

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (PUBLIC INTEREST LITIGATION)

NO. 1067 OF 2020.

Diary No. 14260 OF 2020

IN THE MATTER OF:

1. Dr Nand Kishore Garg

... **Petitioner**

VERSUS

1. Union of India
Through its Secretary,
New Delhi.

... **Respondent No.1**

2. Ministry of Human Resource Development
Department of School Education and Literacy
(Through its Joint Secretary)
C Wing, Shastri Bhawan, Dr Rajendra Prasad Rd,
Rajpath Area, Central Secretariat,
New Delhi-110001.

... **Respondent No.2**

3. Central Board of Secondary Education
Shiksha Kendra 2,
Community Centre, Preet Vihar,
New Delhi- 110092.

... **Respondent No.3**

4. Government of NCT of Delhi
(Through its secretary)
Model Town, Karnal,
Haryana 132001.

... **Respondent No.4**

(ALL RESPONDENTS ARE
CONTESTING RESPONDENTS)

**PUBLIC INTEREST LITIGATION UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA FOR ISSUANCE OF**

IMMEDIATE DIRECTION TO THE RESPONDENTS FOR
ISSUANCE OF COMPREHENSIVE GUIDELINES WITH
RESPECT TO COMPUTER ADDED LEARNING/ONLINE
CLASSES THROUGH VIDEO CONFERENCING/VIRTUAL
LEARNING CLASSES IN RESPECT OF SMALL CHILDREN
AS THERE IS A REAL THREAT TO SMALL CHILDREN
BEING EXPOSED TO HIGHLY SUGGESTIVE AND
OBNOXIOUS MATERIALS AVAILABLE ON THE
INTERNET AND COUNTLESS OPEN WEBSITES WHICH
HAVE SERIOUS BEARING ON ALL-ROUNDED GROWTH
AND DEVELOPMENT OF THE CHILDREN AND/OR
DIRECT THE RESPONDENTS TO IMMEDIATELY
DISCONTINUE THE ONLINE CLASSES UNTIL THE
FORMULATION OF COMPREHENSIVE GUIDELINES
FOR HOISTING OF ONLINE CLASSES IN COMPLETELY
ENCRYPTED AND SAFEGUARDED MANNER WHICH
HAVE MECHANISM TO PREVENT THE ACCESSIBILITY
OF NUMEROUS INTERNET DRIVEN PROHIBITED
WEBSITES WHILE THE ONLINE CLASSES THROUGH
VIDEO CONFERENCING IN SESSION AND/OR DIRECT
THE RESPONDENTS TO EVOLVE THE MECHANISM FOR
ENSURING THE COMPUTER DEVICES OR
ALTERNATIVE DEVICES FOR THE CHILDREN OF
ECONOMICALLY WEAKER SECTION OF THE SOCIETY
WHO HAD BEEN COMPLETELY DISCRIMINATED IN
ACCESSIBILITY OF ONLINE LEARNING DURING THE

**PREVALENCE OF LOCKDOWN WHEN THE SCHOOLS
ARE COMPLETELY CLOSES TILL FURTHER ORDER.**

TO

HON'BLE THE CHIEF JUSTICE AND HISHON'BLE
COMPANION JUSTICES OF THEHON'BLE SUPREME
COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE-NAMED

MOST RESPECTFULLY SHEWETH:

1. That present public interest litigation is being preferred by petitioner out of growing concern of the vulnerability of the small children towards cyber predators and other online driven pornographic open websites which are having a serious bearing on the educational development of children. The petitioner has also concern that the present online video classes are not regulated as various highly dangerous online applications are being used to provide online education to the small children which are prone to be exploited by predacious cyber hackers. Hence, it is highly dangerous for the small children to be exposed to the online classes without adequate online protection from vulnerability to the threat of child pornography predators. The petitioner has also concern about the sudden prevalence of online classes through video conferencing and other online applications are sending a discriminatory message to the tens of millions of economically weaker children who are highly deprived of being accessibility and availability of computer driven devices with connectivity of 4G internet facility. The

petitioner being a concerned citizen of the country feels it his paramount duty to raise the issue for formulation of comprehensive guidelines in respect of conducting the online classes through highly safeguarded and identified independent video applications through which e-learning can be made available to the lakhs of impressionable small children without any threat of being exploited by cyber predators. Thus, it is imperative to submit that an appropriate direction may be given to the respondents to develop robust cyber applications on the pattern of online examination being conducted by various agencies with specified software which does not allow any other cyber application or access of internet browser or option of popping up any other windows during the course of online examination. The petitioner is equally concerned about asymmetrical arrangement for online classes which are presently limited to the children of opulent section of the society and the children of the weaker sections remain deprived to the benefits of online classes. As such, there should be a broader mechanism to be developed for ensuring the accessibility and availability of the computer driven devices or any alternate arrangement of online classes for all the excluded and marginalized children of our country so that these deprived children may be beneficiary of online video classes in order to cover the loss of learning during the lockdown period. Hence, there must be direction to the respondents that the fruits of online education facilities may be provided to the deprived section of the society during the

complete educational lockdown caused due to corona virus (Covid-19). It is further submitted that our country does not have clear law equivalent to Children Online Privacy Protection Act (COPPA) except ad-hoc executive rulings, court directives and other government advisories. This fragmented approach of the respondents are making online education all the more precarious and fragile as the children are increasingly exposed to the negative effects of unfettered accessibility of unwanted and sexually loaded contents. It is submitted that such online education may not be in the interest of growing children unless there is formulated guidelines in terms of safeguards, training to the teachers and proper online education etc.

1.A That the petitioner has already represented to the concerned authority through his counsel with prayer that some guidelines to be issued for regulating the video classes being imparted through various applications like Whatsapp, Skype, Google team, Google meet and Zoom etc to the student of less than 18 years of age who are completely vulnerable to the access of all objectionable site which is open for all on the internet. That the Respondent is not reply of the application. The copy of the said representation is being annexed here with and marked as **Annexure P-1 [Page to Page]**.

1B. That the petitioner is well socially connected person feel deeply pains when came to know about the situation that the schools are conducting the online classes and the majority of the student of villages are not having the electronic gadget with internet facility to attend the online line educational classes through video conferencing. The said act of the various schools are discriminatory as being organized in absence of any guidelines issued by the respondents.

1.C The petitioner has no personal interest, or private/oblique motive in filing the instant application. There is no civil, criminal, revenue or any litigation involving against the petitioner, which has or could have a legal nexus with the issues involved in this application.

1.D That though the petitioner is social worker and

Further the petitioner undertakes that in case any cost is imposed by this Hon'ble Court, the Petitioner has the means to pay the same and shall pay the same.

- 1.E The petitioner has no personal interest, or private/oblique motive in filing the instant application. There is no civil, criminal, revenue or any litigation involving against the petitioner, which has or could have a legal nexus with the issues involved in this application.
- 1.F That this petition is being filed out of the own findings of the petitioner. This petition is filed on the basis of information that have been verified in capacity of personal knowledge as well as information obtained by the petitioner from various sources including the news clippings. The copies of news clippings are being annexed herewith and marked as **Annexure P-2 [Page to Page]**.
- 1.G That the petitioner did not have any Civil, Criminal or Revenue litigation and do not have any legal nexus involved in the present Public Interest Litigation Petition.
- 1.H That the petitioner seeks exemption from filing duly affirmed affidavit in the prevailing circumstances with an undertaking that deficit court fees will be paid

subsequently. The petitioner further undertakes that the matter may be taken up through the Video-Conferencing mode. The petitioner would prefer to appear before this Hon'ble Court through his arguing counsel by means of video conferencing from office of the counsel.

Adequate safeguards and protection from the potential cyber threats.

- 1I. That the petition, if allowed, would benefit the citizen of this country generally as rule of law is essential for democracy and such brazen violation of law by the respondents can be stopped by the orders of this Hon'ble Court only.
 - 1J. The persons affected by such acts of the state are numerous and are not in a position to approach the Hon'ble court hence the petitioner is filing the present PIL on behalf of such affected persons.
 - 1k. Because No, injury will be caused due to filing of the present public litigation
2. That it is submitted that the petitioner is primarily more concerned about the education of the coming generation which are apparently being threatened by unprotected and unsafeguarded technological exposure of virtual classes. Though, the petitioner is not opposed to the introduction of the online video classes, the petitioner only seeks the technological safeguard of video classes which may not impact the cognitive development of small

children/students of future generation. The petitioner being social worker and is deeply connected to the educational institutions, is more worried at the various incidences of the locality, when the small children of the locality are exposed to pornography websites on their computer devices and when confronted, the small children had no answer whatsoever and the parents of the small children are also completely clueless and indecisive between the current education of their children and the future of the children through online video classes. Thus, the petitioner is bringing this issue to the notice of this Hon'ble Court for a robust mechanism to be developed by the respondents to ensure the technologically propelled protected online video classes to the small children

adequate safeguards and protection from the potential cyber threats.

3. That it is submitted that our country has been in the midst of extraordinary uncertain times where the whole country are under complete lockdown with no accessibility to even the bear-minimum societal interactions and as such technology is proving to be boon to the majority of the people but the technology must be protected for the vulnerable section of the society like small children. The whole family is reduced to sedentary lifestyles and completely limited to foods and indoor activities with restrictions. The small children of the family are real sufferers who are completely deprived of the educational facilities which are otherwise available in the normal times. However, the various schools irrespective of private and government run schools have arranged online classes to compensate and redeem the losses of current

academic session during the lockdown period. While, it is not exaggeration to say that the online education is now a trend that has been increasing in popularity over the few months especially during the lockdown period, the schools are switching over to complete virtual mode for the purpose of imparting education to the students/children. According to the rough estimate online classes has quadrupled over the few months across the country. Under the given circumstances, the respondents must formulate a scientific mechanism to make sure that the online classes should be more secured and adequately safeguarded so that the obnoxious influences may not impact particularly to the impressionable mind of the small children. In the recent days there has been myriad of instances of the widespread misuse of the online classes on account of the cyber vulnerability being caused to the small children which leads to inescapable conclusion that online classes are extremely dangerous for the children in a manner in which these classes are being conducted without any guidelines. It is submitted that each of the educational institutions are having their own chosen video conferencing applications hosted by different servers being operated beyond the jurisdictions of our country, which makes the whole online classes exposed to all types of cyber threats and the perpetrators of such cyber threats are far from being held accountable in case there is abuse of the online platform/application and those responsible people cannot be brought to justice under court of Indian law. These cyber

operators are targeting the small children for sexual exploitation which is very dangerous to overall development of the small children in our country. The recent instances of misuse of the online video classes can be evidenced by the incidences where pornographic materials were uploaded to the video classes. The copy of the news clipping relating the said incidents is being annexed herewith and marked as **Annexure P-3 [Page to Page]**.

QUESTION OF LAW

4. That it is submitted that in the circumstances mentioned herein above and below, the pertinent question of law emerges for consideration and determination which are set out as under:-

- (a) **Whether**, the use of electronic gadget and access to freely available online application by children below age of 18 years is violation of law and is it not mandatory that there must be some guidelines in respect of prescribing the age limit for attending the video classes in consonance with other existing law which clearly prescribes the age limit for entering into valid contract as all the cyber applications are accompanied by the templated agreement for accessing the particular application ?
- (b) **Whether**, the unregulated and unsafeguarded facility of online education through video conferencing being provided by various schools of our country to the small

children, are violative of article 21 of the Constitution of India as the quality education of children are at risk of degeneration by introduction of highly unreliable and unfriendly virtual classes through various unprotected video conferencing applications?

(c) **Whether**, there is comprehensive guidelines are required to regulate the online virtual classes especially for small children who are highly vulnerable to the explicit materials openly and freely available on internet?

(d) **Whether**, there is a requirement of evolving a mechanism to ensure that the fully protected technological devices may be made available to all students of economically weaker section who are deprived from the fruit of video classes?

GROUND

5. That it is submitted that being dissatisfied and aggrieved by the prevalence of defective methodology of online video classes and its negative impact on the impressionable mind of small children as well as non-availability of the technological gadget to the economically weaker section, the petitioner is challenging the whole process of imparting the online education through video conferencing by use of un-protected video conferencing applications. Hence, the petitioner is approaching this Hon'ble Court for consideration of the issues of wider public importance and issuance of appropriate direction for ensuring completely protected online video

classes of children across the county on the inter-alia various grounds including the following grounds which are set out as under :-

- (a) **Because**, the uses of online application by children below age of 18 years is violation of law of contract as only the major person can enter into any agreement and all these online applications are electronically devised to be available for the person who is competent to enter into an electronic agreement by accepting the disclaimer or agreement of the application providers.
- (b) **Because**, the respondents introduced the online virtual classes through video conferencing for small children without adequate safeguards which are causing great concern among the parents of the children as they are completely unprotected in terms of accessibility to the lots of phonographic and violent open websites. There is no advisory either from the schools or by the respondents to guide the small children for safer uses of online virtual classes through video conferencing as a result there has been a propensity among the larger segment of small children to use internet and are often indulged into objectionable application impacting their tender mind which lead to the diversion of interest from education.
- (c) **Because**, there is no curriculum of online virtual classes through video conferencing in any of the schools of our country. Hence, the curriculum of online education must

be carefully considered and developed in order to be effective in imparting of online education through video conferencing to the students. It appears that the current system of online virtual classes through video conferencing has been conceived in haste in order to carry out perfunctory responsibility of imparting education which is nothing but an empty formality. While, the respondents have ignored the primary requirement of cyber protection in implementing the online virtual classes for students during period of lockdown which had led to the educational vulnerability of small children.

- (d) **Because**, there is an urgent need of comprehensive guidelines regulating the online virtual classes to be imparted through video conferencing in ad-hoc manner by adopting ad-hoc mechanism which are completely unprotected from cyber threat vis-a-vis the small children. It is further added that there is complete absence of cyber literacy in our country and that technology based instructional environment accompanied by adequate cyber protection which is key to success of effective online video classes.
- (e) **Because**, the respondents and various schools of the country had completely ignored the educational requirement of the excluded and marginalized section of society as the small children of those section are not

accessing the advantages of online educational classes. Hence, there is complete discrimination in imparting the education as per the constitutional mandates and such deprivation in imparting the education is clearly violating the fundamental rights of students guaranteed under article 14 of the Constitution of India. Moreover, article 21 of the Constitution of India guarantees free education to the children below age of 14 years is being violated by the respondent.

6. That it is submitted that the petitioner craves the leave of this Hon'ble Court to plea and urge any other further grounds which may be taken by the petitioner during the course of arguments on the present petition and same will be filed at the earliest on direction of this Hon'ble Court.
7. That it is submitted that no prejudice or harm would be caused to the public at large if the present application is allowed for adjudication.
8. That the present Application is being made bona fide and in the interest of justice.
9. That the petitioner has not filed any other writ petition filed in in this Court or any other High court in India .
10. The present Writ Petition Under Article 32 of the Constitution of India is being filed by the Petitioner to enforce Fundamental Right particularly Right to Equality guaranteed Under Article 14 and Article 21 of the Constitution of India and violation of Article 14,21 of the Constitution of India.

PRAYER

In view of the above and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(a) Direct the respondents to issue a comprehensive guidelines with respect to computer added learning/online virtual classes through video conferencing/virtual learning classes in respect of small children as there is a real threat to small children being exposed to highly suggestive and obnoxious materials available on the internet and countless open websites which have serious bearing on all-rounded growth and development of the children.

and/or

(b) Direct the respondents to immediately discontinue the online classes until the formulation of comprehensive guidelines for hoisting of online classes in completely encrypted and safeguarded manner which have mechanism to prevent the accessibility of numerous internet driven prohibited websites while the online classes through video conferencing in session.

and/or

(c) Direct the respondents to evolve the mechanism for ensuring the computer devices or alternative devices for the children of economically weaker section of the society who had been completely discriminated in accessibility of online learning during the prevalence of lockdown when the schools are completely closes till further order.

and/or

(d) Pass such further order(s) as may be deemed fit and proper under the facts and in the circumstances of the case.

ND FOR THIS ACT THIS KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY:

(Shashank Deo Sudhi)

Associates & Solicitors

Advocates

Drawn on

Filed on :

FILED BY:

[.....]

Advocate for the petitioner