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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 393/2024 & CM APPL. 29772/2024

VIJAY MALHOTRA

..... Appellant

Through: Mr. Shohit Chaudhry, Mr. Manoj Kumar Goel, Mr. Shiv Bahadur Chetrya, Mr. Chhinnbhal Singh Chauhan and Mr. V.P. Nahar, Advocates

versus

DIRECTORATE OF EDUCATION AND ORS Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel (Civil) with Mr. Rishabh Srivastava, Advocate
Mr. Arvind Nayar, Senior Advocate with Mr. Vedanta Verma, Mr. Rishabh S. Mishra, Mr. Shubhankar Chaudhary, Advocates for R-3 to 5
Mr. Sanjay Katyal, Standing Counsel with Ms. Chand Chopra, Ms. Neha Bhupathiraju, Advocates for R-6/DDA

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Date of Decision: 17th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present appeal filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High



Court of Delhi, impugns the orders dated 15th April, 2024 and 06th May, 2024, passed in W.P. (C) 2783/2019 ('writ petition'), whereby the learned Single Judge has dismissed the Appellant's interlocutory applications¹ seeking interim directions to Respondent Nos. 3 to 5 from taking any coercive and discriminatory actions against the children of the Appellant, who are studying in Respondent Nos. 3 and 4 Schools.

2. The facts of the case, which are relevant to this appeal are that the Appellant herein is the father of Miss Devika Malhotra, who has, recently on 13th May, 2024, graduated from Class XII from Respondent No. 4 School and Master Yuvraj Malhotra, who is a student of Class X in Respondent No. 3 School.

2.1 It is stated that the underlying writ petition was filed by the Appellant in the year 2018, against Respondents herein, *inter alia*, challenging the fee hike by Respondent Nos. 3 and 4 Schools, in alleged contravention of the circulars and orders issued by Directorate of Education, GNCTD i.e., Respondent No. 1 herein and the provisions of Delhi School Education Act and Rules, 1973.

2.2 It is stated that during the pendency of the writ petition, on 18th March, 2024, the Appellant's son-Master Yuvraj received a WhatsApp message from Respondent No. 3 School, stating that students interested in participating in an exchange programme to Germany in May, 2024 could contact Ms. Roma, a teacher working in Respondent No. 3 School; and subsequently, *vide* letter dated 21st March, 2024, the Appellant's son was informed that he was tentatively selected to be a part of the students' delegation, for the said exchange programme.

¹ CM Appl. No. 22042/2024 & CM Appl. 26444/2024



2.3 It is stated that, however, on 23rd March, 2024, Appellant's son was informed by another teacher, that he could not travel to Germany as the limited number of slots were filled up by other applicants.

2.4 It is stated that based upon the apprehension that Appellant's son was being deliberately excluded, the Appellant filed CM Appl. 22042/2024 in the underlying writ petition, thereby seeking a direction to restrain Respondent Nos. 3 to 5 from taking any coercive and discriminating actions against the children of the Appellant and to restore Appellant's son's name in the student exchange programme for Germany.

3. It is a matter of record that by impugned order dated 15th April, 2024, the learned Single Judge dismissed CM Appl. 22042/2024 and returned a, *prima facie*, finding that there has been no coercive or discriminatory action taken against the Appellant or his ward. The learned Single Judge further opined that the said application seems to be an attempt to use the Court to get an order permitting the Appellant's son to visit Germany without even the slightest evidence being submitted to establish a legal right in that aspect. The learned Single Judge recorded that the Appellant conceded that there is no vested right in a student to participate in the exchange programme to Germany. The application was dismissed with costs of ₹ 5,000/- to be paid by the Appellant to the Delhi High Court Legal Services Committee.

4. However, instead of complying with the direction of the learned Single Judge with respect to payment of costs, the Appellant herein filed CM APPL. 26445/2024 seeking waiver of the aforesaid costs of ₹ 5000/- and filed another application i.e., C.M. Appl. 26444/2024 agitating the identical plea that Respondent Nos. 3 to 5 be restrained from taking any



coercive and discriminatory action against the wards of the Appellant.

5. *Vide* impugned Order dated 06th May, 2024, the learned Single Judge has dismissed CM APPL. 26444/2024 and CM APPL. 26445/2024 with further costs of ₹ 25,000/-, to be paid to the Delhi High Court Legal Services Committee, observing that the applications are an abuse of the process of Court. The learned Single Judge observed that the reliefs sought in CM APPL. 26444/2024 and CM APPL. 22042/2024 have nothing to do with the subject matter of the underlying writ petition and observed that it is a misuse of the process of the Court.

6. Aggrieved by the impugned Orders dated 15th April, 2024 and 06th May, 2024, the Appellant has preferred the present appeal, thereby seeking quashing of the aforementioned impugned orders.

7. Learned counsel for the Petitioner has reiterated the submissions made in the aforesaid applications. He states that the applications were necessitated due to the deliberation exclusion of the Appellant's son by the Respondent No. 3, School for two exchange programmes offered by the school. He states that the school offered exchange programme for Germany followed by Greece and despite the Appellant's son expressing his willingness to enroll for the said programme he was not included. He reiterates that though admittedly, the Appellant's son has no vested right to be sent in the exchange programme, the learned Single Judge ought to have considered the reliefs sought.

8. In reply, the learned Senior counsel for Respondent Nos. 3 to 5, states that the Appellant herein after filing the underlying writ petition in the year 2018, has unilaterally stopped making payments of school fees for both his children Miss. Devika Malhotra and Master Yuvraj Malhotra. He states that



for the past six years, the Appellant has not paid any amount towards the school fee and as of date cumulatively, an amount of ₹10.60 lakhs is outstanding on account of the school fee for both children. He states that though, there is no interim order in the underlying writ petition permitting the Appellant to withhold the tuition fee, however, the Appellant has unilaterally stopped making payments. He states that despite the non-payment of school fees and even though there is no interim order of the Court permitting the Appellant to withhold school fees, Respondent Nos. 3 to 5 have not taken any coercive steps towards the wards of the Appellant. He states that in ordinary circumstances, the Respondent School(s) would have been within their right to cancel the admission of the wards, due to the non-payment of the school fee.

8.1. He states that in the underlying writ petition, the Appellant has challenged the fee hike in the school fee effected in 2018, however, after filing the writ petition, the Appellant has failed to pay even the undisputed portion of the school fee as per the fee structure which existed in the year 2018.

8.2. He states that Appellant's daughter Miss Devika Malhotra's Class XII result was announced on 13th May, 2024 and even though the Appellant has not made any payment of the school fee for the last six years from 2018-2024 for his daughter, Respondent No. 4 School has issued all necessary documents to the said ward and completed all the requisite formalities.

8.3. He states that therefore, the allegation of coercion and discrimination against the children, as levelled by the Appellant are without any merit.

9. In rejoinder, the learned counsel for the Appellant acknowledges the submissions made by Respondent Nos. 3 to 5, that the Appellant has not



paid the school fee of his children for the period between 2018-2024. However, he contends that the school fee was not paid in view of the order dated 21st March, 2018, whereby the learned Single Judge has opined that fee paid by the Appellant for his wards would be subject to the outcome of the underlying writ petition.

10. We have heard the learned counsel for the parties and perused the record.

11. In view of the admitted position that Master Yuvraj Malhotra does not have a vested right to travel on the exchange programme and considering the fact that the relief sought in CM APPL. 22042/2024 was for a mandamus to be named for the exchange programme in Germany, the dismissal of the said application by learned Single Judge is correct and does not call for any interference by this Court. In the absence of any legal right, the Appellant could not have maintained the said applications to seek direction for participating in the exchange programme for Germany.

12. Further, the learned Single Judge was right in observing that the reliefs sought in CM APPL. 22042/2024 and CM APPL. 26444/2024 were predicated on exclusion from the exchange programme in Germany and Greece were both beyond the remit of the controversy in the writ petition and for this additional reason, the applications were beyond the scope of writ petition.

13. We find merit in the submissions of Respondent Nos. 3 to 5, that the non-payment of the school fee by the Appellant last six years since 2018-2024 was a valid legal ground available to the school(s) for cancelling the admission of the wards. The Respondent No. 4's school action in issuing all necessary documentation to Miss. Devika Malhotra upon her passing out



from class XII, evidences the absence of any coercive or discriminatory action by Respondent No. 4 School.

14. The withholding of the fees by the Appellant was patently illegal. The fact that the Appellant has unilaterally withheld the school fee for a period of six years due to the pendency of the underlying writ petition, leads us to believe that the pendency of the writ is being misused by the Appellant. The explanation offered by the Appellant for not making payment is unpersuasive. We, therefore, deem it appropriate to request the learned Single Judge to hear and dispose of the underlying writ petition i.e. W.P. (C) 2783/2018 along with W.P. (C) 2000/2019 and W.P.(C) 4646/2019, expeditiously and preferably within three months from the next date of listing i.e., 1st July, 2024.

15. In the facts noted above, we are satisfied that no coercive or discriminatory action has been taken by the Respondent schools against the wards of the Appellant.

16. For all the above reasons, we find no merits in the present appeal and the same is accordingly dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 17, 2024/mr/hp/MG

Click here to check corrigendum, if any