agitation, demonstration against the management, school and its staff.

(d) Pending disposal of petition, except the petitioner, including the husband of petitioner shall not enter into premises of school without seeking prior permission from the Principal / Head Master of school. In case the husband of petitioner requires to visit the school, he shall make written request through 'e-mail' to Principal/Head Master of School. In case, such request is received the Principal/Head Master of School shall respond within 24 hours from receipt of such identified e-mail from wvelps@gmail.com to the husband of petitioner. However, the restriction so imposed shall not come in the way of husband of petitioner in case of grave emergency to justify his visit to school without prior permission. The email address of school of

management for making communication shall be used as www.myggis.org.

- (e) Pending disposal of petition, both the parties to maintain self respect to avoid any dispute and try to maintain cordial relations, harmony and mutual trust.
- [2] Pending disposal of petition, respondent No.5/school shall allow the petitioner i.e. mother of student to visit school as and when required so as to attend the meetings convened by school or parents' association or to meet the Principal/Head Master or teachers in connection with study, progress, improvement & other related issues regarding her son on par with liberty available to regular students in school.
- [3] Respondent No. 5/ School shall issue mark sheets of 7th and 8th std. to the son of the petitioner within one week from the date of this order.
- [4] All points are kept open including the issue in relation to applicability of provisions of The Right of Children to Free and Compulsory Education Act, 2009 and Maharashtra Educational institutions (Regulation of Fee) Act, 2011 as well as the issue in respect of attendance of petitioner's son, which will be subject to final outcome of the writ petition.
- [5] Parties will be at liberty to settle the matter.
- [6] Liberty is granted to both the parties to apply for appropriate relief, if emergency so occurs.
- [7] Respondent No.1 to file reply within four weeks. Parties to file additional affidavits, if any.
- [8] Parties to act upon authenticated copy of this order. "

3. In pursuance of the above interim order, the Petitioner's ward continued to study in Respondent No.5-school. He appeared for the examination and passed out from 10th standard. Thereafter, the Petitioner's ward has taken admission in Indira International School in

11th standard in science stream. The grievance of the Petitioner is that Respondent No. 5-school has not given original mark-list and school leaving certificate of her ward. Hence, this petition.

4. The Petitioner has thereafter filed above cited civil application for the following reliefs :

“(a) This Honourable Court be pleased to direct Respondent No. 4 and 5 to hand over the school leaving certificate and the original mark-sheet of the child in favour of the present Petitioner within such period as this Hon'ble Court may deem fit and proper.

(b) This Honourable Court be pleased to direct Respondent No. refund the quotioned money and deposit collected by the Respondents within such period as this Hon'ble Court may deem fit and proper.”

5. Learned Counsel for Respondent No.5-School having taken instructions from his client, makes a statement that Respondent No.5 is ready and willing to give to the Petitioner the original mark-sheet and school leaving certificate of her ward, provided the Petitioner, her husband and her ward continue to abide by the directions given in clauses (b), (c) and (d) of the order dated 14th July 2015 passed in writ petition.

6. Learned Counsel for the Petitioner having taken instructions from his client makes a statement that the Petitioner, her husband and her son will abide by the clauses (b), (c) and (d) of the order dated 14th July 2015 passed in above writ petition. Learned Counsel for the Petitioner also submitted that the Petitioner is not pressing the relief of compensation at this stage.

7. In above circumstances, we dispose of Writ Petition and Civil Application by passing following order :

- [1] Statements made and recorded hereinabove by the Petitioner as well as by Respondent No.5 are accepted as undertakings to this Court.
- [2] Respondent No.5-school is directed to send to the Petitioner the original mark-sheet of 10th standard and school leaving certificate of her son by RPAD within the period of one week from today.

[Smt. S. S. JADHAV, J.]

[RANJIT MORE, J.]