

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Writ Jurisdiction)**

W.P. (PIL) No. _____/of 2020

In the matter of:-

An application under Article
226 of the Constitution of
India.

And

In the matter of:-

Swetha Pal,

...Petitioner

Versus

1. State of Jharkhand, Through Chief Secretary, 1st Floor,
Project Bhawan, P.O. & P.S. Dhurwa, Ranchi-834004

2. Secretary, Department of School Education & Literacy Development, Govt. of Jharkhand, M.D.I Building, Dhurwa, P.O. and P.S.-Dhurwa, Ranchi-834004
3. Secretary, Department of Women, Child Development & Social Security, Project Bhawan, P.O. and P.S.-Dhurwa, Ranchi-834004.
4. Secretary, Department of Health, Medical Education & Family Welfare, Ground Floor , Nepal House Doranda P.O. & P.S.- Doranda, Ranchi - 834002
5. Secretary, Ministry of Women and Child Development, Government of India, Shastri Bhawan, P.O.-Shastri Bhawan, P.S-Mandir Marg, 110115, State-New Delhi
6. Secretary, Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, Shastri Bhawan, P.O.-Shastri Bhawan, P.S-Mandir Marg, 110115, State-New Delhi

... Respondents

To,

Hon'ble Mr. Justice Dr. Ravi Ranjan, the Chief Justice of the High Court of Jharkhand, Ranchi and His other companion Judges of the said Hon'ble Court.

The humble petition on behalf of the petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. That in the instant petition, the petitioners pray for issuance of an appropriate writ(s)/ order(s)/ direction(s) for following relief(s):-

- i) Direction upon the State of Jharkhand to ban online streaming classes from Pre-Primary till 5th grade (Under age 10 years) from immediate effect, considering the NIMHANS Director advice and adverse effect on mental health on smaller kids and stop charging fee for the same.
- ii) Direction upon the State of Jharkhand to issue appropriate Circular/Notification/order that attendance in online classes shall be optional and

not mandatory, and accordingly fee should be charged. As many children do not have the enabled device, Access to internet, Reliable electricity etc and capacity to pay fee.

iii) Direction upon the State of Jharkhand to issue circular/Notification/order to regulate timing of online classes based on Guidelines issued by Respondent no. 6 and considering the adverse effect on children due to long duration of online classes.

iv) Direction upon the State of Jharkhand to issue circular/Notification/order for schools to allow those students to appear in exam who could not attend online classes & could not pay fee due to any disabilities due to Covid-19 Lockdown .

v) Direction upon the State of Jharkhand to issue appropriate circular/Notification/order to provide uniform maximum relief in school tuition Fees as far as practicable for the period when physical classes were not held. As Survival of both

Schools and Parents/Families are necessary for the development of society.

vi) Direction upon the State of Jharkhand to issue appropriate circular/Notification/order to Rationalize and regulate the arbitrary and unreasonable tuition fee charged by some schools for online classes, as because limited resource is used in conducting online classes. The fee should be fixed keeping in mind that the Survival of both Parents/Families and Schools are necessary in this current pandemic for the development and progress of Society.

vii) Pass any such other orders as may be deemed fit in the facts and circumstances of this case.

2) That this writ petition has been filed on the following grounds:

Grounds

- a. For that Primary education helps intellectual and physical development through play and structured activities but online classes restrict these activities and put unnecessary stress on them.
- b. For that Children below the age of six years should not be exposed to online schooling, according to National Institute of Mental Health & Neuro Sciences (NIMHANS).
- c. For that considering the ill effects on small children Madhya Pradesh and Maharastra has already banned Online classes for Primary and Pre-Primary children.
- d. For that **Force Majeure** provisions in the law are express terms and not ordinarily can be applied into contracts. So, Supreme court in ***Energy watchdog Vs. CERC & Ors*** held that such contract shall be governed by Section 32 of the Indian Contract Act. There is express and

implied agreement of the school with the parent/students for rendering offline classes. There was no mention in contract that in case of pandemic and adverse circumstances they will offer online classes and charge same set of tuition fee. So, demanding fee and expenses without rendering committed service is bad in law and against the principle of natural justice.

- e. For that the contract between schools and the Parents is to provide teaching/service through offline classes but the unilateral decision without informed consent of parents to take online classes amount Deficiency in Service as per the provisions of Consumer Protection Act.
- f. For that the contract between schools and the Parents is for offline classes and charging fee for online classes which require less resources. Contract between schools and the Parents is to provide teaching/service through offline classes.

- g. For that due to nationwide lockdown, health and financial crises, it is not possible for the parents and students to approach the Consumer Courts and Authorities for the redressal of their grievances.
- h. For that many differently able children and other suffering from mental illness like Attention Deficit Hyperactivity Disorder (ADHD) and other illness cannot attend online classes appropriately and with concentration.
- i. For that Many families do not have enough resource and gadget require to attend online classes.
- j. For that several families have more than 1 child but they do not have more than 1 smart phone or computer consequently each child can not attend online classes.

- k. For that in many household there is only one smart phone and internet connectivity and same is being used by any of the parents in their work.
- l. For that Uttarakhand High court has recently passed an order that only those students who are attending online classes need to pay tuition fee. Thus, making online classes optional.
- m. For that Hon'ble Supreme Court has refused to interfere with the Uttarakhand High court order that made online classes optional.
- n. For that there is a most common problem of internet connectivity and unreliable electricity in many areas, due to which students could not able to attend the online classes. Even sometimes court hearing is affected due to poor internet connectivity.
- o. For that a petition was filed in Hon'ble Supreme Court with regard to waiver of school fee but it refused to interfere on the issue saying that

problems of each state are different and the matter should have been raised before respective High Courts.

p. For that Department of School Education and Literacy, Government of India (Respondent no. 6) has issued guidelines with regard to duration of online classes.

q. That any other ground may be urged at the time of hearing.

3) That the Petitioner is a House Wife residing at HI/263, Harmu Housing colony, Ranchi Jharkhand. I am graduate of Osmania University. She is B.Ed. (English) qualified and also done PG diploma in Child Psychology. As the Petitioner is Post Graduate diploma in Child Psychology, she understand the child psychology and ill effects of long duration of online classes on children. That the petitioner came to know that schools are charging arbitrary and unreasonable fee for online class and also pressurizing the parents

for payment of same. The petitioner has no personal interest, direct or indirect, in the subject matter of this Public Interest Litigation and is filing this writ application for the welfare and benefit of children. These children and parents are belonging from poor and weaker section of the society and they could not move this Hon'ble Court due to Covid-19 Lockdown and its consequences. There is no civil, criminal, revenue or any litigation involving the petitioner, which has or could have a legal nexus with the issues involved in the PIL.

- 4) This petition pertains to Ban on Primary and Pre-Primary online classes, regulation of Fee, regulation of timing of online classes and online classes should be optional for those students who could not attend the online classes due to various disabilities occurred due Covid-19 Lockdown.
- 5) That due to Covid-19 pandemic lockdown was announced by the Respondent/s in the month of March 2020 and all the schools were also closed. Thereafter

some relaxation were announced and schools started online classes. Initially these classes were held by the schools without any guidelines/circular by the government but due to opposition and protest from guardians with regard to Fee, on dated 25.06.20 Government of Jharkhand issued a circular which are mostly related to payment of fee and other charges. But the issues raised in present PIL were not addressed in the said circular.

Photo Copy of Circular is attached herewith and marked as **Annexure-1** forming a part of Writ Application.

- 6) That it is submitted that online classes started by the schools were for all the classes including the Primary and Pri-Primary but children in these are are of upto 10 years and online classes for them is not conducive.
- 7) That is is submitted that happiness, enthusiasm, running, fighting, playing with other children are natural qualities of the children and school are medium to facilitate those at least in Primary and Pre-Primary

level. Primary education helps intellectual and physical development through play and structured activities. However, in current pandemic, our smaller mind has become victim of ambitious parent and greedy school management and have been forced to sit in front of computer and mobile to attend long online classes. It affects mental health adversely as their brain has not developed to a level to understand technology and grasp things presented through online streaming.

- 8) That National Institute of Mental Health and Neuro Sciences (NIMHANS), Bengaluru said that Children below the age of six years should not be exposed to online schooling, further it added that Home Schooling by parent is best option in current pandemic and widely accepted concept. This news was published in New Indian Express news paper on dated 29.05.20.

Printout of web edition of New Indian Express news report is attached herewith and marked as **Annexure-2** forming a part of Writ Application.

9) That considering the ill effects of online classes Maharashtra and Madhya Pradesh banned online classes upto Std. II and Pre-Primary and Primary respectively.

Printout of web edition of news reports are attached herewith and marked as **Annexure-3 Series** forming a part of Writ Application.

10) That it is most humbly submitted that the attendance in online classes should be made optional for all classes and accordingly fee should be charged who attend the online classes. Many families do not have enough resource and gadget require to attend online classes.

11) That it is further, submitted that several family have more than 1 child but they do not have more than 1 smart phone or computer so that each child can attend online class. And in many household there is only one smart phone and internet connectivity and same is being used by any of the parents in their work.

- 12) That there is a most common problem of internet connectivity in many areas, due to which students could not able to attend the online classes.
- 13) That Uttarakhand High court has recently passed an order that only those students who are attending online classes need to pay tuition fee. Thus, making online classes optional. Hon'ble Supreme Court has also refused to interfere with the Uttarakhand High court order that made online classes optional.

Printout of web edition of news reports is attached herewith and marked as **Annexure-4** forming a part of Writ Application.

- 14) That it is humbly submitted that arbitrary and unreasonable tuition fee is charged by the schools for online classes, this should be Rationalize and regulated keeping in mind that the survival of both parents/families and schools are necessary for the development of society. In conducting online classes limited resource is used and their duration is ranging

from 1 to 3 hour compare to offline classes of 5 to 6 hour.

15) That it is further submitted that there is huge disparity in online tuition fee from one school to another as these has been fixed arbitrarily without taking approval from district level fee regulation committee and without obtaining NOC and recognition from state government as per rule 12 of RTE act 2011.

16) That long duration of online classes are not good for the children as it restrict their movement, running, fighting, playing which affect their development of intellectual and physical development through play and structured activities. Department of School Education and Literacy, Government of India (Respondent no. 6) has issued guidelines with regard to duration of online classes.

Relevant extract of Guideline is attached herewith and marked as **Annexure-5** forming a part of Writ Application.

17) That a petition was filed in Hon'ble Supreme Court with regard to waiver of school fee but it refused to interfere on the issue saying that problems of each state are different and the matter should have been raised before respective High Courts.

Printout of news report is attached herewith and marked as **Annexure-6** forming a part of Writ Application.

18) That on dated 15.07.2020 the petitioner sent a representation to Chief Secretary and other concerned department highlighting the issues raised in this PIL with a request to address them, but nothing has been done and no response was received from them.

Printout of representation is attached herewith and marked as **Annexure-7** forming a part of Writ Application.

19) That the Petitioner has no alternate efficacious remedy but to approach this Hon'ble Court under Article 226 of the Constitution of India for the reliefs prayed for herein.

- 20) That the Petitioner has not moved earlier for the same relief as prayed in this Public Interest Litigation.
- 21) That the cause of action for filing this public interest litigation has arisen within the territorial jurisdiction of this Hon'ble court.
- 22) That this application is being made bonafide and in the interest of justice for the public at large especially the economically and socially weaker section of the society.

It is, therefore prayed that your Lordship may graciously be pleased to issue an appropriate writ(s)/ order(s)/ direction(s) for following relief(s):-

- i) Direction upon the State of Jharkhand to ban online streaming classes from Pre-Primary till 5th grade (Under age 10 years) from immediate effect, considering the NIMHANS Director advice and adverse effect on mental health on smaller kids and stop charging fee for the same.

- ii) Direction upon the State of Jharkhand to issue appropriate Circular/Notification/order that attendance in online classes shall be optional and not mandatory, and accordingly fee should be charged. As many children do not have the enabled device, Access to internet, Reliable electricity etc and capacity to pay fee.
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- v) Direction upon the State of Jharkhand to issue appropriate circular/Notification/order to provide uniform maximum relief in school tuition Fees as far as practicable for the period when physical classes were not held. As Survival of both Schools and Parents/Families are necessary for the development of society.
- vi) Direction upon the State of Jharkhand to issue appropriate circular/Notification/order to Rationalize and regulate the arbitrary and unreasonable tuition fee charged by some schools for online classes, as because limited resource is used in conducting online classes. The fee should be fixed keeping in mind that the Survival of both Parents/Families and Schools are necessary in this current pandemic for the development and progress of Society.

- vii) Pass any such other orders as may be deemed fit in the facts and circumstances of this case.

And for this act of kindness petitioner is duty bound and shall ever pray.