

104 (4 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. COCP-1210-2022 (O&M)
Date of Decision:20.11.2023

*VIRAT (MINOR) THROUGH HIS FATHER AND NATURAL GUARDIAN
AND OTHERS*

.....Petitioners

V/s.

*MAHAVIR SINGH, IAS, ADDITIONAL CHIEF SECRETARY, SCHOOL
EDUCATION DEPARTMENT, HARYANA AND OTHERS*

.....Respondents

2. COCP-1212-2022 (O&M)

*VANI (MINOR) THROUGH HER FATHER AND NATURAL GUARDIAN
AND OTHERS*

.....Petitioners

V/s.

*MAHAVIR SINGH, IAS, ADDITIONAL CHIEF SECRETARY, SCHOOL
EDUCATION DEPARTMENT, HARYANA AND OTHERS*

.....Respondents

3. COCP-1213-2022 (O&M)

*DEEPANSHU (MINOR) THROUGH HIS FATHER AND NATURAL
GUARDIAN AND OTHERS*

.....Petitioners

V/s.

*MAHAVIR SINGH, IAS, ADDITIONAL CHIEF SECRETARY, SCHOOL
EDUCATION DEPARTMENT, HARYANA AND OTHERS*

.....Respondents

4. COCP-1213-2022 (O&M)

RAJ KUMAR AND OTHERS

.....Petitioners

V/s.

*MR. SANJEEV KAUSHAL, IAS, THE CHIEF SECRETARY, HARYANA AND
OTHERS*

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Ankit Grewal, Advocate for the petitioners.

Mr. Harsh Vardhan Sehrawat, AAG, Haryana.

Mr. Pankaj Maini, Advocate
for respondents No.16, 23, 27 and 29.

Mr. Harsh Sharma, Advocate for respondent No.26.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of four connected Contempt Petitions as the issue involved in both the Contempt Petitions is common.

2. In these cases, the Court has passed an order on 20.07.2022 directing the learned counsel for the petitioner(s) to examine as to whether a petition for initiating contempt proceedings initiated for violation of the directions issued in the Writ Petition in the year 2015 shall be maintainable at the behest of the petitioners herein who were not parties to the Writ Petition.

3. Learned counsel for the petitioner(s) was asked to address on the said aspect as this Court was of the view that the Contempt Petitions would not lie and the petitioners were not party to the said Writ Petition nor they were petitioners to the Writ Petition wherein directions were issued. The Contempt Petitions, without filing any Petition in the Court for redressal of any of the grievance, would not lie.

4. The petitioners' counsel has stated that as the orders passed by the High Court, were binding on different schools, who had approached their Association before this Court, the respondents-Schools cannot escape from their liability to admit the petitioners' who are wanting to take admission in the schools of the respondents.

5. Further, learned counsel for the petitioners submits that the petitioners need not to file a separate Writ Petition and can approach this Court for implementation of orders of the Court as in the Contempt Petition, they can only act as informers with regard to violation of the Court's orders and the Court has to take cognizance of the violations of its orders upon an information having been received. The Contempt Petition would, therefore, lie even by persons who may not be a party to the Writ Petition.

6. While examining this aspect, this Court finds that the petitioners alleged violations of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “the Act of 2009”). This Court in a bunch of Writ Petitions decided on 01.04.2015 took a view that unaided Institutions as defined under Section 2(n)(iv) have a mandatory obligation to admit the students in Class I and school education to the extent of 25% of the strength of the class belonging to the weaker sections and disadvantaged groups in the neighborhood and provide for free and elementary education to them till its completion and the State is required to reimburse the expenditure as per Section 12(2) of the Act of 2009.

7. Having said so, it was incumbent upon the petitioners to have either filed a complaint in terms of Section 32 of the Act of 2009 which provides for redressal of the grievances or even before this Court for implementation for their admission in a particular school. However, instead course was adopted for filing of the Contempt Petition wherein all the different schools have been impleaded through their Principals as party-contemnors. It is also not known as to which child has applied in which

school for admission and general, vague and bald allegations have been leveled.

8. Considering that the contempt proceedings are in the nature of *quasi* criminal proceedings, specific allegations with specific averments must be mentioned in the contempt petition pointing out the deliberate and willful disobedience of the Courts order.

9. In a recent judgment in the case of **Future Retail Ltd.** Vs. **Amazon Investment.com Holdings and Others**; 2022 (2) RCR (Civil) 353, the Hon'ble Supreme Court has held as under:-

"41. Viewed differently, contempt of a civil nature can be made out under Order XXXIX Rule 2A CPC not when there has been mere "disobedience", but only when there has been "wilful disobedience". The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but "wilful" and "conscious". This Court in the case of Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204, considering the implication of exercise of contempt jurisdiction, held that the power must be exercised with caution rather than on mere probabilities. While delineating the conduct which can be held to be "wilful disobedience", this Court held that:

"12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of 14 consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order,

the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct."

10. Considering the above, this Court while allowing the petitioners to raise their grievances and even initiate writ proceedings, if so required, which would be only after giving opportunity of hearing to the concerned individual school where the petitioners may move an appropriate application for seeking admission under Act of 2009, the present Contempt Petitions are held to be not maintainable as in Contempt Petitions, this Court would not pass any other directions except to see whether an order of the Court is being flouted.

11. Considering the scope as held in the case (supra), the present contempt petitions are held to be not maintainable and the same are **dismissed** with liberty as aforesaid to the individual petitioners who have come before this Court in these contempt petitions.

12. Notices stand discharged

13. All pending applications filed in this Contempt Petition shall stand disposed of.

November 20, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

Whether speaking / reasoned : *Yes / No.*
Whether Reportable : *Yes / No.*