

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

+ **W.P.(C.) No.11301/2009**

% **Date of Decision: 31.08.2009**

Master Rahul Seth (Minor) Petitioner
Through Mr.Ashok Agarwal, Advocate

Versus

Mount Carmel School & Another Respondents
Through Mr.K.K.Rai, Sr.Advocate with
Mr.S.K.Pandey, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J. (ORAL)

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The petitioner seeks direction for quashing the impugned letters dated 27th July, 2009 and 30th July, 2009 and to direct the respondent no.1 to allow the petitioner to join the classes and direction to respondent No.2 to take action against the respondent no.1 school. The petitioner was suspended for one month on account of persistent violation of dress code of wearing belt on the hips in an indecent manner. The father of the petitioner was given show cause notice and asked to give a personal assurance in writing that the disobedience will not be done by his son. Instead of showing remorse and counseling his son, the father of the petitioner threatened the Principal of the school

and also called an SI of the police to the school and threatened with registration of a criminal case leading to indefinite suspension of the petitioner.

The father of the petitioner, therefore, had filed a suit for perpetual/permanent injunction under Section 38 of the Specific Relief Act, 1963 seeking direction to take back the letter of suspension dated 27th July, 2009 and to declare the suspension illegal. The suit of the plaintiff/petitioner was contested by the school contending inter alia that school is a prestigious school of Delhi and the petitioner was aware of the dress/uniform code as the elder brother of the petitioner was also a student of the school. The school also contended that not only the petitioner but other children were also issued notices for violating the dress code/uniform code. On persistent violation of the dress code, the petitioner was suspended for one month and the father of the petitioner was asked to give a personal assurance in writing that the disobedience will not be done by his son. However, the parents of the petitioner opted for confrontation with the school despite the fact that the act of the petitioner was not only in violation of the dress code/uniform code but was an indecent act which persisted despite notices and instead of appreciating the concern of the school, the father of the petitioner came back with a Sub Inspector of the Police and threatened the school Principal with lodging an FIR against the school.

The father of the petitioner contended in the suit filed by him that the Principal of the school humiliated him by calling a photographer and he was asked to give a public apology which is denied by the school in the written statement filed by the school before the Civil Judge. Rather a recorded CD had been filed by the respondent no.1 to show as to what had transpired in the office of the Principal.

The petitioner in the suit filed through his father failed to get any interim relief. The father of the petitioner withdrew the suit on 25th August, 2009 with liberty to file it before the appropriate forum.

Instead of filing another suit, the petitioner has filed the present petition which tantamount to forum choosing in the facts and circumstances. The liberty granted to the petitioner's father by the Civil Court was to file another civil suit. A civil Court does not grant liberty to file a writ petition under Article 226 of the Constitution of India nor on the basis of such liberty the petitioner can contend that the writ petition is maintainable. Learned counsel for the petitioner is unable to explain as to how the writ petition will be maintainable, after the suit was filed involving disputed question of facts, which was withdrawn. For subsequent events after 27th July, 2009 i.e another letter dated 30th July, 2009 and subsequent suspension for indefinite period of the petitioner which is alleged to be contrary to Delhi School Education Rules, either the pending suit on behalf of the petitioner could be

amended or another suit could be filed. Even in the civil suit, the petitioner can challenge the indefinite suspension on the ground that it is contrary to the provisions of Delhi School Education Rules. The dispute is about the persistent indecent behavior of the petitioner and the support of the parents for such a behavior and the parent instead of counseling the petitioner, confronting the school authorities and threatening them. These allegations made by the school are not admitted by the petitioner. There are different versions in respect to what transpired between the principal of the school and father of the petitioner. The school had filed a recorded CD showing what transpired between the Principal and the father of the petitioner.

There cannot be any doubt that the question as to when a discretionary jurisdiction is to be exercised or refused to be exercised by the High Court has to be determined having regard to the facts and circumstances of each case and no hard-and-fast rule can be laid down. Normally, the High Court does not entertain writ petitions unless it is shown that there is something more in a case. To the doctrine of exhaustion of alternative remedy there are two exceptions. One is when the proceedings are under a provision of law which is ultra vires which will entail quashing of same on the ground that the proceedings are incompetent without a party being obliged to wait until those proceedings run their full course. The other exception is when an order

is made in violation of principles of natural justice and the proceedings itself are an abuse of process of law. The plea of the learned counsel for the petitioner that the expulsion of the petitioner is contrary to Delhi School Education Rules, prima facie is not acceptable as the petitioner has not been expelled but has been suspended indefinitely as he has refused to adhere to the dress code of the school and has persisted with wearing his belt and trouser in an indecent manner. Suspension pending indiscipline for whatsoever period cannot be termed as expulsion and is not contrary to the provisions of Delhi School Education Rules. The father of the petitioner has also insisted on alleged rights and has not cared about his duties to counsel his son and to advise his son to maintain the discipline of the school. The school is not the extension of the ramp where the students have to show their dresses and how they are to be worn. A Bench of the Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* ((2004) 3 SCC 553 : JT (2003) 10 SC 300 [12]) observed that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition and it is the Court that has imposed upon itself certain restrictions in the exercise of this power. The Supreme Court had held on page 572 in para 28 as under:

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. **The**

High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn. v. Registrar of Trade Marks*) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

A civil suit was filed on behalf of the petitioner as the matter involved substantial disputes of facts, whether the petitioner indulged in the solitary instance of indecent behavior or the indecent behavior of the petitioner persisted. The dispute is about the persistent indecent behavior of the petitioner and the support of the parents for such a behavior and the parents instead of counseling the petitioner, confronting the school authorities and threatening them. The dispute is whether the principal humiliated the father of the petitioner or whether the father claimed his alleged rights without doing his duties for maintaining the discipline of the school. In the writ petition also the father of the petitioner who has filed the petition on behalf of the petitioner, has neither shown any regret or remorse or that the petitioner shall be counseled by him against such a behavior. In the facts and circumstances, it will not be appropriate to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

In the circumstances, this Court declines to exercise its jurisdiction under Article 226 of the Constitution of India and the writ petition is, therefore, dismissed.

August 31, 2009
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ANIL KUMAR, J.