

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.34185 OF 2023

Between:

Vyshnav Dinesh & others

... **Petitioners**

And

State of Telangana & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

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> Head Note:

! Counsel for the Petitioner : Mr. Y.Soma Srinath Reddy

^ Counsel for Respondents :GP for Education for R1 to R5
Mr.M.P.K.Aditya for R6

? Cases Referred:

- (1) W.P.No.21137 of 2019, dated 24.01.2020
- (2) MANU/TN/6538/2019
- (3) MANU/TN/2168/2012
- (4) WP (C) 6658 of 2019 & CM APPL.30816.0 of 2019, dated 11.07.2019
- (5) MANU/TN/2168/2012
- (6) 2019 scc online Mad.9385
- (7) W.P.No.2930 of 2022, dated 24.06.2022
- (8) W.P.No.21137 of 2019, dated 24.01.2020
- (9) W.P.No.9606 of 2021, dated 27.01.2021
- (10) (10)WP(c) No.20027/2020, dated 16.09.2020
- (11) [1995] 2 WLR 383]

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

W.P. No.34185 OF 2023

ORDER:

Heard Mr.Y.Soma Srinath Reddy, learned counsel appearing on behalf of the petitioners, learned Government Pleader for Education appearing on behalf of respondent Nos.1 to 5 and Mr.M.P.K.Aditya, learned counsel appearing on behalf of respondent No.6.

2. The Petitioners approached the Court seeking prayer as under :

".....to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus declaring the inaction of respondent No. 3 and 4 in not taking action against the respondent No. 6 for not issuing the transfer certificates to the petitioners children as arbitrary, illegal, unjust, unfair and violative of Art.14, 21-A of Constitution of India and consequently direct the 6" respondent to issue the transfer certificates to the petitioners children and pass such other order or orders....."

3. The case of the Petitioners as per the averments made by the petitioners in the affidavit filed by the petitioners in support of the present Writ Petition, in brief, are as follows:

a) The Petitioners are parents of students who are studying at Brilliant Grammar High School, Godavarikhani. All the students were pursuing their schooling at the 6th respondent school and previously got admitted at the Brilliant Grammar High School, Godavarikhani.

b) The 6th respondent did not give Transfer Certificate and the 6th respondent harassed the petitioners to make additional payment apart from the balance fee payment in order to issue the Transfer Certificate. Upon the petitioners' sincere request, the 7th respondent accepted to join petitioners' children to the 7th respondent school subject to the condition that the Transfer Certificate would be given to them at the earliest. While, petitioners tried to persuade to give petitioners' children's Transfer Certificates, the 6th respondent has failed to issue the same and resorted to making illegal demands time and again.

c) The 7th respondent on numerous occasions informed the petitioners herein to submit the Transfer Certificates at the earliest and also indicated that the admission was provided only on the assurance that the Transfer Certificates of the said students would be provided at the earliest. For which, petitioners requested for additional time to submit the Transfer Certificates as the same was not being released by the 6th respondent.

d) Left with no other opinion, the petitioners made several representations to the 4th & 6th respondents addressing petitioners grievance, but to no avail as the petitioners did not receive any reply except on one occasion where the 4th respondent has indicated vide proceedings Rc.No.999/A7/2022, undated August, 2022 that the Transfer Certificate can be provided upon payment of balance fee to the 6th respondent, there is no pending fee which has to be paid to the 6th respondent and as such the petitioners could not be fastened with such liability.

e) It is specific case of the petitioners that the petitioners requested further time before the 7th respondent. The 7th

respondent stated that they were helpless as the 4th respondent issued closing orders vide proceedings bearing Rc.No.3220/A7/2022, dated 17.10.2023, thereby the 2nd respondent on the basis of closing orders dated 17.10.2023, directed the petitioners to take necessary steps to close down the classes I to X for not submitting Transfer Certificates of the children of the petitioners. **When the 7th respondent has challenged the closing orders vide proceedings bearing Rc.No.3220/A7/2022, dated 17.10.2023, this Court passed Interim orders observing as under:**

"Taking into consideration the fact that the petitioner-Institution is an Institution imparting Education to around 900 students, this court opines for the sake of non-submission of transfer certificates in respect of the 46 students, the other students cannot be penalized and put to hardship in the midst of the Academic year. Moreover, the learned counsel appearing on behalf of the petitioner-Institution undertakes to submit the transfer certificates as called upon vide Proc. No.999/ A7/2022, dated 28.06.2023 of District Educational Officer, Peddapalli in respect of 46 students by 15.12.2023 without fail."

f) It is further the case of the petitioners that the 7th respondent putting pressure on the petitioners to submit the Transfer Certificate and the 7th respondent requires the said Transfer Certificates of students to register the students names in Unified District Information System for Education and the last date for registration had already passed. Aggrieved by the same, petitioners approached this Court by filing the present Writ Petition.

4. PERUSED THE RECORD

A. Proceedings Rc. No.999/A7/2022, August, 2023 of the District Educational Officer, Peddapalli, reads as under:

“The parents of students of Brilliant Grammer High School Godavarikhani, Ramagundam Mandal, Peddapalli District have approached the District Collector, Peddapalli stating that the Management of Sri Sidhartha High School, Markandeya Colony, Godavarikhani is not issuing the Transfer Certificates to the Children.

In this regard, the Parents of students are hereby informed that, the issues are between the Managements of Brilliant Grammar High School Godavarikhani and Sri

Sidhartha High School, Markandeya Colony, Godavarikhani. The Parents should obey and follow as per the directions issued by the Hon'ble High Court and ask for Transfer Certificates from the Management where they have paid the fee and verify the Fee receipt books and fee collection registers at Sri Sidhartha High School, Markandeya Colony, Godavarikhani, Ramagundam Mandal and as per the records they have to pay the fee and obtain the Transfer Certificates.

Further, the Parents of students are informed that, they should submit the Transfer Certificates to the Children to the Correspondent, Brilliant Grammar High School, Godavarikhani, Ramagundam Mandal to continue the student in Brilliant Grammar High School, Gadavarikhani, Ramagundam Mandal."

B. The counter affidavit filed by the 6th respondent and in particular paragraph Nos.8, 9 and 11 read as under:-

8. In reply to para 3 to 11 I respectfully submit, I am running the school with all requisite permissions from the year 1999-2000. They are more than 5000 students who studied and qualified 10th exams before leaving my school for further studies ever since I set up and started running the same. In fact the respondent No.49 also worked with me in my institution/School and later the respondent

No.49 felt apart from me for his selfish needs and set up the parallel school under the name and style of respondent No.49 and slowly instigated the students and their parents of my school of course on all false promises to provide both education at lesser fees and lured them to join in school while assuring falsely to the respondent No. 1 to 43 they need not pay the past dues pending for the 2019-2020, 2020- 2021 and 2021-2022 years.

9. I respectfully submit that respondent No.1 to 43 fell prey for false promises of respondent No.49 and joined their children without clearing my school fees for the year 2019 to 2022 and without taking Transfer certificate from my school essentially required for new admission perhaps in the notion that they can approach the High Court and take shelter at fag end of their school education by pretending that they lose their carrier if Hon'ble court doesn't come to their rescue and it has become a practice year after year to approach the court just before last date of examination and pretend that if the Hon'ble High Court doesn't come to their rescue they all lose 1 year and leave a dent in their carrier. It is also not out of place to mention that the notice served by the Hon'ble court was received a day after the matter was fixed for hearing and the impugned order was passed.

11. I further submit that both interim prayer and Main prayer are one and the same and the order passed in the form of granting the relief as prayed in the main writ petition is contrary to law as held by Supreme Court from time to time. It is pertinent to mention that the certificate sought by the petitioners or **their parents after 2 years after leaving the school is of no use as that may not fetch any benefit for further studies. Perhaps, no school should admit the student without Transfer certificate as it is mandatory required condition precedent to admit the students in respective school.**

DISCUSSION AND CONCLUSION:

5. This Court opines that imparting education is the primary duty of the state and hence, the Transfer Certificates of children cannot be withheld by school, because the fees are due to the school. Every child has fundamental right to education as indicated and envisaged under Article 21A of the Constitution of India. The respondents being government servants cannot act in unfair manner by supporting the wrongful actions of the 6th respondent. It is only on the ground of fee that the Transfer Certificates of the children of the petitioners had been withheld by the 6th respondent.

6. A Division Bench of this Court vide its judgment, dated 24.01.2020 in W.P.No.21137 of 2019 dealing with withholding of original academic qualification certificates of the students observed at paragraph Nos. 29 and 30 as under:-

29. We are not expressing any opinion on the right of the 3rd respondent-College to recover amounts towards the entire course fee or the bond amount of Rs.3 lakhs from the petitioner / her parent, **but we hold that withholding her original academic qualification certificates, is impermissible in law.**

30. Therefore, the Writ Petition is allowed; the action of the 3rd respondent-College in not returning the original academic qualification certificates of the petitioner who had discontinued study of M.B.B.S. I year course in the said college, is declared as illegal, arbitrary and violative of Article 14 and 300-A of the Constitution of India; Para no.7(iii) of G.O.MS.No.114, Health, Medical and Family Welfare (C.1) Department, dt.05.07.2017 is declared to be ultra vires the powers of the State Government under the Telangana Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act 5 of 1983); and the 3rd respondent is forthwith

directed to return the original academic qualification certificates of the petitioner to her. No costs.

The Division Bench very clearly observed that withholding the original academic qualification certificates of the students is impermissible in law.

7. The High Court of Madras in K.Palanisamy Vs. Correspondent, Vidya Vikash Matriculation School and Others of Madurai Bench in WP (MD) 20726 of 2019 decided on 17.10.2019 reported in MANU/TN/6538/2019, held that certificates of students could not be held back by educational institutions citing financial dues.

8. In the judgment of the High Court of Madras, Madurai Bench in S.Muthukamatchi vs. The Director of Technical Education, Anna University and others in WP(MD) No.14394 of 2012 decided on 18.12.2012 reported in MANU/TN/2168/2012, it is observed as under:

"I would not venture to get into that controversy, namely, whether the College is entitled to collect the balance of fees or not. The main grievance of the petitioner is about

the certificates of her daughter. **Those certificates are not like fixed deposit receipt on which, banks claim a general lien in terms of Section 171 of the Contract Act. Therefore, the certificates cannot be retained at any rate. Hence, this writ petition is allowed directing the fourth respondent to return all the original Certificates deposited by the petitioner forthwith.**"

9. The judgment of the High Court of Delhi in Court on its own Motion Vs. Directorate of Education & Ors. in WP (C) 6658 of 2019 & CM APPL.30816.0 of 2019, dated 11.07.2019, it was held as under:-

"8. There are methods of recovering the outstanding school fees with the school. **Even a suit could have been filed by Respondent No.2 upon the parents of the students, which has not been done so far.** No such suit has been instituted by Respondent School for the recovery of outstanding fees.

9. In view of these facts, this Court is of the opinion that the School Leaving Certificates cannot be withheld by the respondents."

10. Learned counsel appearing on behalf of respondent refers to paragraph No.36 of the judgment dated

16.03.1995 of House of Lords Opinions of the Lords of Appeal for judgment in the Cause in Re-C (A minor) (A.P.) (Appellant) (On appeal from A Divisional Court of the Queen's Bench Division) reported in [1995] 2 WLR 383 and contends that the respondents are entitled to withhold certificate till the fee due is paid to the school.

11. In S.Muthukamatch vs. The Director of Technical Education, Anna University in W.P.(MD) NO.14394 of 2012, dated 18.12.2012, the Madras High Court at Madurai Bench categorically held that certificates of student is her/his property. College cannot detain the said certificates at any rate. Even if the college has any monetary claim, the rejection of the said certificates is not the method by which the claim can be enforced. There is no lien on the certificates of the students.

12. The Madras High Court in R.Pradeep Raj v. Commissioner, the Directorate of Technical Education reported in 2019 SCC OnLine Mad.9385, and this Court in Kaluri Shiva Sai Teja vs. The State of Telangana in

W.P.No.2930 of 2022, dated 24.06.2022 and D.Vaishnavi vs. State of Telangana, represented by its Principal Secretary Health Medical and Family Welfare, Hydeabad in W.P.No.21137 of 2019, dated 24.01.2020 and also the High Court of Andhra Pradesh at Amaravati in Andhra Pradesh Private Unaided Schools Management Association v. The State of Andhra Pradesh in W.P.No.9606 of 2021, dated 27.10.2021 directed the college concerned authorities to return the certificates and granted liberty to the college to claim fee by availing legal remedies in similar circumstances.

13. The order dated 16.09.2020 passed in W.P.(C)No.20027 of 2020 in "DIPESH KU.PADHIRARI v. HI-TECH MEDICAL COLLEGE & HOSPITAL AND OTHERS", in particular, para 8 of the said Judgment reads as under:

"8. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave

the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. **In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/Bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution.** The balance fees must be kept invested in fixed deposits in a nationalised Bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance."

14. UGC guidelines, dated 23.04.2007, in particular, paragraph No.2 reads as under:

"2. The Commission is of the view that the Institutions/Universities, by way of retaining the certificate

in original, force retention of admitted students which limits the opportunities for the candidates from exercising other options of joining other institutions of their choice. However, it would not be permissible for institutions and Universities to **retain the School/Institution, Leaving Certificate, mark sheet, caste certificate and other documents in original.**"

15. This Court opines that the 6th respondent cannot withhold the Transfer Certificate unless and until the amount in dispute as school fee is paid by the petitioner. There is no lien on the certificate of the students since the certificate of the student is his/her property. This Court opines that the right of children to get the Transfer Certificates from one school to join another school for whatever reason cannot be denied by the school authorities merely because the school fee is due, if an amount is due towards fee, the proper course open to the 6th respondent is to file appropriate proceedings against the petitioners for recovery before competent courts and coercive tactics cannot be adopted by the 6th respondent to make the petitioners pay the school fee. This Court opines that there is no justification by the

6th respondent to withhold the certificates of the children of the petitioners.

17. Taking into consideration:

- (i) the aforesaid facts and circumstances of the case,**
- (ii) the observations of various Court's in the judgments (referred to and extracted above)**
- (iii) the UGC guidelines, dated 23.04.2007, the Writ Petition is allowed as prayed for and the 6th respondent is directed to issue the Transfer Certificates to the petitioners' children within a period of two (02) weeks from the date of receipt of copy of this order.**

Miscellaneous petitions, if any pending, in this writ petition shall stand closed. However there shall be no order as to costs.

SUREPALLI NANDA, J

Date: 03.06.2024

Note : L.R. Copy to be marked.
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