



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 6th OF NOVEMBER, 2024**

WRIT PETITION No. 25817 of 2024

DEEPIKA SARAF

Versus

THE COLLECTOR AND OTHERS

Appearance:

Shri Aishwary Sahu – Advocate for the petitioner.

Shri Swapnil Ganguli – Dy. AG for the respondents / State.

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs :-

- “(i) To issue a writ in the nature of mandamus directing the respondent no. 3 to issue the Transfer Certificate and mark sheet of Class-VI to the daughter of the petitioner namely Ms. Moksha Saraf.
- (ii) To grant any other relief as deemed fit and proper by this Hon’ble Court.”

2. It is submitted by counsel for petitioner that petitioner had filed a petition for grant of divorce which was dismissed by First District Judge, Itarsi, District Narmadapuram by judgment and decree



dated 27.6.2024 passed in RCSHM No.71/2023, against which, first appeal is pending.

3. Since petitioner is not residing with her husband, therefore, she has shifted to Itarsi. Earlier her daughter namely Ku. Moksha was studying in Maharishi Vidya Mandir, Seoni. Custody of Ku. Moksha is with the petitioner. Since petitioner has shifted to Itarsi, therefore, she wanted to get her daughter admitted in Shri Tagore Vidya Mandir School, Itarsi where she has been granted provisional admission and she has been allowed to sit in the class room subject to furnishing Transfer Certificate and Mark-sheet of class 6th issued by the earlier school. Respondent no. 3 is not issuing Transfer Certificate and Mark-sheet of Class VI, therefore, the present petition has been filed.

4. A Coordinate Bench of this court by order dated 22.10.2024 had passed following orders :-

“The matter relates to grant of transfer certificate to daughter of the petitioner namely Moksha Saraf who as per petitioner has come into custody of the petitioner in July, 2024 from the custody of her husband and after getting custody of daughter in July, 2024, the petitioner has brought her daughter and admitted in Tagore Vidya Mandir, Itarsi and is seeking transfer certificate from Maharishi Vidya Mandir, Jabalpur Road, Seoni but the said school which is impleaded as respondent No.3 is not providing transfer certificate to daughter of the petitioner on account of the objection raised by her husband namely Vinay Saraf. As a result of tussle between the petitioner and her husband



education of her daughter is being adversely affected. It is contended that the petitioner has submitted a detailed representation before the District Education Officer, District, Seoni.

Looking to the averments made in the petition and looking to anxiety expressed about interruption in education of her daughter, the counsel for the State is directed to seek instructions in the matter from respondent No.2- District Education Officer who shall specifically enquire into the matter and submit a specific affidavit before this Court and intimate that what is the hurdle for respondent No.3 in issuing transfer certificate and Class- VI Marksheet in favour of the daughter of the petitioner.

Let the affidavit be filed within two weeks.

List the case on 06.11.2024.

The learned counsel for the State is directed to communicate this order to the concerned District Education Officer.”

5. It is submitted by Shri Swapnil Ganguli that D.E.O. had sought information from respondent no. 3 as to why respondent no. 3 is not issuing Transfer Certificate and Mark-sheet of Class VI and it has been informed by respondent no. 3 that in the judgment and decree dated 27.6.2024 passed by First District Judge, Itarsi, District Narmadapuram, application filed by the petitioner for grant of educational documents has been rejected and therefore, respondent no. 3 is not in a position to issue Transfer Certificate and Mark-sheet of Class VI.



6. It is further submitted by Shri Swapnil Ganguli that Principal of Maharishi Vidya Mandir, Seoni / respondent no. 3 has called the petitioner and her husband to resolve the dispute and therefore, every attempt will be made to resolve the dispute with regard to issuance of Transfer Certificate and Mark-sheet of Class VI.

7. In response to this submission, it is submitted by Shri Sahu that Principal of respondent no. 3 had telephoned the petitioner and had also threatened her. It is further submitted that since petitioner does not wish to complicate the matter any further, therefore, no amendment application was filed in that regard and petitioner also did not want to agitate that issue and, therefore, did not make the said submission. But as the counsel for respondent no. 2 has pointed out that respondent no. 3 has called the petitioner as well as her husband for reconciliation purposes, therefore, aforementioned submission is being made.

8. Heard learned counsel for the parties.

9. Shri Swapnil Ganguli was directed to point out the authority of Principal of Maharishi Vidya Mandir, Seoni to step into the personal dispute of petitioner and her husband. It was fairly conceded by counsel for respondent no. 2 that Principal of Maharishi Vidya Mandir, Seoni has no authority whatsoever and assured that now respondent no. 3 would neither contact the petitioner nor would insist upon the appearance of petitioner as well her husband for reconciliation purposes.



10. In view of the submission made by counsel for respondent no. 2 it is directed that Principal, Maharishi Vidya Mandir, Seoni shall stay away from the personal dispute of petitioner and her husband. Any attempt to step in the personal dispute of petitioner and her husband will be viewed very seriously and this Court may take coercive action against him. But, for the time being and under the hope and belief that Principal, Maharishi Vidya Mandir, Seoni would realize that he has no jurisdiction, and would stay away, no further action is being taken against him.

11. So far as the defense taken by respondent no. 3 in its reply sent to District Education Officer which has been provided by Shri Swapnil Ganguli and the same is taken on record, contains the following paragraph :-

“4 पुनः श्री विनय श्रॉफ द्वारा स्कूल आकर यह जानकारी दी की न्यायलय द्वारा इस विवाद प्रकरण को DISPOSED किया जा चुका है एवं माननीय न्यायलय द्वारा आदेशित RCSHM/71/2023 CNRNO-MP05060009222023 में आदेशित RCSHM/71/2023 के 6 प्रस्टक्रमक (9) में प्रश्न क्र. 3 लगायत 7 पर सकारण निष्कर्ष – बिंदु क्र. 22 में लिखित निर्णय पुत्री की संरक्षकता के तेहत एव शैक्षिक दस्तावेज प्राप्ति को अस्वीकार माना है। (संलग्न)”

12. Thus, it is clear that respondent no. 3 has refused to issue Transfer Certificate and Mark-sheet of Class VI only in the light of observations made by Trial Court in paragraph 22 of the judgment dated 27.6.2024. For the purposes of appreciation of contents of



paragraph 22, it is necessary to reproduce the same which reads as under :-

“22. पुत्री की स्थाई संरक्षकता एवं शिक्षण संबंधी दस्तावेज प्राप्त करने के संबंध में आवेदिका की प्रार्थना के विषय में सर्वप्रथम यह उल्लेखनीय है कि उपरोक्त विवेचना अनुसार दर्शित आवेदिका का आचरण, पुत्री की संरक्षकता प्राप्त करने संबंधी उसकी प्रार्थना पर नकारात्मक दृष्टिकोण अपनाने के लिये पर्याप्त हैं। वहीं सर्वाधिक महत्वपूर्ण रूप से यह उल्लेखनीय है कि आवेदिका एवं अनावेदक द्वारा उपरोक्त आवेदन के माध्यम से पुत्री की स्थाई संरक्षकता की मांग की गयी है। जिसके लिये हिंदू विवाह अधिनियम 1955 की धारा 26 के तहत इस न्यायालय को कोई अधिकार नहीं है क्योंकि धारा 26 के तहत केवल अंतरिम अभिरक्षा ही दी जा सकती है, जिसका निर्णय के इस स्तर पर कोई महत्व नहीं रह जाता है एवं उक्त वांछित अनुतोष के लिये आवेदिका एवं अनावेदक संरक्षकता एवं प्रतिपाल्य अधिनियम के तहत पृथक से कार्यवाही करने के लिये स्वतंत्र है। इसलिये पुत्री की संरक्षकता संबंधी उभयपक्ष द्वारा प्रस्तुत उपरोक्त आवेदन एवं फलस्वरूप पुत्री की शैक्षणिक दस्तावेज की प्राप्ति संबंधी आवेदिका का आवेदन भी अस्वीकार किया जाता है।”

13. It appears that petitioner had filed an application for custody of the daughter as well as for receipt of education related documents of her daughter. The said application was filed under Section 26 of Hindu Marriage Act. The Trial Court rejected the application on the ground that only interim custody can be given under Section 26 of Hindu Marriage Act and for custody of the girl, the parties are free to take separate step under the Minority and Guardianship Act.

14. Thus, it is clear that Trial Court did not reject the application filed by petitioner on merits but it was rejected on the ground of



jurisdiction. It is really surprising that Principal, Maharishi Vidya Mandir, Seoni who is head of the Educational Institution was unable to understand simple meaning of contents of paragraph 22.

15. Be that whatever it may be.

16. It is for the Administrator of Maharishi Vidya Mandir to consider the competency and intelligence of the Principal of Maharishi Vidya Mandir, Seoni.

17. Be that whatever it may be.

18. The welfare of the child is paramount consideration.

19. It was fairly considered by counsel for the State that custody of the child is with the petitioner. If the husband wants custody of the child, then he is free to initiate proceeding under the relevant Act. But, under the garb of personal dispute between husband and wife, the child cannot be made to suffer because in absence of Transfer Certificate and Mark-sheet of Class VI, the new school will not be in a position to give regular admission which would result that daughter of the petitioner would not be able to prosecute her further studies.

20. It is really shocking that Principal, Maharishi Vidya Mandir, Seoni has made every effort to deprive the daughter of the petitioner from educational facility which are fundamental rights of the child.

21. Be that whatever it may be.

22. Since the application filed by petitioner for permanent custody as well as for supply of educational documents was not rejected on merits, therefore, it is clear that in case if this Court, while



keeping the welfare of the child under consideration, directs for issuance of Transfer Certificate and Mark-sheet of Class VI of Ku. Moksha within a period of two days from today, then it would not amount to nullifying the decree passed by the Trial Court in RCSHM No.71/2023.

23. Under these circumstances, Principal, Maharishi Vidya Mandir, Seoni is directed to immediately issue Transfer Certificate of Ku. Moksha as well as Mark-sheet of Class-VI latest by **8.11.2024**.

24. Respondents no. 2 and 3 are directed that they will ensure that the documents are supplied to petitioner by a messenger at Itarsi at the cost of respondent no.3. Any deviation and noncompliance will be viewed very seriously and coercive action shall be taken against them for not complying the order.

25. With aforesaid observation, petition is **allowed**.

(G. S. AHLUWALIA)
JUDGE