

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 21ST DAY OF AUGUST 2023 / 30TH SRAVANA, 1945

WP(C) NO. 21991 OF 2023

PETITIONER/S:

BY ADVS.
NAVANEETH.N.NATH
ABHIRAMI S.

RESPONDENT/S:

- 1 THE CBSE REGIONAL OFFICE
CTTC, ADMIN BLOCK, BSNL RTTC CAMPUS, KAIMANAM,
THIRUVANANTHAPURAM,, PIN - 695040
- 2 THE PRINCIPAL
SADGURU PUBLIC SCHOOL, PEROOR, PULLUR P.O., VIA
ANANDASHRAM, KANHANGAD, KERALA, PIN - 671315
BY ADVS.
MOHAN JACOB GEORGE
P.V.PARVATHY (P-41)(K/000036/1991)
REENA THOMAS(R-364)
NIGI GEORGE(K/1169/2012)

OTHER PRESENT:

SRI. MOHAN JACOB GEORGE - R1

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

(Dated this the 21st day of August 2023)

The petitioner, is a minor, aged 13 years old, represented by her mother, has approached this Court for a direction to the 2nd respondent to issue the Transfer Certificate to the petitioner based on Ext.P1 application.

2. Petitioner is a student at Sadguru Public School, Kanhangad. The 2nd respondent is the Principal of the School. The case projected by the petitioner is that after the former Principal left the School, the new Principal brought in many changes in rules, regulations, and conduct to be followed by the students studying there. The petitioner had to face severe mental harassment from the Principal. Finding it very difficult to continue with her studies in the said School, the petitioner's mother filed Ext.P1 application to issue a Transfer Certificate. The said application was filed on 15.06.2023. When there was a delay in the issuance of the certificate, the petitioner's mother

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approached the 2nd respondent, and the 2nd respondent informed her that there were arrears of fees of Rs.39,055/- and unless and until, the said amount is paid, the Transfer Certificate cannot be issued. Even though the petitioner's mother submitted a representation before the 1st respondent, and also before the PTA regarding the harassment the child had faced and the non-issuance of the Transfer Certificate, they have not chosen to take any appropriate steps.

3. The petitioner submits that Exts.P2 and P3 are copies of the transaction regarding the payment of Rs.15,000/- and Rs.25,000/- on 11.09.2022 and 17.12.2022 respectively, and there are no arrears of fees, as alleged by the 2nd respondent. Therefore, the petitioner has approached this Court for a direction for issuing the Transfer Certificate.

4. A counter affidavit has been filed by the 2nd respondent, wherein it is contended that the petitioner had completed her 8th standard in the School during the academic

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year 2022-23. Therefore, she had already completed her elementary education, and the averment that she is studying in the 8th standard is wrong. In such a situation, the petitioner cannot rely on Section 5 of the Right to Education Act, 2009, as she has already completed her elementary education.

5. The School is an unaided (Self-Financing) Private School established by a minority community and run by a registered trust known as 'Bhuvanendra Education Trust, Kanhangad'. The School is affiliated to CBSE and is providing education till 10th standard. The provisions of the Right to Education Act, 2009 are not applicable to a minority School.

6. The petitioner has already completed her elementary education. The total amount of defaulted tuition fees and bus fees comes to Rs.39,055/- and the School, being a Self-Financing Institution, is solely depending on the fees collected from the students for payment of salary to the teachers and for the expenditure incurred for running of the School.

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7. Students cannot insist on a Transfer Certificate without payment of the school fees. The reason for leaving the School, as seen from Ext.P1, is to go abroad. A student's fees in a Private School in Gulf Countries come to lakhs of rupees. The default amount is only Rs.39,055/- and the petitioner's mother intends to somehow obtain the Transfer Certificate without payment of the fees and send the child to Gulf Countries for further studies.

8. The respondent-school not only provides an excellent academic atmosphere but gives much importance to extracurricular and cultural activities. The petitioner was a bright student academically and was an active participant in the athletic and cultural events conducted in the School. She had represented the School in the CBSE State level athletic meet and bagged a Silver Medal in the 800 mtrs running race and also Bronze Medal in the 200 mtrs and 800 mtrs running race in the under-16 age group. The school has always supported the petitioner in academic and other co-curricular activities. The averment that the

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harassment is treated against the petitioner is ill-founded. Therefore, prayed for the dismissal of the writ petition.

9. Ext.P1 is the application filed by the petitioner's mother for the issuance of Transfer Certificate to take the child abroad for further studies. The application is dated 15.06.2023. The reason for non-issuance of the Transfer Certificate is that an amount of Rs.39,055/- is due towards the school fees and bus fees. The petitioner submits that, as per Exts.P2 and P3, the entire fees have been paid for the academic year 2022-23 and disputes the claim raised by the School.

10. The petitioner has also filed I.A No.1/2023 by producing Exts.P5 and P6. Ext.P5 is a lawyer's notice dated 16.06.2023 issued to the petitioner's mother, calling upon her to pay the balance fees of Rs.39,055/- within 15 days of receipt of the notice, failing which, legal action would be initiated. Ext.P6 are the medical reports of the petitioner's mother showing that she is undergoing treatment for cancer.

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11. Imparting education is the primary duty of the State. The Transfer Certificate of a child cannot be withheld by a School because the fees are due to the School. Every child has a fundamental right to get an education. At the same time, the School, being an unaided school, also has a right to get the fees which are legally due for their sustenance. An unaided school runs on the school fees obtained from the children studying at the School for payment of salary to teachers and for the maintenance of the School. But a School cannot deny a child to obtain a Transfer Certificate to move to another School of their choice. In the present case, the petitioner contends that the entire fees have been paid for the academic year 2022-23. But the 2nd respondent disputed the same and submitted that an amount of Rs.39,055/- is due from the petitioner towards fees.

12. Since it is a disputed question of fact, this Court cannot go into the said aspect under Article 226 of the Constitution of India. The question that arises for consideration

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is whether the 2nd respondent can withhold the Transfer Certificate, unless and until, the amount in dispute as school fees is paid by the petitioner. Indeed, the answer is no. The right of a child to get a Transfer Certificate from a School to join another School, for whatever reason, cannot be denied by the School Authorities merely because the School fee is due. If any amount is due towards fees, the proper course open to the 2nd respondent is to file appropriate proceedings against the petitioner for recovery.

13. Coercive tactics cannot be insisted upon by the 2nd respondent to make the petitioner pay school fees. It is seen from Ext.P5 that the school has already issued a lawyer's notice to the petitioner's mother to pay the entire fees due to a tune of Rs.39,055/- within 15 days, and it is also stated that failing which, legal action would be initiated. Ext.P6 shows that the petitioner's mother, is aged 32 years, is undergoing treatment for cancer, and one of the certificates show that the approximate cost

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of the treatment would come to Rs. 12 lakhs.

In such a situation, the child cannot be made a scapegoat and denied the right to education by withholding the Transfer Certificate. The 2nd respondent has no business to retain the Transfer Certificate. Therefore, the writ petitioner is entitled to an order and hence, there will be a direction to the 2nd respondent to issue the Transfer Certificate to the petitioner based on Ext.P1 application within a period of seven days from the date of receipt of the certified copy of the judgment. Needless to say, if any amount is due to the petitioner, the 2nd respondent is given liberty to initiate appropriate legal proceedings for recovery of the same.

The writ petition is disposed of.

Sd/-
BASANT BALAJI
JUDGE

JS

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APPENDIX OF WP(C) 21991/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF APPLICATION FOR TRANSFER
CERTIFICATE SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT DATED
15.06.2023
- Exhibit P2 TRUE COPY OF TRANSACTION DETAILS OF
PAYMENT OF FEE, RS.15,000/- DATED
11.09.2022
- Exhibit P3 TRUE COPY OF TRANSACTION DETAILS OF
PAYMENT OF FEE, RS.25000/- DATED
17.12.2022
- Exhibit P4 TRUE COPY OF THE SCREEN SHOT OF
REPRESENTATION SUBMITTED THROUGH EMAIL
BY THE PETITIONER BEFORE THE 1ST
RESPONDENT DATED 14/06/2023
- Exhibit P5 THE TRUE COPY OF LAWYER NOTICE DATED
16.06.2023
- Exhibit P6 THE TRUE COPY OF MEDICAL DIAGNOSIS AND
RELATED TREATMENT DETAILS

RESPONDENT EXHIBITS

- EXT.R2 (B) COPY OF THE CERTIFICATE DATED
05.09.2012 ISSUED BY THE DISTRICT
COLLECTOR, KASARGOD, CERTIFYING THAT
THE SCHOOL IS A MINORITY SCHOOL
ESTABLISHED BY THE KONKINI LINGUISTIC
MINORITY
- EXT.R2 (A) THE STUDENT REPORT CARD OF THE
PETITIONER