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gd/ssd

WPA(P)/51/2022
GAURAV PURKAYASTHA
VS

THE STATE OF WEST BENGAL AND ORS.
(Through Video Conference)
Mr. Ritzu Ghoshal,
Mr. Anirban Ghosh
..for the Petitioner

Mr. S.N. Mookherjee, learned Advocate General,
Mr. Samrat Sen,
Mr. Nilotpall Chatterjee,
Mr. Ayon Chakraborty
..for the State

Mr. Y.J. Dastoor, Additional Solicitor General,
Mr. Arijit Mazumdar
..for the Union of India

By this petition the petitioner has sought a direction to the State authorities to ensure that the physical classes of Class VIII are resume only for vaccinated children and those who are unvaccinated and born after 2007 should be permitted to attend online classes.

The submission of learned counsel for the petitioner is that the children who are born after 2007 are unvaccinated being out of the purview of the vaccination policy of the government and they are at the risk of the Covid infection if compelled to attend the physical classes. He has referred to the circular issued by one of the private schools i.e. DPS Megacity, Kolkata requiring physical attendance of all the students on alternate day from Class VIII from 7th of February, 2022. He submits that this circular covers even those students

of Class VIII who are not vaccinated, hence exposes them to risk.

Learned Advocate General has vehemently opposed the petition, questioning the locus of the petitioner, by submitting that the petitioner is neither a parent of student or a student who will be affected by reopening of the physical classes nor he is an educationist connected with education but he is a person residing in Birbhum raising the issue relating to opening of the schools in Calcutta. He has also submitted that the petition is bereft of material particular and on the basis of only the circular issued by one private school the petition has been filed and if the plea of the petitioner is accepted, then the students will be divided into two groups, vaccinated and unvaccinated which is not in their interest and that the State Government has already taken a policy decision by issuing the circular and the notification dated 31st of January, 2022 in this regard. He has also referred to the report of WHO filed along with the petition as annexure "P-4" and has pointed out that on account of the closure of the schools the interest of children is suffering. He has submitted that positivity rate in the State of West Bengal has come down to 3.34% which indicates sharp decline in the Covid cases. He submits that the schools are expected to follow Covid-19 protocol and if there is any lapse on their

part, then appropriate complaint can be made. By referring to the chart produce during the course of arguments he has submitted that many of the States have reopened the school. He has also placed reliance upon the order of Division Bench order of the Madhya Pradesh High Court in WP 26272 of 2021 dated 02.12.2021 in the matter of *Aditya Singh Solanki v. The State of Madhya Pradesh & Others* wherein the Court has refused to interfere in the policy decision to reopen the school.

He has also pointed out that earlier State had taken a decision to reopen the schools in the month of November, at that time a writ petition was filed questioning it and thereafter when the schools were closed down due to third wave of Covid Pandemic, another petition being WPA(P) 26 of 2022 was filed with the prayer for reopening of the schools which is still pending.

Learned ASG has submitted that the Union of India has been unnecessarily impleaded in the petition and that in principle Union of India is in favour of reopening of the schools.

Having considered the above submissions, we are of the opinion that when one writ petition being WPA(P) 26 of 2022 is already pending before this Court in respect of the issue of reopening of the school than

separate petition touching upon the same issue praying a different relief need not be entertained. That apart, there is a serious objection about the locus of the petition and the writ petition is also not supported by the material particulars and documents. Hence, we dismiss this petition, however, with liberty to the concerned aggrieved parties to file an appropriate application for direction along with all the material particulars in the pending writ petition, if they are so advised.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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