

IN THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU
(Original Jurisdiction)

Writ Petition No. / 2020 (PIL)

Between:

Nayana Jyothi Jhawar & Ors.

... Petitioners

And

State of Karnataka and Ors.

... Respondents

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Place: Bangalore

Date: 07/02/2020

ADVOCATE FOR PETITIONER

IN THE HON'BLE HIGH COURT OF KARNATAKA

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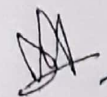
State of Karnataka and Ors.

... Respondents

Synopsis and List of Dates

Date	Event
	Shaheen Education Society and the Administration, Bidar, was established 31 years ago and is well-known in the State of Karnataka. It has 40 centers across 8 states in the Country with over 16,000 students studying in them. As many as 327 students from the institute have cleared the NEET exam for admission to MBBS courses for the year 2019. The institution has also been conferred the Rajyotsava award in the year 2013 for its contribution in the field of education. Most of the students studying the institute approximately 70% of the students are belong to marginalized communities, socio-politically and economically.
22/07/2005	The United Nations, Economic and Social Council, in Resolution

	2005/20 issues Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.
26/01/2020	The Respondent no. 4 registered an FIR against the President or Head, Shaheen School, Bidar, Management Persons of Shaheen School, and Mohammed Yusuf, as accused in FIR bearing no. 10/2020 for offences punishable under section 504, 505 (2), 124A, 153A and 34 of the Indian Penal Code, 1860.
27/01/2020 to 05/02/2020	Respondent no. 3 and Respondent no. 4 in furtherance of the FIR dated 26/01/2020, continued to carry the interrogation of the students within school premises of the Shaheen Education Society and the Administration, Bidar, in violation of the Criminal Procedure Code, 1973 and Juvenile Justice Act, 2015 and Rules, 2016, creating a hostile environment to the students and effecting their education and mental psychology.
30/01/2020	The Headmistress of Shaheen School, Bidar one Ms. Fareeda Begum and a student's mother one Ms. Najamunnissa were arrested for alleged involvement of staging drama, in connection with the said FIR bearing no. 10/2020 by the Respondent no. 4 Police Officials.
30/01/2020	The Shaheen Alumni Association issued a statement with the subject "Mental Harassment to children by Bidar Police" stating that the Respondent no. 3 and 4 police officials have in the name of interrogation are questioning the minor students without informing to their respective parents and while doing this interrogation the police officials carried gun around them, creating an intimidating and fearful environment



05/02/2020	The Karnataka State Commission for Protection of Child Rights issued notice to the Respondent Police seeking a report from them over questioning students in Shaheen School, Bidar.
28/01/2020-06/02/2020	Various media reported the illegal and malafide procedure adopted by the Respondent no. 3 and 4 with regard to the interrogation of the minor students in the Shaheen School, Bidar.
06/02/2020	The Petitioner no. 1 herein approached Respondent no. 2 on 06/02/2020 and submitted a memorandum bringing to the notice of the said Respondent no. 2 official with regard to illegal procedure followed by the Respondent No. 3 and 4.
07/02/2020	That the Petitioner No.1, on her own initiative approached and submitted a representation to Respondent No.2 on 07/02/2020 objecting to the way in which the students of Shaheen School have been interrogated

That Petitioner no. 1 is an Advocate having registration number as 1376/2003 and roll number as KAR 1440/2003. Petitioner is a mother of 6 year old child and an advocate concerned with condition of child rights in the country. That Petitioner No.2 That Petitioner No.2 is South India Cell for Human Rights Education and Monitoring (SICHREM), a Non Government Organisation (NGO) functioning in Bangalore since 1995. The Petitioner No.2 organisation SICHREM has made many legal interventions in the past in the form of Public Interest Litigation (PIL) in the Honorable High Court of Karnataka, on issues of child labour specifically in the sericulture sector, on the issue of minor children kept in central prison etc. PILs also have been facilitated on the need of amendments in the rules of the Karnataka State Commission for Protection of Child Rights (KSCPCR) and better infrastructure and facilities for the Karnataka State Human Rights Commission (KSHRC) and obtained favorable orders. It has been involved in rescue operations of children from child bonded labour and women in distress.



A social worker named Neelesh Rakshyal on 26/01/2020 registered a Police complaint against Shaheen School in Bidar, for allowing students to stage a drama against the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC) alleging that the Head of Shaheen Education Society and the Administration, Bidar, have performed anti-national activities by spreading negative opinion about the Parliament's laws among the students of their school and, through the students' play, have spread false information to the general public, further they have spread communal tension among the general public by making the students perform a play that incites the public to oppose the Parliament's law.

In furtherance of the said FIR dated 26/01/2020, the school's headmistress Fareeda Begum and a student's mother Najamunnissa were arrested for alleged involvement of staging drama.

In blatant violation of Rule of Law and various provisions of the Criminal Procedure Code, 1973 and Juvenile Justice Act, 2015 and Rules, 2016 Responded no. 3 and 4 have interrogated the students aged merely from 9 years to 12 years of Shaheen School in Bidar, creating mental trauma and fear in the children's state of mind.

Hence this Petition.

Place: BANGALORE

Date: 07/02/2020



**THE HON'BLE HIGH COURT OF KARNATAKA
AT BENGALURU
(Original Jurisdiction)**

Writ Petition No. / 2020 (PIL)

Between:

... Petitioners

And

1. State of Karnataka
Represented by its Secretary,
Home Department
Vidhana Soudha,
Bengaluru – 560001.
2. Director General of Police
Police Head Quarters, Nrupathunga Road,

beside RBI, Bengaluru, Karnataka 560001.

3. Superintend of Police
1, Mangalpet Rd, Pakalwada,
Bidar, Karnataka-585401

4. Police Inspector
New town Police station,
Bidar, Karnataka – 585401

... Respondents

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

The Petitioner herein respectfully submits as follows: -

1. The address of the Petitioners for the purpose of service of summons, notice, etc. from this Hon'ble Court is as stated in the cause title, and that their Counsels, Basawa Prasad Kunale, Mohammed Afeef, Vinay K Sreenivas, and Savita A Siddi having their office at 122/4, next to Balaji Art Gallery, Bengaluru – 560001. The addresses of the Respondents for the same purpose are as stated in the cause title.

3. That Petitioner No.2 is South India Cell for Human Rights Education and Monitoring (SICHREM), a Non Government Organisation (NGO) functioning in

Bangalore since 1995. It functions as a project of the registered charitable society namely Manasa Centre for Development and Social Action wide reg. No

During the last 25 years, the organisation has made significant contributions for the protection and promotion of Human Rights in the state of Karnataka. It has initiated a Human Rights Education Programme in Schools and so far covered more than 2000 schools in various districts. It has undertaken several fact findings in to the cases of Human Rights violations and provided free legal aid to the victims and survivors. SICHREM has facilitated several complaints before various Human Rights Commissions and helped victims to get Justice and compensations. It also runs a free telephonic counseling facility for the victims of Human Rights violations. It conducts free Human Rights Mobile Clinics for the poor in the slums of Bangalore city regularly.

4. That Petitioner No.2 organisation SICHREM has made many legal interventions in the past in the form of Public Interest Litigation (PIL) in the Honorable High Court of Karnataka, on issues of child labour specifically in the sericulture sector, on the issue of minor children kept in central prison etc. PILs also have been facilitated on the need of amendments in the rules of the Karnataka State Commission for Protection of Child Rights (KSCPCR) and better infrastructure and facilities for the Karnataka State Human Rights Commission (KSHRC) and obtained favorable orders. It has been involved in rescue operations of children from child bonded labour and women in distress.
5. Through this public interest litigation, the Petitioners challenge the actions of the police officials of the New Town Police station to interrogate the students of Shaeen School, Bidar, located at Hamnabad, Bidar, Karnataka- 585401, who are aged merely between 9 years to 12 years, in complete violation of established law and various provisions of the Criminal Procedure Code, 1973, Juvenile Justice Act, 2015 and Rules, 2016 and International Conventions. This Petition before this Hon'ble Court is in no way concerned with charges invoked against the

Accused persons in FIR dated 26/01/2020 bearing no. 10/2020 pending on the file of the Respondent No. 4 Police Station.

6. It is submitted that Shaheen Education Society and the Administration, Bidar, was established 31 years ago and is well-known in the State of Karnataka. It has 40 centers across 8 states in the Country with over 16,000 students studying in them. As many as 327 students from the institute cleared the NEET exam for admission to MBBS courses last year. The institution has also been conferred the Rajyotsava award in 2013 for its contribution in the field of education.
7. That the Police officials from the Karnataka State Police authorities in New Town Police station at Bidar, registered a First Information report bearing Cr. No. 10/2020, dated 26/01/2020 under sections 504, 505(2), 124A, 153A, R/W 34, of the Indian Penal Code, 1860 based on a complaint of one social worker named Sri Neelesh Rakshyal naming the President or Head, Shaheen School, Bidar, Management Persons of Shaheen School, and Mohammed Yusuf, as accused in the said FIR, for allowing students to stage a drama on 21.01.2020 against the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC) alleging that the Head of Shaheen Education Society and the Administration, Bidar, have performed anti-national activities by spreading negative opinion about the Parliament's laws among the students of their school and, through the students' play, have spread false information to the general public, further they have allegedly spread communal tension among the general public by making the students perform a play that incites the public to oppose the Parliament's law.
8. The True Copy of the FIR dated 26/01/2020 on the file of the Respondent no. Police is produced herewith as **Annexure A**. The True copy of the translation of the FIR dated 26/01/2020 on the file of the Respondent no. Police is produced herewith as **Annexure A1**.
9. It is submitted that in furtherance of the said FIR dated 26/01/2020, the headmistress of Shaheen School, Bidar and one Ms Fareeda Begum, mother of a student in the said school were arrested in connection with the said FIR dated

26/01/2020 on the file of the Respondent no. 4 Police station. The copy of the Remand Application on the file of the Respondent no. 4 Police station dated 30/01/2020 is produced herewith as **Annexure B**. The True copy of the translation of the Remand Application dated 30/01/2020 on the file of the Respondent no. 4 Police is produced herewith as **Annexure B1**.

10. It is submitted that the Respondent no. 3 and the Police officials of the Respondent no. 4 Police Station based on the said FIR dated 26/01/2020, as per the news paper reports continued to carry the interrogation of the almost 85 students, belonging to class 4 to 6, within school premises of the Shaheen Education Society and the Administration, Bidar, creating a hostile environment to the students and effecting their education and mental psychology.
11. It is submitted that the procedure adopted by the Respondent no. 3 and 4 police officials included visiting the school premises of Shaheen Education Society and the Administration, Bidar, in police uniform, selected students based on discretion of the Respondent Police, the said selected students were taken to a room within the premises of the school and interrogated.
12. It is submitted that the Respondent Police questioned the students of the Shaheen Education Society and the Administration, Bidar, violating procedure established by Law including provisions of the Juvenile Justice Act 2015 and Rules, 2016 as well as the Criminal Procedure Code, 1973, and most significantly Article 21 of the Indian Constitution, without any presence of the parents or teachers of the students questioning them while being video recorded, without their consent.
13. It is submitted that the condemning this action of the Respondent no. 3 and 4 Police Officials, the Shaheen Alumni Association issued a statement dated 30/01/2020, with the subject "Mental Harassment to children by Bidar Police" stating that the Respondent no. 3 and 4 police officials have in the name of interrogation are questioning the minor students without informing to their respective parents and while doing this interrogation the police officials carried gun around them, creating an intimidating and fearful environment, it is further

stated that the students were forced to come to DSP office for integration. The copy of the Statement issued by the Shaheen Alumni Association dated 30/01/2020 is produced herewith as **Annexure C**.

14. It is submitted that various media reported this illegal and mala fide action of the Respondent no.3 and 4 Police officials stating that the police officials Respondents no. 3 and 4 have visited the Shaheen School, Bidar, to question students about a play staged at the school which voiced dissent against the Citizenship Amendment Act. The Bidar police's questioning of the students at the school was criticized by many observers, particularly after photographs of the police questioning students in uniform were shared widely.
15. It is submitted True Copy of the news paper report dated 28/01/2020 reported Indian Today with the headline "Seditious school Play: case filed against Karnataka School management for Anti CAA play, students questioned" is procured herewith as **Annexure D1**. The True Copy of the news report dated 28/01/2020 reported by News Minute with the headline "School in Karnataka's Bidar booked for sedition over children's play on CAA-NRC" is procured herewith as **Annexure D2**. True Copy of the news paper report dated 31/01/2020 reported by News Minute with the headlines "Bidar school sedition case: Youngest student cops questioned over play is 9 years old." as **Annexure D3**. True Copy of the news paper report dated 03/02/2020 reported by News Minute with the headline "Cops turn up at Bidar school for fourth time, question kids over anti-CAA play" **Annexure D4**. True copy of the news paper report dated 04/02/2020 reported by News Minute with the headlines 'I want her to come back': Bidar student on her mother's arrest over an anti-CAA play **Annexure D5**. True Copy of the news paper report dated 06/02/2020 reported by The Time of India Bidar cops interrogate 85 school kids 5 times over 9 days for 'anti-CAA play' as **Annexure D6**.
16. It is submitted that the Karnataka State Child Rights Commission issued notice bearing no. KSCRC/compliant/559/02/2020 dated 06/02/2020 to the Superintendent of Police bringing it to the notice of the said official with regard to the violation of

rights of children during the course of investigation in relation to the case filed against the Shaheen Education society on 26/01/2020. The true copy of the notice bearing no. KSCRC/compliant/559/02/2020 dated 06/02/2020 to the Superintendent of Police by Karnataka State Child Rights Commission is produced herewith as **Annexure E**.

17. It is submitted that the Karnataka State Child Rights Commission issued letter bearing no. KSCRC/Complaint/559/02/2020 dated 06/02/2020 to the Chariperson, Child Welfare Committee, Bidar, with the subject "Regarding the questioning of school children with respect to the case registered against the Shaheen Education society on 26/01/2020". In the said notice, the Commission has informed the Chariperson, Child Welfare Committee about the direction it has issued to the Respondent police officials and was concerned with respect to the rights of the child being violated. The true copy of the letter bearing no. KSCRC/Complaint/559/02/2020 dated 06/02/2020 issued by Karnataka State Child Rights Commission to the Chariperson, Child Welfare Committee, Bidar is produced herewith as **Annexure F**.

18. It is submitted that in the Petitioner No.1 was part of a Delegation wherein various lawyers/social activists and concerned parents herein approached Respondent no. 2 on 06/02/2020 and submitted a memorandum bringing to the notice of the said Respondent official with regard to illegal procedure followed by the Respondents. The copy of the representation to the Respondent no. 2 dated 06/02/2020 is produced herewith as **Annexure G**.

19. That the Petitioner No.1, on her own initiative approached and submitted a representation to Respondent No.2 on 07/02/2020 objecting to the way in which the students of Shaheen School have been interrogated. The copy of the representation of Petitioner No.1 to the Respondent No. 2 dated 07/02/2020 is produced herewith as **Annexure H**.

20. That the Petitioner has not presented any other Writ Petition before this Hon'ble Court or any other Forum on the same cause of action. The Petitioner having no other efficacious or alternate remedy has approached this Hon'ble Court by

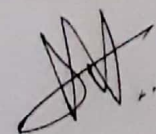
presenting this Writ Petition as a Public Interest Litigation under Article 226 of the Constitution on the following among other grounds:

GROUND

21. That the Police officials from the Karnataka State Police authorities in New Town Police station at Bidar, while investigating a First Information report bearing Cr. No. 10/2020, under sections 504, 505(2), 124A, 153A, R/W 34, of the Indian Penal Code, 1860, have examined minor children from Shaheen School Bidar, in the school premises and in the New Town Police station at Bidar itself, as the investigation was regarding a play that occurred on 21.01.2020, in which the said children had participated.
22. That the above-said actions of the police authorities with respect to the questioning and examination of the school children has been captured by the CCTV within Shaheen School (Bidar). Further, that the reportage of all the major newspaper and media outlets (Both English and Kannada) in the country clearly covers the said questioning and examination of the school children.
23. That both the CCTV footage and the news reports establish that such a questioning of the minor students took place.
24. That the actions of the Police officials from the Karnataka State Police authorities in New Town Police station at Bidar are in gross violation of Article 21 of the Constitution.
25. That the interrogation of children some as young as nine years old about the play they enacted is in contravention of the right to education of children without fear or favour, which forms part of Article 21 of the Constitution.
26. That the Police action of intruding into the school and repeatedly questioning children is violative of the child's right to dignity and privacy as upheld by the Hon'ble Supreme Court in *K.S Puttaswamy v. Union of India* (2017) 10 SCC 1
27. That the police holding the students for over two hours for interrogation is violative of Article 39(e) and (f) of the Constitution which ties the State in an obligation to provide children the situation that facilitates development in a

healthy manner and in conditions of freedom and dignity, and protecting childhood against exploitation.

28. That the Police authorities by repeatedly examining and questioning Minor students from Shaheen School, either in the school premises or in the relevant Police station have *prima facie* violated Section 160 of the Code of Criminal Procedure, 1973, insofar as the proviso of the said section holds that that no male person [under the age of 15 years or above the age of 65 or a woman or a mentally or physically disabled person], for purposes of investigation, shall be required to attend at any place other than the place in which such male person or woman resides.
29. That the above-said actions of the Police authorities are in violation of Section 68 (e) of the Karnataka Police Act, 1963, which mandates that It shall be the duty of every Police Officer, in dealing with women and children to act with strict regard to decency and with reasonable gentleness.
30. That the above-said actions of the Police authorities stand in stark contrast to the principles and objects of the Juvenile Justice (Care and Protection of Children) Act, 2015.
31. That norms which ought to govern police interaction with children are laid down in Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015
- The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing provisions of this Act, shall be guided by these fundamental principles, namely:-
- a. Principle of dignity and worth
 - b. Principle of best interest
 - c. principle of equality and non-discrimination.
32. That Section 107 of the Juvenile Justice (Care and Protection of Children) Act, 2015, mandates that the state government constitute a special Juvenile Police Unit to co-ordinate all functions of police related to children. That notably in this case, no such special committee was used to co-ordinate with the children.



33. That even when a Juvenile is in conflict with law are to be examined as per the Juvenile Justice (Care and Protection of Children) Act, 2015, they are to be accompanied by a parent or guardian or social worker, as the case may be.
34. That Rule 54 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016, holds that even a Magistrate, whenever interviewing victim/ witness child; that the child may be accompanied by parent or guardian or social worker.
35. It is submitted that the Karnataka State Child Protection Policy is guided by certain non-negotiable fundamental principles. The principles violated in the pertinent case are, a) Principle of best interest of the child ; b) Principle of Equality, Universality and Non-discrimination; c) Principle of right to survival and development; d) Principle of Right to Participation; e) Principle of dignity and self-worth and f) Principle of Confidentiality.
36. That the Hon'ble Supreme Court through a Catena of Decisions has held that the proviso of Section 160, of the Code of Criminal Procedure, 1973 must strictly be complied with.
37. That the convention on the Rights of Child, 1989 to which India is a signatory as held *Bachpan Bachao Andolan v. Union of India and Ors* 2011 (5) SCC 1 states that:

"Article 3. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

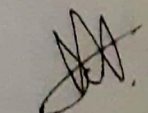
38. That the Economic and Social Council of the United Nations has in its Resolution 2005/20 developed Guidelines on Justice Matters involving Child Victims and Witnesses of Crime, which provide that child complainants and witnesses should receive special protection and assistance that they need in order to prevent hardship and trauma that may arise from their participation in the criminal justice system. The copy of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime Issued by the United Nations, Economic and Social

Council, in Resolution 2005/20 dated 22.07.2005. That one of the significant principles of the above guidelines is that of Child Protection, which holds that Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect is produced herewith as **Annexure J**.

39. That the above guidelines holds that child witnesses should be treated in a caring and sensitive manner throughout the justice process, that interference in the child's private life should be limited to the minimum needed, that in order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.
40. That the children questioned and examined by the police were of classes 4th to 6th standard, that due to their tender age, the actions of the Police has inflicted tremendous emotional and mental trauma on them and the parents of the children.
41. That on 16/12/2019 when the Class 11 and 12 students from Karnataka's Sri Rama Vidyakendra High School located in Dakshina Kannada district's Kalladka, were made to enact the demolition of the Babri Masjid, there were no arrests and neither any questions or examination of students occurred therein. This also demonstrates the discriminatory application of Law by the Police Officials.

GROUND FOR INTERIM PRAYER

1. That there is sufficient evidence by means of photographs and CCTV footage that Karnataka State Police authorities at Bidar, have examined minor children from Shaheen School, Bidar, in the school premises. That preservation and production of the said CCTV footage would be crucial, to determination of truth if not tampered with. The absence or possible tampering of the electronic evidence, will be fatal to any possible inquiry.
2. That the students of the Shaheen School, Bidar might be subjected to further questioning by the Respondent no. 3 and 4 police without complying with the

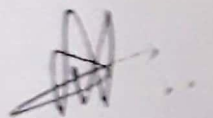


guidelines laid down by the Criminal procedure code, 1973 and Juvenile Justice (Care and Protection of Children) Act, 2015 and rules made thereunder.

PRAYER

Wherefore, the Petitioner prays that this Hon'ble Court may be pleased to:

1. Issue a writ of mandamus or any other writ, directing Respondents that any examination of minors in a criminal investigation must follow the established law regarding the safeguards to minors with respect to witness examination.
2. Issue an appropriate writ, by issuing guidelines to the Respondents with respect to examination of minors in criminal proceedings in line or accordance with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime Issued by the United Nations, Economic and Social Council, in Resolution 2005/20 dated 22.07.2005. **(Annexure-H)**
3. Direct the 1st respondent to take all necessary action against the 3rd and 4th respondent, including initiating departmental enquiry and all consequential actions, for the illegal manner of examining and questioning of the minor students of Shaheen education society and administration, Bidar.
4. Issue a writ of mandamus or any other writ, order, directing the respondents to pay compensation to the parents or legal guardians of the minor's illegally examined in Shaheen School due to the emotional and mental trauma inflicted upon them.

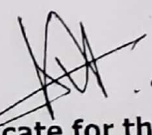


INTERIM PRAYER

- a. Pending disposal of the Writ Petition, the Hon'ble Court may be pleased to issue a writ of mandamus or any other writ, order, directing the Respondents to preserve and produce the CCTV footage and Digital video recordings of all cameras in Shaheen School at Bidar for the time period between 27.01.2020 to 05.02.2019.
- b. Issue an appropriate Writ, order or direction restraining the Respondents from carrying out any further examination or questioning of students of Shaheen education society and administration, Bidar with respect to Crime No. 10/2020 dated 26.01.2020 in contravention of established law.

Place: Bengaluru

Date: 07/02/2020


Advocate for the Petitioners

BASAWA PRASAD