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## (2018) 07 CAL CK 0102

## **Calcutta High Court (original side)**

Case No: WP 180 of 2018

Dave Aditya Jefferson

Sengupta, Minor, Rep. APPELLANT

By Father

Vs

Council For Indian

School Certificate RESPONDENT

Exam & Ors.

Date of Decision: July 19, 2018

Hon'ble Judges: SHEKHAR B. SARAF, J

Bench: Single Bench

Advocate: P. Verma, T. Guray, Chandan Mondal, Sanjoy Kumar Baid, Arunima Lala

Final Decision: Allowed

## **Judgement**

The Court: Heard learned Counsel appearing for both the parties.

Ã, The writ petition deals with issues with regard to a child of Class-IX in Don Bosco School, Park Street.Ã, The child has been granted a Transfer

Certificate by the school authorities on several grounds including the fact that a child is suffering from depression and has a habit of injuring himself in

front of his school mates.Ã, The respondent school authorities submit that keeping the child in the school may result in harm to the other children.Ã,

They submit that they have received several complaints of parents from other students who are concerned with regard to their ward $\tilde{A}$ ¢ $\hat{a}$ , $\neg \hat{a}$ ,¢s safety. $\tilde{A}$ ,

Mr. Baid, learned Advocate appearing on behalf of respondent nos. 4 and 5 relies on a judgment of this Court being Purushottam Lal Singhania v.

Delhi Public School reported in AIR 2006 Cal 313, wherein a coordinate Bench had held as follows:

 $\tilde{A}$ ¢â,¬Å"7. I do think that writ petition can be entertained for examining whether the disciplinary action taken by the school is vitiated by arbitrariness or by

violation of principles of natural justice.Ã, An exercise undertaken for such examination will amount to a judicial review of the decision.Ã, In my view,

if it is held that the decision in question can be judicially reviewed by the Writ Court, then it will necessarily follow that the school is amenable to the

jurisdiction of the Writ Court with respect to its every action and decision.Ã, I think such a proposition cannot be laid down for maintaining a writ

against an unaided private educational institute.

8. I am unable to agree with counsel for the petitioner that since anallegation has been made regarding infringement of fundamental right, the writ

petition has to be entertained just as a matter of course.Ã, In my view, by simply alleging infringement of fundamental right, the student does not

acquire a right to automatic admission of his writ petition.Ã, In my opinion, it is the duty of the Court to see whether a prima facie case of

infringement of fundamental right has been made out.Ã, In my view, in this case the petitioner has failed to make out any prima facie case of

infringement of his son  $\tilde{A}$  ¢ $\hat{a}$ ,  $\neg \hat{a}$ , ¢s fundamental right to education.

9. For these reasons, I hold that the present writ petition is notmaintainable.Ã, The remedy (if any) of the petitioner (necessarily for the student

concerned), in my view, is available before the ordinary civil Court.Ã, The writ petition is dismissed.Ã, There shall be no order for costs in it.ââ,¬â€∢

Relying on the above judgment, he submits that the writ Court should be extremely slow in entertaining such a writ petition that deals with a

studentschool relationship. $\tilde{A}$ , He submits that the action of granting the  $\tilde{A}$ ¢ $\hat{a}$ ,¬ $\tilde{E}$ ©Transfer Certificate $\tilde{A}$ ¢ $\hat{a}$ ,¬ $\hat{a}$ ,¢ to the writ petitioner was keeping in mind the

childââ,¬â,,¢s welfare. According to him, the child requires to attend a special needs school.Ã, Granting the Transfer Certificate also allows the child to

continue his studies in the next class i.e. class-X.Ã, In view of the above, he submits that he wants to file an affidavit in support of his submissions

bringing on record the various complaints etc. that have been received by other parents.Ã, On the contrary, learned Counsel on behalf of the

petitioners submits that the child is being targeted and the actions of the school authorities is mala fide.

However, after perusal of the documents on record, prima facie I do not find any mala fide action on behalf of the school authorities.Ã, In light of the

above, I am of the view that presently no interim order can be passed in this matter.Ã, Under the prevailing circumstances the child cannot be allowed

to rejoin the school. $\tilde{A}$ , Accordingly, directions for affidavit are given. $\tilde{A}$ , Affidavit $\tilde{A}$ ¢ $\hat{a}$ ,¬"in-opposition to be filed within two weeks, reply if any, within one

week thereafter.

Let the matter be appear as ââ,¬Å"Court applicationââ,¬â€ on 6th August, 2018.

As the matter requires a super understanding on the issue as to when the writ court should interfere in matters such as the present where a private

school is involved, I appoint Mr. Phiroze Edulji (9038080136) as an Amicus Curie to assist this Court on the issue. Copy of the writ petition and this

order should be served on him by the writ petitioner by July 23, 2018.

