

Neutral Citation No. - 2023:AHC-LKO:38462-DB

**AFR**

**Court No. - 1**

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 354 of 2023

**Appellant :-** Azaj Ahmad And Others

**Respondent :-** National Commission For Protection Of Child Rights (Ncpr) Thru. Its Chairperson And Others

**Counsel for Appellant :-** Gauri Shankar Maurya, Adil Hussain

**Counsel for Respondent :-** Rakshit Raj Singh, A.S.G.I., C.S.C.

**Hon'ble Devendra Kumar Upadhyaya, J.**

**Hon'ble Om Prakash Shukla, J.**

- (1) Office has reported a delay of 28 days in filing the Special Appeal.
- (2) Having regard to the averments made in the affidavit filed in support of the application seeking condonation of delay in filing the Special Appeal and having heard learned counsel for the parties, we are satisfied that the delay has sufficiently been explained.
- (3) Accordingly, the application is **allowed** and the delay in preferring the Special Appeal is hereby condoned.
- (4) Heard Sri V. K. Singh, learned Senior Advocate assisted by Sri M. A. Ausaf, Sri Sankalp Narain, Sri G.S. Maurya, Sri Srivats Narain, Sri Adil Hussain, Sri B. P. Tiwari and Sri Ayush Tandon for the appellants, Ms. Swarupama Chaturvedi, learned counsel appearing for respondent No.1-National Commission for Protection of Child Rights (NCPCR), Sri R. C. Tiwari, learned Counsel representing the Union of India and learned State Counsel representing the State-respondents.
- (5) This intra-Court appeal arises out of the proceedings drawn by the learned Single Judge in Writ-A No. 2474 of 2023 wherein two orders, namely, the order dated 17.05.2023 and the other order dated 27.03.2023 have been passed. By the order dated

17.05.2023, intervention application moved by the NCPCR has been allowed and the NCPCR has been permitted to intervene in the proceedings. The learned Single Judge has further observed in para - 4 of the said order that the matter is of wide ramification and some importance. Para - 4 of the said order dated 17.05.2023 is quoted as under:-

***"4. The matter is of wide ramification and some importance and outcome of this case will effect the education system as well as the rights of the children studying in Madaras. Therefore, this Court appoints Sri S. M. Singh Raikwar, Advocate, as amicus curiae to assist the Court in the matter."***

- (6) While passing the order dated 27.03.2023, learned Single Judge has directed the Central as well as State Governments to file their responses, in the following words:-

**"Let the Central Government and State Government file their affidavits explaining that how on Government expense or the funding provided by the Government Exchequer religious education be imparted and whether this could be in violation of Articles 14, 25, 26, 29 an 30 of the Constitution of India."**

- (7) The order dated 27.03.2023 further recites as under:-

**"The affidavits of the Central Government from the Secretary, Ministry of Minority Affairs, Government of India and State Government from the Principal Secretary, Department of Minority Welfare and Waqf, Government of Uttar Pradesh should be filed answering the petition and aforesaid questions within a period of six weeks from today."**

- (8) Submission of the learned Senior Advocate representing the appellants is that from a perusal of the two orders dated 27.03.2023 and 17.05.2023 passed by the learned Single Judge, it is apparent and more than clear that apart from considering the issue raised primarily in the writ petition, learned Single Judge also intends to consider the issues having wider

ramification and some importance and that outcome of the writ petition will effect the education system as well as the rights of the children studying in Madarsas. His submission, thus, is that it is apparent that the learned Single Judge intends to clearly embark upon a journey to adjudicate the issue of larger public interest which has cropped up before him during the pendency of the case, having due regard to the nature of grievances raised by the writ petitioner and the prayers made therein.

- (9) Drawing our attention to the prayer clause of the writ petition, it has been stated by the learned Senior Advocate that the writ petition was filed by the writ petitioner seeking a direction to the respondents therein to release his withheld salary and to pay him regular salary as admissible to him under law. The prayers made in the writ petition are extracted here-in-below:-

**"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased:**

**(A) to issue a Writ, Order or Direction in the nature of mandamus commanding the Opposite Parties to release the entire withheld salary to the Petitioner and to pay him regular salary as admissible to him under the law."**

**(B) to issue such other Writ, Order or Direction as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.**

**(C) to award the cost of the Writ Petition."**

- (10) Thus, it has been argued by the learned Senior Advocate that apart from considering the prayers made in the writ petition on the basis of pleadings made by the writ petitioner, if certain issues relating to larger public interest crops up, this Court either sitting singly or in division benches is not precluded from taking cognizance of such issues, however, in that eventuality the law laid down by Full Bench of this Court in the case of *Dinesh Kumar Singh @ Sonu vs. State of U.P. & Ors. decided*

*on 05.01.2017 [Writ Petition No. 2599 (MB) of 2014]* has to be followed. According to learned Senior Advocate, in such a situation that part of the matter which touches upon or which needs to be addressed in larger public interest has to be referred to Hon'ble the Chief Justice for being referred to the Division Bench dealing with the Public Interest Litigation.

- (11) In this view, submission of learned Senior Advocate is that no party to the proceedings before the learned Single Judge may have any grievance, whatsoever, if the matters directly or tangentially touching the issues of general public interest are taken up, however, in such a situation recourse needs to be taken to the law laid down by the Full Bench in the case of ***Dinesh Kumar Singh @ Sonu (supra)***.
- (12) Learned State Counsel submits that the State Authorities have been directed to file counter affidavit in the proceedings of the writ petition which shall be filed once it is ready.
- (13) Learned Counsel representing the Union of India Sri R. C. Tiwari has submitted that counter affidavit on behalf of Union of India was prepared and it was to be filed as well, however, considering the order dated 17.05.2023 passed by the learned Single Judge, he has instructions to pray for more time for preparation of the counter affidavit. However, he does not deny that Public Interest elements in the matter have arisen as are apparent from a perusal of the orders dated 27.03.2023 and 17.05.2023 passed by the learned Single Judge.
- (14) Learned Counsel representing NCPCR Ms. Swarupama Chaturvedi has submitted that NCPCR has sought its intervention in the matter only on account of the fact that certain anomalies and discrepancies relating to rights of the children in Madarsas have been noticed by the NCPCR. She has categorically stated that NCPCR has nothing to do with the

original *lis* amongst the writ petitioner, the management of the Madarsas and the State authorities though the NCPCR has been taking up the matter relating to children rights involved with the State Government as well.

- (15) Having submitted as above, learned counsel for NCPCR has also stated that learned Single Judge has yet to form its opinion as to whether the issues concerning larger public interest have cropped up or arisen in the matter pending before him or not, which will be better decided once the response from all the parties are filed before the writ Court.
- (16) It has also been stated that it is only on 17.05.2023 that the learned Single Judge has appointed an amicus in the matter and as to whether the issue relating to larger public interest which has arisen needs to be referred to appropriate Bench of this Court in terms of the law laid down by the Full Bench of this Court in the case of ***Dinesh Kumar Singh @ Sonu (supra)*** may be decided by the learned Single Judge.
- (17) Learned amicus appointed in the proceedings of the writ petition has also submitted that in a matter like this, two courses are available before the Bench in a matter where apart from the regular *lis* between the parties some issues concerning general public interest also arise.
- (18) Leaned amicus thus has submitted that first course is to refer the Public Interest element arising in any matter straightaway in terms of the Full Bench decision in the case of ***Dinesh Kumar Singh @ Sonu (supra)*** and the second course is such a reference may be made after inviting the responses from the parties not only in relation to the issue raised originally in the writ petition but also in relation to the issues concerning the larger public interest. Thus, in his submission he has urged that a perusal of the order dated 27.03.2023 and 17.05.2023 passed

by the learned Single Judge reveals that it is only a *prima facie* view which has been formed by the learned Single Judge that in the writ petition pending before him certain issues relating to larger public interest have arisen, however, learned Single Judge has yet to form his final opinion in the matter as to whether issues of general public interest have arisen before him or not. Accordingly, his submission is that the matter at this stage may be left to be decided by the learned Single Judge.

- (19) Ordinarily against interlocutory orders passed by learned Single Judge, intra-Court appeal under Chapter VIII Rule 5 of the Rules of the Court would not be maintainable, however, since in this case the issue raised by the appellants touches upon the very jurisdiction of the learned Single Judge, we have entertained this Special Appeal.
- (20) We completely agree with the order passed by the learned Single Judge where he has expressed his opinion that the matter at hand requires consideration not only from the point of view of the prayers made by the writ petitioner but also from the point of view as to whether the funding by the State Exchequer of the institutions imparting religious instructions is violative of Articles 14, 25, 26, 29 and 30 of the Constitution of India. It is in this context that we also agree with the learned Single Judge where NCPCR, which is a statutory commission incorporated primarily for overseeing protection of children rights, as intervenor. If any issue which has wide ramification concerning the education system as also the rights of children being imparted education and such institutions, there cannot be any quarrel that such issue does involve larger public interest and in this appropriate case if cognizance of such issue apart from the issues concerning the Writ Petitioner, has been taken up by the learned Single Judge, no one can have any objection to the same.

- (21) It is in this context only that we find that the learned Single Judge has rightly called upon the Central Government as also the State Government to file their responses not only to the issue raised by the writ petitioner but also to the issue relating to the larger public interest as is reflected from the orders dated 27.03.2023 and 17.05.2023. We have no doubt in our mind, whatsoever, that there is a clear intent in the proceedings of the writ petition that apart from the issue relating to the writ petitioner claiming payment of salary the issue of larger public interest has also to be considered and agitated.
- (22) However, the question is as to whether in such a situation the larger public interest issues can be entertained by the same Bench or the matter needs to be referred to the PIL Bench as per the law laid down by the Full Bench of this Court in the case of *Dinesh Kumar Singh @ Sonu (supra)*.
- (23) Before the Full Bench in the case of *Dinesh Kumar Singh @ Sonu (supra)*, the following question was formulated for its consideration:-

**"Whether a Judge of Hon'ble High Court sitting alone or Judges sitting in a Division Bench hearing any matter in his/their determination assigned by Hon'ble the Chief Justice, can overstep into the determination of another Bench, if any issue or question arises in the matter including a question in public interest, which is not connected to the matter before him/them, and which in his/their opinion is necessary to be decided, and further in such case where in his/their discretion it is necessary to decide such question, what should be the procedure to be adopted."**

- (24) The Full Bench has answered the said question in para - 15 which is also extracted hereunder:-

**"15. In the circumstances, we hold that a Judge of the High Court sitting alone or Judges sitting in a Division Bench, hearing any matter in**

**his/their determination assigned by the Chief Justice, cannot overstep into the determination of another Judge sitting alone or in a Division Bench. If any such issue or question arises in the matter including a question in public interest which is not connected with the matter before him/them and which in his/their opinion is necessary to be decided, in that situation the only option open to the learned Judge or the Division Bench is to direct the Registry to place the matter before the Chief Justice for appropriate directions or before the appropriate PIL Bench and, in any case, should not convert such a writ petition into a PIL. The question is, thus, answered accordingly in the negative."**

- (25) We may also refer to a judgment of Hon'ble Supreme Court in the case of **State of Uttar Pradesh and others v. Neeraj Chaubey and others** reported in [(2010) 10 SCC 320]. Paragraph 10 of the judgment in the said case, Hon'ble Supreme Court has observed that in case any petition is filed and the Bench comes to the conclusion that it involves some issues relating to Public Interest, the Bench may not entertain it as a Public Interest Litigation but the Court has its option to convert it into a public interest litigation and ask the Registry to place it before a Bench which has jurisdiction to entertain the PIL as per Rules. Para - 10 of the said judgment is extracted here-in-below:-

**"10. In case an application is filed and the Bench comes to the conclusion that it involves some issues relating to Public Interest, the Bench may not entertain it as a Public Interest Litigation but the court has its option to convert it into a public interest litigation and ask the Registry to place it before a Bench which has jurisdiction to entertain the PIL as per the Rules, guidelines or by the roster fixed by the Chief Justice but the Bench cannot convert itself into a PIL and proceed with the matter itself."**



(26) In view of the aforesaid and having regard to the conclusion drawn by the Full Bench of this Court in the case of *Dinesh Kumar Singh @ Sonu (supra)*, we direct the Registry to register the PIL as a separate case and place it before Hon'ble the Chief Justice for appropriate direction or before the appropriate PIL Bench.

(27) The Special Appeal, thus, stands *disposed of* in the aforesaid terms.

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[Om Prakash Shukla, J.] [Devendra Kumar Upadhyaya, J.]

**Order Date :- 29.5.2023**

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