

IN THE HIGH COURT OF ODISHA, CUTTACK

ORIGINAL CIVIL JURISDICTION

W.P (C) (PIL) NO OF 2020

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

Code.....

IN THE MATTER OF:

Mohammed Mustaq AnsariPetitioner

Verses

State of Odisha & AnrRespondents



WITH

I.A No. OF 2020

(APPLICATION FOR PERMISSION TO APPEAR AND ARGUE)

(For index kindly see inside)

Mohammed Mustaq Ansari
MOHAMMED MUSTAQ ANSARI

(Petitioner in person)

MOBILE No. 9853210530

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OSBC No. O-181-09

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Verses

1) The State of Odisha
Through Chief Secretary,
Chief Minister Office
State Secretariat, Sachivalaya Marg
Bhubaneswar, Odisha-751001

2) Department of School and Mass Education
Through Principal Secretary
Bhubaneswar, Odisha - 751001

.....Respondents

**PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
IN THE NATURE OF PUBLIC INTEREST LITIGATION SEEKING
DIRECTIONS TO ALL PRIVATE AIDED AND UN-AIDED SCHOOLS TO
WAIVE TUTION FEES OR OTHER CHARGES FOR THE LOCKDOWN
PERIOD OR TILL COMMENCEMENT OF CLASSES.**

To,
THE HON'BLE ACTING CHIEF JUSTICE OF ODISHA
HIGH COURT

& HIS COMPANION JUSTICES OF HON'BLE COURT.

THE HUMBLE PETITION OF
PETITIONER ABOVE-NAMED

Handwritten signature: Yashwantrao Chavan

MOST RESPECTFULLY SHOWETH AS UNDER:

1. That the present petition under Article 226 of the Constitution of India is being filed by way of Public Interest Litigation and the petitioner has no personal interest. The petition is being filed in the interest of general public (irrespective of their religion, caste or community) as it would give relief to thousands of parents who are facing or will further face hardships because of the complete lockdown during this ongoing pandemic.
2. That the petitioner is a citizen of India and a permanent resident of the state of Odisha, by occupation a Lawyer and a Human Right Activist and is a practitioner in District and Session Court at Sambalpur (Odisha) under the membership of District Bar Association, Sambalpur bearing OSBC Enrollment No. **0-181-09**. In exercise of his duty under Article 51A(h) of the Constitution and with a view to promote the rule of Law, the petitioner has preferred the instant writ petition under Article 226 of the constitution of India in Public Interest.
3. That the petitioner has not filed any other public interest litigation either in this Hon'ble Court or in any other Court seeking same and similar directions as prayed for in this petition.
4. That the petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this PIL. It is not guided for gain of any other individual person,

Manoj Kumar, Sambalpur

institution or body. There is no motive other than the public interest and the petitioner is filing this present petition on his own and not at the instance of someone else. However, it is incumbent to mention here that the petitioner is a parent too and his children are also studying in an un-aided private school in the district of Sambalpur but that does not drive the petitioner to file this PIL.

- 5.** That the entire nation has been going through an extraordinary situation and a deadliest ever pandemic has been witnessed throughout which has convincingly brought the life on this planet on halt and in order to fight this stigma, the Government both Union and State is taking all possible measures which it deem imperative and necessary.
- 6.** That taking a serious approach, the Govt. of Odisha vides an official notification dated 13th Mar'2020 declared COVID-19 as a "Disaster" and authorized the Disaster Management Authorities, State Executive Committee & Public Authorities in the state to take necessary action for the management of the said disaster. (A true typed copy of the said notification is annexed herewith as **Annexure - 1**)
- 7.** That as a preventive measure to fight the pandemic, the Govt. of Odisha in exercise of its power under 'The Epidemic Disease Act, 1897 and 'The Disaster Management Act, 2005' ordered Lockdown of the entire state and directed its residents to stay in isolation at

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home so as to strictly follow the social distancing guidelines issued by the appropriate authorities from time to time.

8. That in order to promote its direction on isolation and social distancing, the State Govt. directed all the Offices (Both Govt. and Private), Institutions including educational institutions, Establishments (Commercial and Private) etc. to remain closed and the same have been extended from time to time as a result of which now the lockdown period have been extended upto 30th April 2020. (A true typed copy of the order extending the lockdown period is annexed herewith as **Annexure - 2**)
9. That since the declaration of the lockdown the people of the state are decreed to stay at home and are facing financial crunch as there earning sources are completely blocked. Not only this there are thousands of families, may be lakhs who are surviving at the mercy of the state authorities and other non governmental agencies.
10. That COVID-19 pandemic has been viewed as a economic tsunami as it has not only slams brakes on economic activity but also jeopardizes the country's financial stability along with bringing enormous human sufferings which has not been seen in decades and currently in the midst of the lockdown period which could possibly extend further, the likelihood of the crisis to turn from bad to worse can't be denied.

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11. That there is no trace of doubt on the functioning of the Central Govt. as well as State Govt and the manner in which they are managing things by taking every possible steps to overcome this crisis but there are some grey areas too which needs extreme attention during this odd times.
12. That under this lockdown period which is effective from 21st Mar' 2020 when people through out the nation including State of Odisha are under strict directions to remain in isolation and all business/professional/other activities (other then declared exceptions) have ceased to function, there could be thousands of parents who could not be in a position to pay the school fee of their wards at revised rates or even at existing rates if demanded.
13. That indentifying the issue, the Hon'ble Chief Minister of Odisha, Shri Naveen Pattnaik on dated 10th April 2020 through his tweet advised all private educational institutions in the state to consider reduction/deferment of fees for the month of April 2020 to June 2020. (A true typed copy of the news article as reflected in the website of TOI is annexed herewith as **Annexure - 3**).
14. That so also the Union Govt. has urged private schools across the country not to increase school fees, and not to charge three month fees in one go following spread of coronavirus and subsequent lockdown. The Union HRD Minister Shri Ramesh Pokhriyal Nishank

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has further appealed all schools to take a sympathetic approach on the issue. (A true typed copy of the news article as reflected in the website of TOI is annexed herewith as **Annexure - 4**).

15. That taking a serious note of the issue and in the interest of justice, the Directorate of Education, Govt. Of NCT Of Delhi has passed a slew of direction to the Un-aided private schools of Delhi and has further warned to take action in case of non-compliance of the same. (A true typed copy of the said order is annexed herewith as **Annexure - 5**).

16. That it is pertinent to mention here that online service extended by the school during the lockdown period shall not be equated with physical conducted classes or lectures as the infrastructures and other facilities of the schools are not in use. At best it could be taken at par with the holiday homework exercise which a school provides to its students during the vacation period.

17. That moreso it cannot be ignored as well that an educational institution too need funds to cover its expenditure to be incurred in staff salary, establishment and curricular activities but since all these institution are not functioning on account of the declared lockdown, expenses to be incurred on curricular activities is almost nil. However even during this lockdown period, payment of salaries to its staff members is a matter of concern which under no

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circumstances can be brushed aside. Under such circumstances, it is the responsibility of the State Govt. to take appropriate measures or such other action as may be deemed fit and proper.

18. That the doctrine of '**Parens Patriae**' is applicable to the common people of the state who are undisputedly the victims of this mass disaster and the State Govt. being the guardian of its residents shall assume the role of parents and shall take all necessary steps to protect the rights and interest of its residents. The Hon'ble Supreme Court in **Charan Lal Sahu v. UOI, AIR 1990 SC 1480**, while dealing with the concept of '**Parens Patriae**' has held that the Government has sovereign power of guardianship over persons who are not in a position to protect their rights and interest. Under such circumstances, Govt. must intervene and fight for their rights. (A true typed copy of the judgement passed by the Hon'ble Apex Court in Charan Lal Sahu v. UOI, is annexed herewith as **Annexure - 6**)

19. That the source of information of the facts pleaded are bonafide and authentic and has been duly verified at the end of the petitioner.

20. That the petitioner has not filed any other petition seeking the same relief in this Hon'ble Court or any other High Court.

21. That the petitioner begs to move the present petition on the following amongst other grounds:

Charan Lal Sahu v. UOI

GROUNDS

- A)** Because the economic blockade caused amidst the lockdown period has completely cut down the earning sources of a large sections of the society,
- B)** Because sometimes mere advice won't bring acute relief to the needy unless and until appropriate direction be issued,
- C)** Because Covid-19 pandemic is an extraordinary situation and an extraordinary situation demands extraordinary measures,
- D)** Because when the earning sources has been completely brought to halt, demanding tuition fee either way may be revised or actual would again cause unnecessary hardship to thousands of families,
- E)** Because under the current scenario when the number of COVID-19 cases is rising every single day, it would be very uncertain to predict the continuity of the lockdown period,
- F)** Because COVID-19 pandemic since declared "Disaster", the provisions of "The Disaster Management Act, 2005" is squarely applicable which demands both Union as well as State Govt. to take necessary measures and such other actions as may be necessary for disaster management,
- G)** Because the State Govt is the guardian of its residents/people and under the current scenario the common English Law Doctrine of '*Parrens Patriae*' under the Constitution of India as in cases like Charan Lal Sahu v. Union of India, AIR 1990 SC 1480 is well applicable,

1/20/2020
 1/20/2020
 1/20/2020

The petitioner craves the leave of this Hon'ble Court to add, alter or amend any of the above grounds and to file additional affidavits at a later stage if so advised.

PRAYER

In the facts and circumstances stated herein above, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) Issue a writ of mandamus or any other appropriate writ, order or direction of this Hon'ble Court directing:

1. Government of Odisha to pass necessary order directing both the private un-aided and aided schools not to collect Tution Fee for the lockdown periods preferably for the month of March 2020 till June 2020 or until actual commencement of classes,
2. Government of Odisha to pass necessary order directing both the private un-aided and aided schools not to increase any fee in the academic session of 2020-21,
3. Government of Odisha to pass orders directing the Manging Committee of both the private un-aided and aided schools not to put extra financial burden upon the parents by creating any new head of fee for the academic session of 2020-21,
4. Government of Odisha to pass order directing its functionaries within its respective districts to take strict action inaccordance with the provision of law in force against the managing committee of those

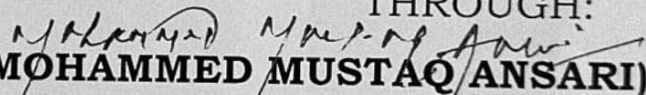
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institution who in any way fails to comply such direction of the State Govt.

5. Government of Odisha to provide sufficient funds to all those private schools who will be unable to bear their basic liabilities of payment of salaries to their staffs both teaching and non-teaching so that no one shall be prejudiced under the guise of shortfall of fund,

(b) Pass any other or further order or orders in the interest of justice, as it may deem fit, in the fact and circumstances of the present case,

AND FOR WHICH ACT OF YOUR KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

THROUGH:

(MOHAMMED MUSTAQ ANSARI)

ADVOCATE, SAMBALPUR

PETITIONER IN PERSON

MOBILE No. 9853210530

adv.mohdansari07@gmail.com

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AFFIDAVIT



do hereby solemnly affirm and state on oath as under:

1. That I am the petitioner in person in the aforementioned writ petition and being familiar with the facts and circumstances of the case, I am conservant to swear this affidavit,
2. That I have read and understood the contents of the petition and all the accompanying applications attatched to it and all the facts stated herein are believed to be true and correct to the best of my knowledge, belief and nothing material has been concealed therefrom,

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3. That all the annexures annexed herewith this writ petition are true copies of their respective originals.
4. That I have made all possible efforts to get best of the information and materials connected with the subject matter in this writ petition.

Maheshwar Mohanty
DEPONENT

VERIFICATION

I, the above noted deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and that no part of it is false and nothing material has been concealed therefrom.

Verified at Sambalpur on **20th** day of April **2020**.

Maheshwar Mohanty
Deponent