

W.P.(C) No. 28124/2021 : 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
WEDNESDAY, THE 8TH DAY OF DECEMBER 2021 / 17TH AGRAHAYANA, 1943

WP(C) NO. 28124 OF 2021

PETITIONER/S:

VINOD MATHEW WILSON
AGED 36 YEARS
S/O.V.G.WILSON VAZHAYIL, NEDIYARA, ANCHAL, KOLLAM 691 30
BY ADVS.
R.SIVADASAN
C.K.ANWAR

RESPONDENT/S:

- 1 UNION OF INDIA
DEPARTMENT OF SCHOOL EDUCATION AND LITERACY UNDER
MINISTRY OF EDUCATION (MOE), REP.BY ITS SECRETARY, 302-C,
SASTHRI BHAVAN, NEW DELHI 110 001
- 2 CENTRAL BOARD OF SECONDARY EDUCATION (CBSE)
REP.BY ITS CHAIR PERSON, SIKSHA KENDRA -2, COMMUNITY
CENTRE, PREET VIHAR, NEW DELHI 110 092
- 3 INDIAN CERTIFICATE OF SECONDARY EDUCATION (ICSE)
REP.BY ITS CHAIRMAN, PRAGATI HOUSE, 3RD FLOOR, 47-48, NEHRU
PLACE, NEW DELHI 110 019
- 4 SECRETARY
DEPARTMENT OF GENERAL EDUCATION, GOVT. OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM 695 001
- 5 CHAIRMAN
CURRICULUM STEERING COMMITTEE, SCERT, VIDYA BHAVAN,
POOJAPURA, THIRUVANANTHAPURAM 695 012.

R1 BY SRI.S.MANU, ASG
R2 BY SRI. NIRMAL S, SC
R4 BY SRI. K.P.HARISH, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.12.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Dated this the 8th day of December, 2021.

JUDGMENT

SHAJI P. CHALY,J.

This is a Public Interest Litigation filed by a practicing lawyer seeking to issue a writ of mandamus directing the respondents, namely the Union of India, Department of School Education and Literacy under Ministry of Education (MoE), New Delhi, Central Board of Secondary Education (CBSE), New Delhi, Indian Certificate of Secondary Education (ICSE), New Delhi, Secretary, Department of General Education, Government of Kerala, Thiruvananthapuram and the Chairman, Curriculum Steering Committee, SCERT, Thiruvananthapuram to include Law as a subject in the curriculum of Central Board of Secondary Education (CBSE) as well as Indian Certificate of Secondary Education (ICSE), and in the curriculum of schools in Kerala, preferably from 8th standard onwards.

2. According to the petitioner, Indians, irrespective of their social, educational or financial standing are hopelessly ignorant of law, which renders their lives miserable in every sphere of their day-to-day activities; and that the worst casualty is the downtrodden among them, still remaining marginalized, who are often subjected to even violation of their basic human rights.

3. It is also pointed out that National Legal Services Authority and its subordinate units at State, District and Taluk levels were constituted under the Legal Services Authorities Act, 1987 for providing free and competent legal services to the weaker sections of the society and thus, the Kerala State Legal Services Authority has been conducting legal literacy classes at School and College levels for enlightening the students. So, according to the petitioner, the practical solution to instill legal education is to include Law in the curriculum of the students, and the mandatory inclusion of varied subjects in the curriculum has to have a definite objective of giving an option to the students to select his area to be pursued for his higher studies and ultimate employment.

4. Therefore, it is submitted that inclusion of Law as a subject in the curriculum, apart from imparting basic knowledge of law will have a far reaching positive impact on his future life and in his sphere of activity, even if he does not choose it for his higher studies to become a lawyer.

5. That apart, it is submitted that inclusion of Law as a subject in the curriculum will have a far reaching positive impact in moulding a society with a higher degree of civic conscience and hence, Law must be made a subject in the curriculum, preferably from 8th standard

onwards, so that at the stage of Plus Two, with study of law at a higher level, the students can take a decision to opt for taking law as a career and resultantly, there would be emergence of a dedicated and well nourished army of budding lawyers, which would go a long way in enhancing the very quality of legal profession in the curriculum. The positive approach in various aspects of human life can be achieved by the knowledge of various enactments like Prevention of damage to public property Act, Constitution of India, Dowry prohibition Act, Environmental laws and similar other enactments.

6. It is also submitted that the inclusion of Law in the curriculum would give a clear insight to the students to have a definite and positive approach to the issues that are faced by the society and consequent to which, a number of problems faced by the society at present would be solved, when such aspects have created serious impacts in the minds of the young students. Therefore, according to the petitioner, nothing standing in the way of this Court exercising the power under Article 226 of the Constitution of India and issuing directions to the respondents to include Law as a subject in the course curriculum of students who are undergoing education as per CBSE, ICSE and State syllabuses.

7. We have heard, Sri. R. Sivadasan for the petitioner, learned

Senior Government Pleader Sri. K. P. Harish for the State, and perused the pleadings and materials on record.

8. The sole question that emerges for consideration is whether any such positive direction as is sought for by the petitioner can be granted by this Court exercising the discretionary power conferred under Article 226 of the Constitution of India.

9. In our view, insofar as the field of education is concerned, the syllabus for imparting education is prescribed by various educational agencies, taking into account the opinions extended by the experts, and other studies carried out in a well defined manner so as to achieve targets, and inculcate values among the students. However, this Court under Article 226 of the Constitution of India cannot undertake any such studies and issue a direction to the appropriate educational agency to include Law as a subject in the curriculum of Secondary and Higher Secondary Education.

10. Moreover, in order to include a subject in the curriculum of Secondary as well as Higher Secondary Education, there should be an in-depth study as to the manner in which a particular course is to be included in the curriculum. Law is a vast subject and all of a sudden, the court cannot direct that the Law should be included as a curriculum in the educational programmes, such as CBSE, ICSE, State syllabuses

etc. We are of the view that since the State and its agencies are undertaking such aspects on the basis of the policies formulated from time to time taking into account various factors, such as developments within the nation and globally, changes that takes place in the country, the requirement of the nation in order to adapt to various situations, employment orientation, to compete globally, to tackle the felt necessities of time, and so forth and so on.

11. In our view, such a course of action and deep seated study cannot be undertaken by a Court of law, and the court is not an expert to analyze the issues and the requirements of the community in a larger perspective, and without undertaking any such studies through experts, no direction can be issued to the Central as well as the State Governments to frame a policy in a particular manner. Which thus means, the petitioner is attempting to persuade this Court to step into unwanted and prohibited areas, enjoyed by the law making agencies of the respective Governments.

12. It is well settled in law that the discretionary power conferred under Article 226 of the Constitution of India has to be exercised by the Constitutional courts, bearing in mind the imperative aspect that there is a clear segregation made under the Constitution of India in regard to the power enjoyed by the legislature, the executive

and the judiciary. It goes without saying, legislation is an absolute domain of the parliament and the State legislatures, and therefore, without adequate reasons, a writ court cannot step into the shoes of the legislature and issue directions, which if done, would be nothing but a clear encroachment into a prohibited domain transgressing its jurisdiction, and thereby upset and topple the constitutional framework envisioned by the framers of the Constitution of India.

13. According to the Oxford Dictionary, the word 'policy' means political sagacity, statecraft, prudent conduct, and course of action adopted by the Government. In legal glossary (1993), page 250, 'policy' means a course of action adopted as advantageous or expedient. Therefore, in order to produce results in the arena of education to match with the present day global competition, there should be a coordinated, concerted and dedicated action to frame effective policy by the Government, and we have no doubt in our mind that the Government and the Government alone would be in a position to undertake such a great task using its wide machinery of experts in the field.

14. Anyhow, the Hon'ble Apex Court had occasion to consider a substantially similar matter in ***Ashwini Kumar Upadhyay v. Union of India and others*** in W.P.(C) No. 599/2020, wherein the Apex

Court, as per order dated 17.07.2020, declined almost similar relief sought for. In order to have a proper appreciation of the same, we extract the same:

“ORDER

1 Invoking the jurisdiction of this Court under [Article 32](#) of the Constitution, the following reliefs have been sought by the petitioner who appears in person:

- “a) ascertain the feasibility of constituting a National Education Council (on the lines of GST Council) or National Education Commission (as proposed by the NCRWC) to implement uniform education system having common syllabus and common curriculum for all the children aged 6-14 years in spirit of [Article 21](#).A read with Articles 14, 15, 16, 38(2), 39(f), 46 and 51A of the Constitution of India.
- b) ascertain the feasibility of introducing a standard textbook having chapters on fundamental rights, duties, directive principles and the golden goals set out in the Preamble, and make its study compulsory for all the children aged 6-14 years throughout the territory of India;
- c) ascertain the feasibility of establishing "One Nation One Education Board" by merging Indian Certificate of Secondary Education Board into Central Board of Secondary Education or vice-versa;
- d) take steps as the Court may deem fit to secure right to education in spirit of Articles 14, 15, 16, 21A, 38, 39, 46, 51A and allow the cost.”

2 Mr Ashwini Kumar Upadhyay, who has appeared in person, submits that the reliefs which have been claimed are founded on the provisions of [Article 21A](#) of the Constitution and on the Right of Children to Free and Compulsory Education Act, 2009. In his submission, the present educational system does not provide equal opportunity to students of all strata of society. He has relied on the decision of the US Supreme Court in [Brown vs Board of](#)

[Education](#) 98 L Ed 873: 347 US 483 (1953).

3 In the alternative, he has submitted that if this Court is not inclined to entertain the Writ Petition, the petition may be permitted to be treated as a representation and the Registry should be directed to forward the representation to the respondents for considering the suggestions which have been made.

4. The Writ Petition raises issues of policy. We are affirmatively of the view that it is not within the domain of this Court under [Article 32](#) of the Constitution to direct the constitution of a National Education Council or National Education Commission. These are matters which fall within the domain of experts. Similarly, the relief which has been of introducing a “standard textbook with a chapter on the Constitution” is a matter of policy. The school syllabus contains subjects bearing on the knowledge of rights, duties and governance under the Constitution.

5 We reject the submission for issuing a mandamus for constituting a single Board by merging the Indian Certificate of Secondary Education Board into Central Board of Secondary Education. The petition lays no foundation or justiciable basis for the Court to issue directions of this nature. We decline to allow the office of this Court to be used for directing that the suggestions which have been made by the petitioner be considered by the authorities. This is nothing but an effort to confer legitimacy on the petitioner’s attempt to enter into an area of educational policy.

6. The Writ Petition is accordingly dismissed.

7 Pending applications, if any, stand disposed of.”

15. On an analysis of the issues raised by the petitioner, the

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spirit of the aforesaid order of the Apex Court, and bearing in mind the principles to be followed by this Court in the matter of exercising the powers conferred under Article 226 of the Constitution of India, we are of the clear opinion that the petitioner has not made out any case justifying interference of this Court.

Needless to say, the writ petition fails and accordingly, it is dismissed.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv