

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 13TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.19057 OF 2021(EDN-RES)

BETWEEN:

1. AMRUSHA DAS,
D/O SMT. SHAMPA DAS (NAYAK),
AGED ABOUT 8 YEARS,
SINCE MINOR, REPRESENTED BY
HER MOTHER, SMT. SHAMPA DAS (NAYAK)
I.E. THE PETITIONER NO.2 HEREIN.
2. SMT. SHAMPA DAS (NAYAK)
W/O SHRI PIJUSH KANTI DAS,
AT PRESENT THE PETITIONER
AGED ABOUT 44 YEARS,
NO.1 AND 2 ARE RESIDING AT
193/A/15, PICNIC GARDEN ROAD,
KOLKATA -- 700 039.

...PETITIONERS

(BY SRI. SWAROOP SRINIVAS, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF PRIMARY EDUCATION,
M S BUILDING, BANGALORE - 560 001.
2. COMMISSIONER,
DEPARTMENT OF DIRECTOR OF
PUBLIC INSTRUCTIONS
NRUPATUNGA ROAD,
BENGALURU - 560 001.
3. DIRECTOR OF PUBLIC INSTRUCTIONS
(PRIMARY EDUCATION)
OFFICE OF COMMISSIONER OF
PUBLIC INSTRUCTIONS
NRUPATHUNGA ROAD,
BENGALURU - 560 001.

4. KARNATAKA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS, REPRESENTED BY ITS CHAIRPERSON
4TH FLOOR, KRISHI BHAVAN,
NEAR-HUDSON CIRCLE,
NRUPATHUNGA ROAD,
AMBEDKAR VEEDHI,
SAMPANGI RAMA NAGAR, BENGALURU,
KARNATAKA - 560 002.
5. NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS,
5TH FLOOR, CHANDERLOK BUILDING,
36 JANPATH, NEW DELHI - 110 001.
REPRESENTED BY ITS CHAIRMAN.
6. THE COUNCIL FOR INDIAN SCHOOL CERTIFICATE EXAMINATIONS,
PRAGATI HOUSE, 3RD FLOOR,
47-48, NEHRU PLACE,
NEW DELHI - 110019
REPRESENTED BY ITS CHAIRMAN.
7. THE CHAIRMAN,
THE COUNCIL FOR INDIAN SCHOOL,
CERTIFICATE EXAMINATIONS,
PRAGATI HOUSE, 3RD FLOOR,
47-48, NEHRU PLACE,
NEW DELHI - 110019.
8. THE PRINCIPAL OFFICER,
THE COUNCIL FOR INDIAN SCHOOL,
CERTIFICATE EXAMINATIONS,
PRAGATI HOUSE, 3RD FLOOR,
47-48, NEHRU PLACE,
NEW DELHI - 110019.
9. SORSFORT INTERNATIONAL SCHOOL,
90, HEWLETT PACKARD AVENUE,
KONAPPANA AGRAHARA, ELECTRONIC CITY,
PHASE-I, NEAR HP OFFICE,
BENGALURU - 560 100.
REPRESENTED BY IST PRINCIPAL.
10. THE PRINCIPAL,
SORSFORT INTERNATIONAL SCHOOL,
90, HEWLETT PACKARD AVENUE,
KONAPPANA AGRAHARA, ELECTRONIC CITY,
PHASE-I, NEAR HP OFFICE,
BENGALURU - 560 100.

11. SRI. PIJUS KANTHI DAS,
S/O SRI. SUKUMAR DAS,
AGED ABOUT 43 YEARS,
SALARPULIYA SYMOHANY,
HOSUR ROAD,
BENGALURU – 560 100.
IMPLEADED V.C.O DATED 13.01.2022

... RESPONDENTS

(BY SRI. VINOD KUMAR, AGA FOR R1-R3;
SMT. VIDYULATHA, ADVOCATE FOR R4;
SRI. SHANTHI BHUSHAN, ASG FOR R5-R8;
NOTICE TO R5 IS D/W V.C.O DATED 25.10.2021;
SRI. M P SRIKANTH, ADVOCATE FOR R9 & R10;
SRI. SHYAM SUNDAR H V, ADVOCATE FOR
PROPOSED R11 ON IA.1/2021)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER LETTER DATED 29.6.2021 ISSUED BY THE PETITIONER REQUESTING FOR ISSUANCE OF THE TRANSFER TO THE PETITIONER ANNEXURE-A AND ETC.,

THIS PETITION COMING ON FOR ORDERS THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:-

ORDER

First petitioner minor child and second petitioner, its mother are knocking at the doors of Writ Court grieving against the non-issuance of the Transfer Certificate of the child, by the 9th Respondent – School despite repeated request.

2. After service of notice, the respondents have entered appearance through their advocates; official respondents 1, 2 & 3 are represented by learned AGA; the fourth respondent is represented by his Panel Counsel;

learned ASG represents respondents 5 to 8; respondents 9 & 10 are represented by their Panel Counsel; similarly, the now impleaded respondent no.11 is also represented by his own counsel.

3. Learned Panel Counsel appearing for respondent School & 11th respondent being the father of the first petitioner & husband of the second, oppose the writ petition contending that without the consent of the father TC cannot be issued; the counsel for the school submits that unless school dues are cleared, the request for issuance of TC cannot be considered; they also contend that since the child now in Kolkata is attending the school online and therefore, there is no reason for shifting it to another school.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(a) The first petitioner is a minor daughter of second petitioner and, now impleaded 11th respondent happens to be its father; there appears to be some estrangement between the spouses as is reflected from the record; the

Division Bench of this Court in father's W.P.(HC) No. 32/2021, has made some observations at paragraphs 10 & 11 of the judgment which show that the custody of the child is with the second petitioner; that being the position, the respondent Nos. 9, 10 & 11 are not justified in opposing the request for the issuance of Transfer Certificate of the child who is now stated to be admitted to a school in Kolkata; because of estrangement between the parents, child's educational prospects should not be affected by not issuing the TC.

(b) The contention of counsel for the 11th respondent that to which school a child of the estranged parents should be admitted, has to be a matter of consensus between them and that one of the parents cannot take such a decision unilaterally, cannot be countenanced as a thumb rule; child is as yet a minor and it is a female; admittedly it is in the exclusive custody of 2nd petitioner-mother; ordinarily, law favours custody of minor daughters being with the mothers, needs no elaboration; the child is already admitted to a school in Kolkata; the legal battle for its custody between the parents is stated to be still going on. What is being decided in this case is only the matter of Transfer Certificate and not the child custody or

visitation rights. Justice of the case warrants the issuance of Transfer Certificate to facilitate educational career progression of the child; in matters like this all agencies involved should co-ordinate and facilitate the same. This is reflected in the provisions of Sec.5 of the Right of Children to free and compulsory Education Act, 2009.

In the above circumstances, this writ petition succeeds; a Writ of Mandamus issues to the respondents nos.1, 2 & 3 to cause issuance of Transfer Certificate by the respondent nos. 9 & 10- School; a direction also issues to the 10th respondent to hand the subject Transfer Certificate to the second petitioner-mother within ten days, failing which the respondents 9 & 10 each shall pay to the second petitioner Rs.5,000/- for the delay brooked each day, apart from running the risk of contempt of court.

The observations made hereinabove shall not influence the claims for child custody or the visitation rights.

Now, no costs.

**Sd/-
JUDGE**