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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4750/2024**
MISS ISHIKA YADAV Petitioner

Through: Mr. Mahesh Kumar Yadav,
father of the petitioner in person

versus

**MOUNT OLIVET SENIOR SECONDARY
SCHOOL AND OTHERS** Respondents

Through: Mr. Utkarsh Singh, Adv. for
Mr. Santosh Kumar Tripathi, Standing
Counsel (Civil) for the DoE
Mr. Raghvinder Verma, ASC with Mr.
Mananjan Mishra, Adv. for NDMC

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **02.04.2024**

CM APPL. 19467/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. Mr. Mahesh Kumar Yadav, is the father of the petitioner, claims

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to be a street vendor who was squatting at Janpath Market, near Indian Oil Building, Janpath, Connaught Place since 1998. He was removed from the premises from where he was peddling his trade in 2016. He instituted W.P. (C) 11415/2016 to challenge the said action. The said writ petition was dismissed by a Division Bench of this Court *vide* judgment dated 18 September 2017, with a direction to the Town Vending Committee (TVC) to consider the case of the petitioner's father as and when it became functional.

4. Mr. Yadav asserts that an inquiry was made by the Sub-Divisional Magistrate (SDM) regarding the financial means of Mr. Yadav and that the report of the SDM certified that Mr. Yadav did not have any independent source of income and was being provided financial help by his two brothers. These facts stand recorded in the order dated 10 January 2024, passed by a coordinate Bench of this Court in Cont Cas (C) 899/2019, by which Mr. Yadav had alleged non compliance with the directions contained in the order dated 18 September 2017 *supra* passed by the Division Bench of this Court.

5. On 7 February 2024, a coordinate Bench of this Court, while dealing with Cont Cas (C) 899/2019, took note of Mr. Yadav's submissions that he was unable to pay the school fees of his daughter Ishika Yadav, who was studying in Class VIII in the respondent school. Paras 7 to 9, 11 to 13 and 18 of the said order merit reproduction thus:

“7. Having heard Mr. Satyakam, learned Additional Standing Counsel as well as the petitioner in person, this Court is of the view that since the said school where the daughter of

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the petitioner is studying, is a private school, this Court cannot as such suo moto give any directions to the school to waive off the fees of the daughter of the petitioner. However, at the same time, this Court cannot be oblivious to the rights of the minor child for getting her education, who is stated to be studying in Standard 8th. Accordingly, it is directed that the petitioner shall pay an amount of Rs. 15,000/- towards fees of the school within two weeks from today.

8. It is noted that the aforesaid amount is only a part-amount which is being paid by the petitioner for the time being. The petitioner who is present in Court undertakes that he shall ultimately pay all the fees of the school and no dues shall remain unpaid.

9. Accordingly, it is directed that upon deposit of Rs. 15,000/- with the school in question within two weeks from today, the school shall not disturb the education of the petitioner's daughter and she shall be allowed to complete her education till the end of the present academic session, i.e., 2023-2024.

11. *The petitioner who is present in person before the Court submits that after the present academic session, he would make arrangement for admission of his daughter to some government school, in case, he is not able to afford the fees of the school where his daughter is currently studying.*

12. However, it is made clear that this Court has not in any manner curtailed the rights of the school to recover the school fees qua the petitioner's daughter in any manner.

13. The petitioner is directed to show the proof of payment of Rs. 15,000/- to the said school towards part-payment of school fees before the next date of hearing.

18. Needless to state, this Court expects that the school shall not trouble the daughter of the petitioner on account of non-payment of fees by her father and let her study in the school till the end of the present academic session in a dignified manner.

(Emphasis supplied)"

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6. Thereafter, Mr. Yadav filed CM APPL.18873/2024 again underscoring his impecunious financial condition and praying that the respondent school be directed to permit his daughter to continue to study in the school for the academic session 2024-2025. The said application was, however, not pressed by Mr. Yadav, who on 28 March 2024 sought liberty to withdraw the application to seek his remedies in accordance with law. Though there is no express order granting such liberty to Mr. Yadav, the application was permitted to be withdrawn on 28 March 2024.

7. The petitioner, through Mr. Yadav, has, thereafter, instituted the present petition seeking a direction to the respondent school to permit her to continue to study in the respondent school till the fees in that regard are reimbursed by the Department for the Welfare of SC/ST/OBC, Government of National Capital Territory of Delhi (GNCTD) or till the petitioner's father gets his vending rights from the TVC-NDMC, whichever is earlier.

8. The Mr. Yadav, who appears in person, is unable to refer to any circular, instructions or precedent to support the prayer that the petitioner should be permitted to continue to study in the respondent school without paying fees till the fees are reimbursed by the Department for the Welfare of SC/ST/OBC.

9. Equally, there is obviously no basis for the claim that the school should be directed to continue to dispense education to the petitioner till her father is provided vending rights by the TVC. There is no



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connection whatsoever between the vending rights of Mr. Yadav, the petitioner's father, and the right of the petitioner to be educated in the respondent school.

10. Mr. Yadav, who, submits that he is willing to pay the fees of the respondent school, seeks amnesty to the extent that if there is any delay in paying the fees, the said delay may be condoned.

11. It is not possible for this Court to pass any such direction. The respondent school is admittedly an unaided school. An unaided school survives on fees. It would be unjust and unfair for this Court to direct the respondent school to continue to educate a child without the child paying fees, as are paid by all other children studying in the same school.

12. That apart, para 11 of the order dated 7 February 2024, passed by this Court in Cont Cas (C) 899/2019 specifically records Mr. Yadav's statement that, if he is not in a position to afford the fees of the respondent school, he would make arrangement for admitting his daughter in some Government school. Mr. Utkarsh Singh, learned Counsel appearing for the DoE fairly states that if Mr. Yadav seeks admission of his daughter in a Government school, he would persuade the DoE to take all steps in that regard. He, too, however, submits that the petitioner cannot seek, as of right, a claim to continue to study in the respondent school without paying fees in accordance with the procedure in that regard and as are paid by all other children studying in the said school.



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13. That said, if Mr. Yadav, owing to his financial circumstances, finds difficulty in paying fees in time, and desires some relaxation in that regard, it would be open to him to approach the respondent-school for the said purpose. It would be for the respondent school to decide whether to show the magnanimity that the petitioner seeks. This Court cannot coerce the respondent school to, perforce, educate the petitioner, unless fees are paid by her father in the same manner and fashion as are paid by all other children studying in the school and as per the applicable Rules and Regulations or guidelines in that regard. Any relaxation therefrom can only be a matter of subjective discretion by the School, though the Court does hope that the school adopts a proactive approach.

14. Para 11 of the order dated 7 February 2024, therefore, acts as an additional impediment to the grant of the relief that the petitioner seeks in the present case.

15. The Court regrets that it is not, therefore, in a position to grant the relief that the petitioner seeks. It is obviously in recognition of this position that the coordinate Bench, in its order dated 7 February 2024, has also restricted the relief that it granted to the petitioner to the 2023-2024 academic session. For the next academic session 2024-2025, the order dated 7 February 2024 grants no relief to the petitioner.

16. This Court, therefore, regrets that it is also not in a position to grant the relief that the petitioner seeks.



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17. Needless to say, and at the cost of repetition, the petitioner's father Mr. Yadav would be at liberty to approach the respondent school with the request to permit his child to continue to study in the school by allowing the petitioner to pay the fees payable and to condone any delay in that regard, which may arise out of the financial circumstances in which the petitioner is placed. If such a request is made, it is for the respondent school to take an informed decision thereon. In case, the respondent school is generous enough to take the petitioner's financial condition into account and thereby provide relaxation insofar as the manner in which the fees are to be paid by the petitioner is concerned, no observation contained in the present order shall act as a fetter in that regard.

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18. I may note that Mr. Yadav sought to submit that he is willing to pay the fees of the respondent school on a monthly basis and that is the manner in which the respondent school is allowed to collect fees. He submits that the respondent school is, however, without justification, calling on the petitioner to deposit six months fees in advance.

19. Needless to say, in case the petitioner's father is willing to pay fees as the respondent school is entitled to charge in accordance with law, the school shall allow the petitioner to continue to study with it. It is clarified that the respondent school cannot refuse to permit the petitioner to study by insisting on payment of fees otherwise than in accordance with law.



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20. With these observations, this writ petition is disposed of.

C.HARI SHANKAR, J

APRIL 2, 2024

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Click here to check corrigendum, if any

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