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(OP)

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**WPA/2929/2026**

AVYYA TODI & ANR.  
VS.  
THE STATE OF WEST BENGAL & ORS.

Mr. Jishnu Saha, Sr. Advocate  
Mr. Anuj Singh, Advocate  
Mr. Arka Prava Sen, Advocate  
Mr. Ishaan Saha, Advocate  
Mr. Sayantan Kar, Advocate  
Ms. Deboshree Mukherjee, Advocate  
Ms. Trinisha De, Advocate  
Mr. Shivam Chaturvedi, Advocate

.....for the Petitioners

Mr. Arka Kumar Nag, Advocate  
Mr. Manish Biswas, Advocate

.....for the State

Mr. S.N. Mookherjee, Sr. Advocate  
Mr. Soumya Majumdar, Sr. Advocate  
Mr. Soumya Roychowdhury, Advocate  
Mr. Subhrojyoti Mookherjee, Advocate  
Mr. Biswajit Kumar, Advocate  
Mr. Raja Baliyal, Advocate  
Mr. Rajarsjhi Ganguly, Advocate  
Mr. Aayush Lakhotia, Advocate  
Mr. Vidhya Bhusan Upadhyay, Advocate

.....for the Respondent Nos. 4 to 6

1. This matter was taken up on an urgent basis, upon mentioning by the petitioners. The urgency has arisen according to the petitioners on the ground that the examination from which the petitioner no. 1 has been debarred, which was previously slated for sometime in mid May 2026, has now been pre-poned to commence on April 23, 2026.
2. The bare minimum facts at the present stage, which require consideration are that the first petitioner, a boy of 16 years, pursuing International Baccalaureate Diploma Programme (hereinafter as IBDP) curriculum was suspended on January 23, 2026 on account of an incident which occurred on January 22, 2026. This

incident related to the petitioner no. 1 along with several others indulging in an act of violence by physically bullying a younger student of the same school and indeed mercilessly beating up the younger student causing him extreme mental trauma. Needless to say such allegations have been denied by the petitioners.

3. It is this action which prompted the authorities to suspend the boy from the school and initiate disciplinary proceedings against him. The order of February 6, 2026 by a co-ordinate bench was carried in appeal by the petitioners herein in which the Hon'ble Division Bench passed a detailed order on February 13, 2026 setting forth certain directions which would guide the parties hereto, for the future course of action. It was inter-alia held, that the school shall grant an opportunity of hearing to the student and his parents before taking any final decision. This final decision was directed to be placed before the learned Single Judge and for the writ petition to be heard out. The matter was taken up on March 30th, 2026. None of the parties made any submission nor apprised this court about any decision having been taken by the school to expel the petitioner no. 1. The matter was fixed on 13th April 2026 in view of the urgency pleaded and particularly since it involved the career of a young student. However, in view of the resolution adopted by members of the Bar, the matter could not be taken up on that day.
4. It was only in the course of hearing today, I was informed that the school has taken a final decision on March 30, 2026, expelling the petitioner no. 1 from the school. However, the said decision is not on record.

Though such decision is beyond the scope of this writ petition, evidently, since the writ petition was filed prior to taking such decision, the same may be considered in view of the directions of The Division Bench.

5. It is in this short conspectus that the petitioner seeks an interim order to enable the petitioner to sit for the examination for the final assessment from class 11 to class 12, which is to commence on April 23, 2026.
6. As held in earlier orders, the issue of maintainability was to be decided prior to hearing the main petition as that would entail the grant of interim orders, if any.
7. Hence, before going into the question of any ad interim order, the question of maintainability of the writ petition has to be decided.
8. Mr. S. N. Mookherjee, learned senior advocate appearing for the respondent school has raised four issues challenging the maintainability of the writ petition. The points may be summarized as under:
  - a. *The respondent school is a private unaided institution, which is not amenable to the writ jurisdiction of this Hon'ble Court.*
  - b. *The admission of students and the administration of the school is squarely within the exclusive domain of the respondent school and cannot be questioned in a writ court and at best may find a place in a civil proceeding.*
  - c. *The writ petition is also not maintainable as the petitioner no. 1 is 16 years of age and hence a writ cannot be issued in his favour as he does not have a right to education, which limits such rights to students within the age group of 6 to 14 years.*
  - d. *Article 21A of the Constitution of India also specifies that the State shall provide free and compulsory education to children of the age 6 to 14 years. The petitioner no. 1 being 16 years of age does not come within the purview of Article 21A.*
  - e. *He has relied on two decisions, Purushottam Lal Singhania v. Delhi Public School & Ors. reported in 2006 SCC OnLine Cal*

339 and *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* (2002) 8 SCC 481. Both decisions and particularly the one of this Hon'ble Court are of the firm view that an infringement of fundamental right against a private body cannot be entertained as a matter of fact, of course by alleging infringement of fundamental right. The much celebrated decision of Supreme Court of India in *T.M.A. Pai Foundation* (supra) also states that in the case of unaided private school maximum autonomy has to be with the management with regard to administration including the right of appointment, disciplinary powers, admission of students and fees to be charged.

9. Mr. Jishnu Saha, learned senior advocate appearing for the petitioners has made the following submissions:
- i. *The writ petition against a private individual or body is maintainable in the event such private body is discharging public function, such as education.*
  - ii. *He has relied upon the decisions of the Hon'ble Supreme Court in *Miss Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666, *St. Mary's Education Society & Another v. Rajendra Prasad Bhargava & Others*, (2023) 4 SCC 498, the Hon'ble High Court of Himachal Pradesh in *Rakesh Kumar & Ors. v. State of Himachal Pradesh & Ors.*, 2026 SCC OnLine HP 883; and the Hon'ble High Court of Calcutta in *Bineeta Patnaik Padhi v. Union of India and Others*, 2021 SCC OnLine Cal 1662.*
  - iii. *The decisions are clear and unequivocal that right to education was espoused in the Constitution of India to enshrine the rights of citizens as a constitutional mandate to provide education at all levels for the benefit of all citizens. Thus, such a right cannot merely be wished away on the basis that a writ petition is not maintainable against a private body/authority even while discharging a public function.*
  - iv. *He also drew attention of this court to the words in Article 226 of the Constitution "to any person or authority" to argue that the makers of the Constitution did not merely postulate issuance of a writ to the state or its bodies, but also to private individuals or private authority, while they were discharging a public duty.*

10. I have heard learned counsel appearing for the parties and the decisions relied upon by them including the documents disclosed by them.
11. Since, at this stage the expulsion order of the petitioner no. 1 from the respondent no. 4 school is not before this Court, it would be inappropriate at this ad interim stage to go into the correctness, legality or procedural propriety of the action taken by the school in expelling the student.
12. However, this much is admitted that there was an incident which resulted in shock and trauma for a younger student of the same school. The decision as to whether the petitioner no. 1 was one of the perpetrators of such an action will have to wait till such order of expulsion is placed before this Court and the matter is finally heard.
13. Adverting to the only issue that the parties are concerned with at present, the decisions were varied as to whether a court exercising jurisdiction under Article 226 of the Constitution of India is empowered to issue a writ against a private body or not. However, this issue is no longer *res integra*. The construction of Article 226 has to be for a purpose which serves the benefit of maximum number of people without in any manner diluting the duties cast upon a body or an authority, especially when such body or authority is discharging a public duty.
14. Admittedly, the respondent no. 4 is engaged in the act of imparting education to young citizens of this country who would at some stage be the future of the country. Any school which is a private unaided institution cannot be brought within the realm of state logistics nor can its autonomy, which is of primary importance,

be curtailed in a manner which would destroy its autonomy. At the same time such a body imparting education, which has over a period of time been construed as a public duty, should not be allowed to function in an arbitrary or whimsical manner.

15. Any school while imparting education is undoubtedly embarking on the domain of a duty cast upon it involving public element and necessarily public wellbeing. Schools imparting education can be construed as engaged in an activity imparting education as a collective benefit for a body of citizens, termed as students. There is thus no impediment in holding that this act of schools (that is imparting education) falls within the domain of public duty having a direct nexus with the job undertaken by it. If, in the exercise of such duty, the school acts arbitrarily or whimsically, a public law action will vest in the aggrieved person, who may at that stage seek invocation of a prerogative action under Article 226 of the Constitution of India. In *St. Mary's Technological Education Society* (supra) it has been clearly held by the Hon'ble Supreme Court of India that if an action is assailed against a private institution which relates to the public duty that is imparting education, the same would be amenable to the writ jurisdiction. At the same time as held therein a private dispute by an employee against a private unaided school may not fall within the domain of discharging a public duty by this school. The said action would necessarily be covered by a private action between the employee and the private institution as the employer. In this particular case, it is not a case of employer and employee. It is the grievance of a student, a

beneficiary of the public duty being discharged by the school that is imparting education, which has been assailed in the writ petition.

16. The decision relied upon by the respondent particularly in the case of T.M.A. Pai Foundation & Ors. (supra) relates to certain minority institutions asserting their rights to establish and administer educational institution of their choice unhampered by rules and regulations that impinge upon their autonomy. In the present case, it is not a question of the autonomy of the school but the nature and character of an act of commission and/or omission taken by the school in suspending and now as it seems expelling a student on the ground of misbehavior or physical assault on another student.
17. The nature of the act as afore stated, by the school has a commencement, a substantive part and a consequence. The Act Commences from the Order of suspension of the alleged errant student which is attributable to an incident to which the student was allegedly a perpetrator. The substantive part of the act is to suspend the student from attending classes and ultimately expelling him from the institution. The consequence is the denial of the petitioner's right to continue with his education in the institution. All three parts form a fraction of the whole. The whole being the students' right to receive education as well as the duty of the school to impart education. Whether the act has been done in a rightful manner and is at all correct or not in so far as the procedural propriety is concerned is to be visited at the time of hearing of the petition. What is germane now is that the entire act of suspending and expelling the

student thereby denying him the right to obtain education can be construed as an act which falls within the domain of a public duty. Since the act is entirely between a student and the institution and not in any private domain, but clearly in the realm of discharging a public duty by the School, I have no hesitation in holding that the instant act relates to such public duty of the School and falls within the public domain. The act of expulsion or even suspension of the student has the effect of the institution refusing to impart education to the petitioner and clearly has a direct nexus, as laid down in St. Mary's Education Society (Supra), to the duty of the school to impart education which falls within the realm of public duty.

18. In so far as the connected issue is concerned as to whether right to education is a fundamental right or not, it is true that by way of Article 21-A the right to education has been limited to students between the age group of six to fourteen and the Petitioner being a student of sixteen years of age doesn't fall within the parameters of this Article. However, it is equally true that while deciding the issue of right to life under Article 19 of the Constitution of India, the Hon'ble Apex Court has held in Unni Krishnan (Supra) that right to education is well within the benchmark parameters of right to life. Hence, any student who is denied a right to education can invoke the prerogative powers of the High Court under Article 226 of the Constitution of India.
19. Had this action been against the very same school by an employee, I suspect if the writ petition could have been maintainable. In that case as reiterated by the

Supreme Court of India in *St. Mary's Education Society (supra)* the tenor of the dispute would have nothing to do with the public duty being discharged by the school, it would have been a private dispute between the school as an employer and the aggrieved person as an employee. However in the present circumstance, that is not the case. The school is discharging a public duty and has taken the decision to show cause and now suspend the petitioner no. 1 while discharging such a public duty. Thus, the denial of the petitioner's right to participate in the proceedings in the school of attending classes and taking the exam or the assessment is completely within the realm of public duty cast upon the school. There is clearly an element of public duty, infraction whereof is under challenge in this writ petition.

20. In *Unni Krishnan v. State of Andhra Pradesh (Supra)*, read with *Mohini Jain v. State of Karnataka (Supra)*, the Supreme Court authoritatively declared that the right to education, though not expressly catalogued in Part III of the Constitution, is intrinsic to and flows from the right to life guaranteed under Article 21 of the Constitution of India. The Court recognized that the expression "life" under Article 21 does not signify mere animal existence but also incorporates the right to live with human dignity, intellectual freedom, and the full development of one's personality. Education was held to be the very foundation upon which the dignity of the individual rests, for without education the freedom guaranteed by the Constitution would remain illusory and incapable of meaningful exercise. These pronouncements thus elevate education from a mere

constitutional aspiration to an enforceable component of the right to life, without which the promise of social justice and constitutional democracy would remain incomplete.

21. In view of the aforesaid discussions, I have no hesitation in holding that the writ petition is maintainable. Having held the writ petition to be maintainable, it is now incumbent to assess whether an ad interim order of injunction on the assessment or examination which is to commence from April 23, 2026 in the respondent no. 4 can be stayed or be kept in abeyance. It is in these circumstances that the question of balancing the equity assumes a rather pivotal role. The petitioner no. 1 is not the only student who is taking such an examination/assessment but is one amongst many. It is true that the petitioner seeks to challenge the expulsion which has been meted out to him by the school on the alleged ground of misbehavior, assault and causing trauma to another student. It is equally true that this order of expulsion is not before this Court as it was passed after the writ petition was filed before this Hon'ble Court.
22. Any sort of restraint against the examination to be conducted by the respondent no. 4 would prejudice the entire batch of students and for no fault of theirs a large number of students would stand to lose a year of their academic career. This would not only be prejudicial but would be a complete dilution if not an infraction of the rights of such students.
23. On the other hand, to permit the petitioner no. 1 to sit for the exam would cause a similar dilution of the school's autonomy to initiate an action against any

errant student, if the situation so arose. Thus, any interim order at this stage directing the school to permit the petitioner no. 1 to sit for the examination would result in or at least would have to result in keeping the order of expulsion in abeyance till such time that the writ petition was finally disposed of. The expulsion order is not before this court. Hence, to take any decision in respect of the order of expulsion in its absence would tantamount to passing an order of a prima facie satisfaction without even perusing such order of expulsion. This would lead to judicial impropriety.

24. In the circumstances afore-stated, the balance of equities is of a clear 2:1 ratio. The two being: - a. The autonomy of the school in dealing with its own affairs; b. The well being and the rights of a large number of students who are also going to sit for the examination.
25. The one on the other hand being the rights of this particular student, the petitioner no. 1 herein. However, the right of this young person also requires some protection.
26. Since this is an internal examination to be conducted by the school itself, I direct the petitioner's right to sit for this examination as a student of the respondent no. 4 would be subject to the outcome of the writ petition. Thus, in other words, in the event the writ petitioners are successful in their pursuit, the petitioner no.1 will be permitted to sit for this examination at a later date, which the school will arrange to ensure that the petitioner no. 1 does not lose an academic year to his career.
27. Since Mr. Saha prays for leave to file a

supplementary affidavit to bring on record the order of expulsion along with certain other documents. Such leave is granted. The petitioners will file the supplementary affidavit by April 30, 2026.

28. Let affidavits in opposition be filed by May 20, 2026 reply thereto, if any, by June 20, 2026.
29. List this matter in the monthly combined list of July 2026.

**(Reetobroto Kumar Mitra, J.)**