

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____ / 2020

(Writ Petition U/A 32 Of The Constitution Of India)

In the matter of:

Reepak Kansal

...Petitioner

Versus

Union of India & Ors.

...Respondents.

(Paper Book)

(I. A. NO. 2020)

Appl. praying for exemption and urgent listing

(Kindly See Index)

Advocate for Petitioner: Vatsalya Vigya

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PROFORMA FOR FIRST LISTING

SECTION PIL

The case pertains to (tick/check the correct box):

- Central Act: (Title)_The constitution of India
 - Articles / Section: 21
 - Central Rule: (Title) N.A
 - Rule No (s): NA
 - State Act: (Title) NA
 - State Rule:(Title) NA
 - Impugned Interim Order: (Date) NA
 - Impugned Final Order: (Date) NA
 - High Court : (Name)_ NA
 - Names of Judges: NA
 - Tribunal/Authority: (Name) NA
-

1. Nature of matter: **CIVIL**
2. (a) Petitioner/Appellant: Reepak Kansal
(b) e-mail ID:
(c) Mobile phone number:
3. (a) Respondent No. 1: U.O.I & Ors.
(b) e-mail ID:_NA
(c) Mobile phone number: _NA
4. (a) Main category classification:_ 18
(b) Sub classification:_1807
5. Not to be listed before:_ NA
6. a Similar disposed off matter: No similar disposed of matter
b similar pending matter with case detail. No similar matter is pending.
7. **Criminal Matters:**
(a) Whether accused/convict has surrendered: (NA)
Yes No
- (b) FIR No. NA Date: NA

- (c) Police Station: __ NA
- (d) Sentence Awarded: _ NA
- (e) Sentence Undergone: __ NA

8. **Land Acquisition Matter: NA**

- (a) Date of Section 4 notification: _ NA
- (b) Date of Section 6 notification: __ NA
- (c) Date of Section 17 notification: __ NA

9. **Tax Matters:** State the tax effect: __ NA

10. **Special Category** (first petitioner/appellant only):
NA

- () Senior citizen > 65 years () SC/ST ()
Woman/child () Disabled () Legal Aid case ()
In custody NA

11. Vehicle Number (in case of Motor Accident Claim matters): NA

Date: 30.06.2020

Vatsalya Vigya
(Advocate for Petitioner)

SYNOPSIS

The petitioner is filing this petition in public interest seeking an intervention of this Hon'ble court with respect to interpretation and application of Force Majeure clauses in the current circumstances and to direct the respondents / authorities to take decision in regard to wave off or provide uniform maximum relief in the school fee for the period of nation lockdown.

The private school administrations have been demanding school fee and other charges without rendering any services. The respondents / authorities have not been taking any action against the illegal demands of the school administrations under their respective jurisdiction despite of protests by the parents/student in the various part of the country therefore, the present Writ Petition is being filed.

In Re: Energy watchdog Vs. CERC & Ors., this Hon'ble Court held that in case the contract itself contain an express and implied terms relating to Force Majeure condition, the same shall be governed by Section 32 of the Indian Contract Act. It is also

C

held that if there is an existing force majeure clause then that covers the scope of a party's entitlement to claim force majeure and no reliance can be placed on frustration generally as is defined in section 56 of the Indian Contract Act.

The school administrations are bound with terms and conditions which are mentioned in the admission form and there is no Force Majeure clause in the said admission form, therefore, demanding fee and expenses without rendering service is illegal and against the principle of natural justice.

It is further important to mention here that there is no clause in the admission form that in case of epidemic / adverse situation / nation lock down etc., the school administration would provide online classes and charge same set of fee & expenses for the same. There are several side effects and demerits of online classes which is totally different from the concept of schooling. The students have lots of problem to understand through online medium. It needs some homework and some class

D

test under the trained teachers to ascertain the working and progress which can't be achieved through online classes.

The private schools administrations have not been providing any social service to the nation/ society and similar other commercial establishments must bear expenses (if, any).

The citizens of our nation have been facing health as well as economic crises due to present epidemic of Corona. There is nationwide lockdown by the government and peoples are locked in their homes. There is complete ban on educational, religious and commercial activities during the present epidemic situation. Therefore, citizens have facing hard time due to said circumstances. There is no source of earning during the lockdown.

Some of the educational institutions have introduced online classes which do not fall in the scope of running educational institutions. The parents may be charged for the expenses of the said online classes proportionally from the students who have given prior consent and attended online classes.

E

“Section 2(1) (g) of the Consumer Protection Act, 1986 defines deficiency. According to this definition, any fault, shortcomings, inadequacy, and imperfection in the quality, nature or manner of performance of the service is a deficiency. This standard has to be maintained by or under any law for the time being in force.”

The students studying in educational institutions throughout India have been getting fee vouchers through SMS/ Email etc to pay fee of their respective ward for the period of epidemic. In order to justify collection of fee, some of these elite schools have started online classes of students during the period of lockdown to present an excuse that they were providing education to their students.

Due to nationwide lockdown, health and financial crises, it is not possible for the parents and students to approach the Consumer Courts and Authorities for their grievances as the similar issues are also pending before the various High Courts. The different order/ findings and Non-payment of fee and expenses as illegally demanded by the private and

F

public institutions would effects the rights to equal protection and education of students. There are no specific guidelines / Notification issued by the respective education authorities / state government in this regard.

The government and private schools / educational institutions have been demanding fee which includes transport fee, activities charges building funds, technology fee, maintenance charges etc therefore, Petitioner has approach this Hon'ble Court seeking direction (s) to the respondents to direct the authorities to take decision in regard to waive of or provide uniform maximum relief in the fee for the period of nation lock down.

The authorities/ respondent have been illegal forcing the students / parents to pay the school fee without getting services from their respective schools which violates the fundamental rights as well as various sections of Consumer Protection Act.

LIST OF DATES

- 21.03.20 It was ordered a public curfew on 22 March, followed by enforcement of a series of regulations in the country's COVID-19 affected regions.
- 24.03.20 On 24 March, the Government of India under Prime Minister Shri. Narendra Modi ordered a nationwide lockdown for 21 days, limiting movement of the entire 1.3 billion population of India as a preventive measure against the 2020 corona virus pandemic in India.
- 14.04.20 On 14 April, Prime Minister extended the nationwide lockdown till 3 May.
- 03.05.20 The nation lockdown extended till 17 May.
- 17.05.20 The nation lockdown further extended till 31 May and education institutes / schools are still not allowed to open till today.
- 30.06.20 Hence this Writ Petition is being filed

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. _____/2020

IN THE MATTER OF:

Reepak Kansal,

Petitioner

Versus

- | | |
|--|-------------------------------|
| 1. Union of India through
Secretary, Department of
Higher Education, MHRD, Lal
Bahadur Sastri Smriti, Maulana
Azad Rd, Bal Bhawan, Man
Singh Road Area, New Delhi,
Delhi 110001. | Contesting
respondent
1 |
| 2. Union of India through
Secretary, Department of
School Education and Literacy, | Contesting
respondent
2 |

C Wing, Shastri Bhawan, Dr
Rajendra Prasad Rd, Rajpath
Area, Central Secretariat, New
Delhi, Delhi 110001.

- | | | |
|----|--|-------------------------------|
| 3. | State of Haryana through
Secretary, Department of
Education, Haryana Civil
Secretariat, Sector-1,
Chandigarh. | Contesting
Respondent
3 |
| 4. | State of Punjab through
Secretary, Department of
Education, Punjab Civil
Secretariat, Chandigarh –
160001. | Contesting
respondent
4 |
| 5. | State of Oddisha through
Secretary, Department of
Education, Government of
Oddisha, General Admn. Dept.
Orrisa Secretariat,
Bhubaneshwar -751001. | Contesting
respondent
5 |

3

6. Government of Gujarat through Secretary, Department of Education, Block No.1, 3rd floor, New Sachivalaya Complex, Gandhinagar - 382010. Contesting respondent 6
7. Government of Andhra Pradesh through Secretary, Department of Education, Secretariat Building, Hyderabad-500 001. Contesting respondent 7
8. Government of Arunachal Pradesh through Secretary, Department of Education, Secretariat Itanagar-791 111. Contesting respondent 8
9. Government of Assam through Secretary, Department of Education, Block-C, 3rd Floor, Secretariat, Dispur, Guwahati-781006 Contesting respondent 9

10. Government of Bihar through Secretary, Department of Education, Old Secretariat, Patna-800 015. Contesting respondent 10
11. Government of Chhattisgarh through Secretary, Department of Education, D K S Bhavan, Room No. 207, Mantralay, Raipur-492 001. Contesting respondent 11
12. Government of Goa through Secretary, Department of Education, Secretariat, Porvoriam, Goa-403001. Contesting respondent 12
13. Government of Himachal Pradesh through Secretary, Department of Education, Secretary, Department of Education, Secretariat, Shimla-171001. Contesting respondent 13

5

14. Government of Jammu & Kashmir, through Secretary, Department of Education, Secretary, Department of Education, Civil Secretariat, Shrinagar-190001. Contesting respondent 14
15. Government of Jharkhand through its' Secretary, Department of Education, Secretariat, Ranchi, 834001 (Jharkhand). Contesting respondent 15
16. Government of Karnataka through Secretary, Department of Education, Secretary, Department of Education, Vidhana Soudha, Bangalore-560001. Contesting respondent 16
17. Government of Maharashtra through Secretary, Department of Education, Secretary, Contesting respondent 17

Department of Education, Room
No.518, 5th Floor, Main
Building Mantralaya, Mumbai-
400032.

18. Government of Madhya Pradesh
through Secretary, Department
of Education, Vallabh
Bhavan,Bhopal-462003. Contesting
respondent
18
19. Government of Manipur through
Secretary, Department of
Education, Room No.171 South
Block, Secretariat, Imphal-
795001. Contesting
respondent
19
20. Government of Meghalaya
through Secretary, Department
of Education, Secretary,
Department of Education, Main
Secretariat Building,Shilong-
793001. Contesting
respondent
20

- | | |
|---|-----------------------------|
| 21. Government of Mizoram through Secretary, Department of Education, Civil Secretariat, Block -C, Aizwal -796001. | Contesting respondent
21 |
| 22. Government of Nagaland through Secretary, Department of Education, Secretariat, Kohima-797001. | Contesting respondent
22 |
| 23. Government of Pondicherry No. 1 through Secretary, Department of Education, Beach Road, Pondicherry. | Contesting respondent
23 |
| 24. Government of Rajasthan through Secretary, Department of Education, Department of Education, Secretariat , Jaipur-302005. | Contesting respondent
24 |
| 25. Government of Sikkim through Secretary, Department of | |

- | | |
|--|--------------------------------|
| Education, Tashiling
Secretariat, Gangtok -737101. | Contesting
respondent
25 |
| 26. Government of Tamil -Nadu
through Secretary, Department
of Education, Secretariat,
Chennai-600009. | Contesting
respondent
26 |
| 27. Government of Tripura through
Secretary, Department of
Education, Civil Secretariat,
Agaartala-799001. | Contesting
respondent
27 |
| 28. Government of Uttar Pradesh,
through Secretary, Department
of Education, Lal Bahadur
Shastri Bhavan, UP Secretariat,
Lucknow-226001. | Contesting
respondent
28 |

29. Government of Uttarkhand through Secretary, Department of Education, Uttarakhand Secretariat, 4B Shubhash Road, Dehradun -248001. Contesting respondent 29
30. Government of West Bengal through Secretary, Department of Education, Writers' Building, Kolkata -700001. Contesting respondent 30
31. Government of Kerla through Secretary, Directorate of Health Services General Hospital Services, General Hospital Junction, Thiruvananthapuram, Kerala. Pin Code - 695035. Contesting respondent 31
32. U. T. of Andaman & Nicobar through Secretary, Department of Education, Islands Secretariat, Port Blair, Andaman -744101. Contesting respondent 32

33. U.T. of Chandigarh through
Adviser to Administrator,
Secretariat, Sector 9,
Chandigarh -160001. Contesting
respondent 33
34. U .T. of Dadra & Nagar Haveli
through Administrator,
Secretariat, Silvasa-396230. Contesting
respondent 34
35. U. T. of Lakshadweep through
Administrator, Secretariat,
Kavaratti – 682555. Contesting
respondent 35
36. U. T. of Daman & Diu through
Administrator, Fort Area,
Secretariat Moti Daman-
396220. Contesting
respondent 36

To,
Hon'ble the Chief Justice of India
and His Companion Justices of
The Supreme Court of India;

The humble petition of the Petitioner above-named

MOST RESPECTFULLY SHEWETH:

1. The petitioner is filing this Writ Petition in public interest under Article 32 read with Article 14 of the Constitution of India.
2. That, the petitioner is constrained to file this petition before the Hon'ble Supreme Court of India as relief(s) have been claimed to Union Government as well as State Governments for which this Hon'ble Court only has the jurisdiction.
3. That, the petitioner is constrained to file the above writ petition before this Hon'ble Court as it has no other efficacious remedy.
4. The Petitioner is an Advocate and member of the SCBA having SCBA membership no. K-490. The email id of the petitioner is

The postal address of the petitioner is mentioned in the cause title.

5. The petitioner has no personal gain, private motive or oblique reason in filing the present writ petition.
6. The petitioner states that no Civil, Criminal or Revenue litigation involving the petitioner or which has or could have a legal nexus with the issue involve in the present writ petition.
7. That, the petitioner is citizen of India and filing the present writ petition for the common cause and the benefits of the society at large.
8. There is violation of Articles 14 of the Constitution of India.
9. That the petitioner states that he has not approached any of the court (s) earlier for the relief sought in this petition.

10. That the petitioner has not filed any similar petition previously before this Hon'ble Court or before any High Court.

11. That this petition is preferred without prejudice to each other inter alia on the following grounds:-

 GROUNDS OF THE WRIT PETITION

A. Because, Article 14 of the Constitution of India provide equality before law and the equal protection of the laws within the territory of India.

B. Because, the idea of 'right to livelihood' is an ancient one and it embodies the principle that each person should follow an honest occupation, which fully respects other people.

- C. Because, the cases involving the same questions of law are pending before various High Courts and this Hon'ble court has jurisdiction to decide the same.
- D. Because it is need of hour to interpretation and application of force majeure clauses in the current circumstances.
- E. Because due to present epidemic of corona and in the absence of force majeure clause in the admission form, the respondents / authorities have to take decision in regard to waive off or provide uniform maximum relief in the fee for the period of nation lockdown.
- F. Because, in Re: Energy watchdog Vs. CERC & ors., this Hon'ble Court held that in case the contract itself contain an express and implied

terms relating to force majeure condition, the same shall be governed by Section 32 of the Indian Contract Act.

- G. Because, if there is no force majeure clause in agreement / admission form, then issue would have to be determined on the basis of Consumer Protection Act and School administration cant charge school fee & other expenses without rendering services.
- H. Because, there is a complete ban on educational activities till today.
- I. The private schools administration have not been providing any social service and similar to other commercial establishments.
- J. Because, the authorities/ respondents have been illegal forcing the students / parents to pay the school fee without getting services

from their respective schools which violates the fundamental rights as well as various sections of Consumer Protection Act.

- K. Because the administrative of educational institutions without rendering their respective education services to the students due to force majeure cause, have been demanding fee and other expenses and pressurizing the parents / students to pay the fees and other expenses.
- L. Every child coping mechanism is different therefore, to ensure the physical, emotional and mental well-being of children in the present epidemic, school administrations must sincerely act without applying its' commercial thought on the students.

- M. Because, some of the educational institutions introduced online classes which do not fall in the scope of schooling.
- N. Because, to take online classes, there is need of a gadget and proper internet facility which require more expenditure.
- O. Because, in several area/ part of the country, there is no proper internet facility.
- P. Because, it is unfortunate that many educational institutions and teachers are not yet fully equipped to understand the mental health issues of the students.
- Q. Because, due to online classes, the students may suffer from various problems including weak eyesight, depression, anxiety, bi-polar disorders, disruptive behavior disorders,

Intellectual disability, Autism Spectrum Disorders and ADHD.

- R. Because, the psychological concern in children are also on the rise, especially behavior issues and suicide.
- S. Because, the parents may be charged for the expenses of the said online classes proportionally from the students who have given prior consent and attended online classes.
- T. Because, the students studying in educational institutions throughout India have been getting fee vouchers through SMS/ Email etc to pay fee of their respective ward for the period of epidemic.

- U. Because, in order to justify fee & expenses, some of schools have started online classes of students during the period of lockdown.

- V. Because, the government and private schools / educational institutions have been demanding fee which includes transport fee, activities charges building funds, technology fee, maintenance charges etc.

PRAYER

It is, therefore, most respectfully prayed that your lordships may be pleased to allow this writ petition and may further be pleased:-

- (i) to interpretation and application of Force Majeure clauses in the current circumstances and/ or

- (ii) to pass such other writ(s), order(s) or direction(s) directing the respondents / authorities to take decision in regard to waive off or provide uniform maximum relief in the fee for the period of nation lockdown and / or

- (iii) to pass such other writ(s), order(s) or direction(s) as is deemed fit and proper in the premises of the case, which is not specifically prayed for hereinabove.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

Drawn by:

Reepak Kansal, Adv

Filed by:

Vatsalya Vigya Shrivastava
(Advocate for Petitioner)

Drawn on 23.06.2020

Filed on: 30.06.2020

- 3 The petitioner has no personal gain, private motive or oblique reason in filing the present writ petition.

Deponent

Verification

Verified at Delhi on this 30th June, 2020 that the contents of the paragraphs in the above affidavit from para 1 to 3 are true and correct to my knowledge and belief. Nothing is false and nothing material has been concealed there from.

Deponent

APPENDIX

Art 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Section 2(1)(g) in the Consumer Protection Act, 1986

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

The Indian Contract Act, 1872

Sec 32. Enforcement of contracts contingent on an event happening.—Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. —Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened." If the event becomes impossible, such contracts become void.

56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void. —An agreement to do an act impossible in itself is void." Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I. A. NO. OF 2020
IN

WRIT PETITION (C) No. _____/2020

IN THE MATTER OF:

Reepak Kansal ...Petitioner

Versus

Union of India & Ors. ...Respondents.

**APPLICATION PRAYING FOR
EXEMPTION FROM FILING ATTESTED
AFFIDAVIT AND URGENT LISTING**

To

The Hon'ble Chief Justice of India
and his Companion Justices of the
Supreme Court of India.

The Humble petition of the Petitioner Abovementioned.

MOST RESPECTFULLY SHEWETH:-

1. That the present writ petition has been filed by petitioner as a Public Interest Litigation which may be read as the part and parcel of this mentioning application.

2. The petitioner seeks indulgence of this Hon'ble Court to protect and safeguard rights of students who have been forcing by the authorities / respondent to pay the school fee without getting services during nationwide lockdown which needs urgent hearing during the present epidemic and nation lock down.

3. The petitioner seeks permission to exempt the attested / affirmed affidavit, hard / photocopies of paper books (3+1) of Writ Petition and deficit court fees (if any) in the prevailing circumstances as the matter is urgent in nature therefore, needs urgent hearing.

4. The petitioner is agreeing for hearing the present Writ Petition through video conference and undertakes to follow the instructions of the registry for the same.

5. That the contact number of petitioner is .

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- (i) allow the application and list the matter before the Hon'ble court as soon as possible /or
- (ii) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER PRAY AS DUTY-BOUND.

Signed and Verified By

Vatsalya Vigya
(Advocate for Petitioner)

Filed by

Drawn on 23.06.2020
Filed on: 30.06.2020

Vatsalya Vigya
(Advocate for Petitioner)