

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18147 of 2008 & connected petitions*
Date of Decision: April 25, 2012

The Independent Schools Association (Regd.), Chandigarh
...Petitioner

Versus

Chandigarh Administration and others
...Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE ALOK SINGH

Present:

For the petitioner(s): Mr. Rajiv Atma Ram, Sr. Advocate,
with Mr. Arjun Atma Ram, Advocate,
(in CWP No. 18147 of 2008).
Mr. R.S. Khosla, Advocate,
(in CWP No. 9826 of 2010).
Mr. Tushar Sharma, Advocate,
(in CWP No. 10411 of 2010)

For the respondent(s): Mr. O.S. Batalvi,
Standing Counsel for Union of India.
Mr. Sanjay Kaushal,
Sr. Standing Counsel, U.T. Chandigarh,
with Mr. Vikas Suri, Advocate.

1. To be referred to the Reporters or not?
2. Whether the Judgment should be reported in the Digest

M.M. KUMAR, ACJ.

1. This order shall dispose of a bunch of petitions* because identical questions of law and facts are involved. CWP Nos. 18147 of 2008 and 10411 of 2010 have been filed by the Independent Schools Association, which is a registered body of the privately managed unaided schools running in Chandigarh, Mohali, Panchkula and Baddi. However, the said petitions have been filed in respect of the grievance of private managed unaided schools located in Chandigarh. The third petition, namely, CWP No. 9826 of 2010 has

been filed by St. Joseph High School, which is also a private unaided school.

2. In all the petitions the common grievance of the petitioners is with regard to Clause 18 of the Allotment of Land to Educational Institutions (Schools), Etc. on Lease-hold Basis in Chandigarh Scheme, 1996 (for brevity, 'the Scheme'), which mandates that the schools who have been allotted land under the Scheme, are required to reserve 15% seats for children from EWS. The petitioners have also challenged various notices issued by the Director Public Instruction(S), Chandigarh Administration asking them to show cause as to why resumption proceedings be not initiated against them for not adhering to the provision of reservation of 15% seats for economically weaker section. Challenge has also been made to the Admission Notice issued by the respondent Education Department in March 2008 bringing to the notice of the general public of U.T. Chandigarh that 15% reservation for Economically Weaker Section in Private Schools under economically weaker section quota is available in the schools and any person having annual income less than ₹1,00,000/- per annum could apply for admission of his/her child/ward in any of the schools listed in the admission notice. It has further been mentioned that the fee/funds under 15% reserved quota would be at par with fees being charged in Government Schools of Chandigarh (Annexure P-12 attached with CWP No. 18147 of 2008). Still further, the show cause notices issued to the schools with regard to withdrawal of their provisional recognition for not complying with the conditions imposed at the time of grant of such recognition including the condition of 15% reservation of seats for

the students of Economically Weaker Section of the society, are also sought to be quashed.

3. Brief facts, which have been culled out from CWP No. 18147 of 2008, are that in the year 1973 land was allotted by the respondent U.T. Administration to the privately managed unaided schools at market rates. No concession in the rates was granted to them. Even the rates were revised subsequently. No Objection Certificate in favour of allottee schools' were also issued by the U.T. Chandigarh for the purposes of their affiliation with different Council/Boards. Once such certificate, which has been issued in favour of St. Kabir Public School, Sector 8A, Chandigarh, is available on the file of CWP No. 18147 of 2008 (P-5). It is relevant to notice that the said No Objection Certificate has been issued subject to two conditions. The No Objection Certificate reads as under:

“ The Education Department Chandigarh Administration has no objection to the affiliation of St. Kabir Public School, Sector 8A, Chandigarh with the Indian Council for Secondary Education, New Delhi for the Indian School Certificate examination on subject to the following conditions:-

1. The Managing Committee of this school should be reconstituted and got approved from this Department as envisaged in Rule 54(2) of Delhi Education Code.

2. The institution will abide by instructions/directions issued by the Chandigarh Administration for the promotion of educational pursuits.”

4. On 31.1.1996, the respondent Administration promulgated 'the Scheme' for the allotment of land to the

Educational Institutions (Schools) on lease-hold basis in the Union Territory of Chandigarh (Annexure P-1 attached with CWP No. 9826 of 2010). 'The Scheme', inter alia, requires the Educational Societies/Institutions/Trust(Schools) to adhere to the following conditions:

- (i) Reserve 15% seats as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to economically weaker sections of the Society and the fee charged from those students shall be nominal preferably the same as is charged from students of a Government institutions. Provided that if for certain reasons schools are unable to fill up these 15% seats reserved for economically weaker sections in any academic year, the same shall be brought to the notice of the Chandigarh Administration and the concurrence of the Competent Authority shall be obtained with reasons to be recorded in writing for reducing/condoning this reservation for that particular academic year.
- (ii) Follow instructions/guidelines/directions issued by the Chandigarh Administration from time to time regarding fee structure and Admission procedure etc.
- (iii) Appoint qualified teacher/other Ministerial staff and pay them the salaries as is required to be paid in an aided school in the Union Territory, Chandigarh.

5. On 16.2.2006, the respondent U.T. Administration issued letters to various schools requiring them to reserve 15% of the total seats and admit students of the economical weaker section. They were also required to charge fee at the rate being charged by the Government Schools in Chandigarh, irrespective of the fact that the privately managed schools do not receive any aid from the respondent U.T. Administration. The petitioner schools sent reply stating that the policy of reservation can not be enforced in a privately managed unaided school. In that regard they have placed reliance on the Constitution Bench judgments of Hon'ble the Supreme Court rendered in the cases of P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 and T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481. However, the respondent U.T. Administration issued show cause notices from time to time to the privately managed unaided schools requiring them to charge fee equivalent to the fee charged in the government run schools and also to reserve 15% seats for economically weaker sections of the society. In their replies the stand taken was that the Chandigarh Administration has no jurisdiction to interfere in the administration and functioning of unaided schools including fixation of fee. Their representation was eventually rejected on 12.9.2008 (Annexure P-27 with CWP No. 18147 of 2008).

6. In the written statement filed on behalf of the respondents it has been stated that the U.T. Administration has always allotted land to the schools at concessional rates and not at market rates. It is further stated that the educational institutions have always been treated as a special category separate from the domestic and commercial for the reason that education cannot be

treated as a business or commerce. The respondent Administration being a welfare State and with the object of securing better organisation and development of school education, especially for weaker sections of the society, inserted Clause 18 in 'the Scheme', providing for reservation of 15% seats for students belonging to economically weaker sections of the society. After referring to clause 18 of 'the Scheme', it has also been pointed out that on 29.7.2005, 'the Scheme' was further amended by a new scheme, namely, 'the Allotment of Land to Educational Institutions (Schools), etc. on Lease-hold Basis in Chandigarh (Amendment) Scheme, 2005' (for brevity, 'the 2005 Scheme'), whereunder percentage of such reservation has been reduced from 15% to 5% (R-3 with CWP No. 18147 of 2008).

7. It has also been asserted that the respondent U.T. Administration has the power of giving direction to privately managed un-aided schools to apply the principle of reservation of 15% seats because in the letters of allotment issued to the schools by the Estate Officer, it has been specifically stipulated that the schools would be bound by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder as also the condition that the admission to the institution would be subject to such directions/instructions which the Director Public Instructions (Schools), Chandigarh may issue from time to time.

8. On 18.1.2011, when these petitions were listed for hearing, the Court was apprised that after the enactment of the Right to Education Act, 2009 (for brevity, 'the RTE Act'), the issue with regard to the validity of certain provisions relating to

reservation of seats for the socially and economically weaker sections of the society including the provisions of Article 15(5) of the Constitution, were pending before Hon'ble the Supreme Court.

9. It is pertinent to notice here that on 24.2.2011, a similar petition, namely, CWP No. 4909 of 2010, was listed before this Court and after hearing the arguments of the respective parties, the following order was passed:

“ The arguments that have been advanced at the hearing, which have remained inconclusive, would simply indicate that all the private schools impleaded as party respondents in the present case except St. Joseph's School, are actually providing or making endeavours to provide education to at least 15% students belonging to the Economically Weaker Section of the Society (for short 'EWS'). It has been submitted by learned counsels for such schools that the aforesaid action has been on voluntary basis and not in terms of the mandate under the “Allotment of land to educational institutions (schools) etc. on lease hold basis in the Chandigarh Scheme, 1996”. It has also been submitted that notwithstanding the public offer made by the schools for 15% seats for EWS category, a few of the schools are not getting adequate number of students of that category. A few of the schools have also submitted that within their financial and other constraints, all endeavour is being made to provide 15% seats to EWS category.

Insofar as St. Joseph's School is concerned, Sh. Khosla, learned counsel for the said school, has submitted that no land at concessional rate was offered or taken by the said school so as to create any obligation under the Scheme in question. It is also submitted that the Chandigarh Scheme framed in the year 1996 is beyond the statutory powers conferred by Section 3 and 22 of the Capital of Punjab (Development & Regulation) Act, 19952 under which the Scheme has been purported to be made. Sh. Khosla has further submitted that the initial allotment letter issued to the School in respect of the land, even if such allotment is understood to be at concessional rate, did not contain any stipulation with regard to 15% seats for EWS category which came to be added later.

The above would go to show that the dimensions of the issues arising in the PIL stand severely truncated and the question with regard to legality of the Scheme for providing 15% seats to the EWS category has to be considered only in the case of St. Joseph's School. The aforesaid aspect of the case along with the voluntariness expressed by the Schools and the effect thereof on Clause 18(2) of the Scheme will be considered on 28.2.2011 when the matter will be taken up again."

10. On 28.2.2011, this Court felt that as the validity of the RTE Act was pending before Hon'ble the Supreme Court, final orders in the writ petition ought not to be passed because in some of the petitions, the validity of the aforesaid Act was directly in

question and in those cases where it was not, the decision of the Apex Court, if answered in the affirmative, may take care of the 15% reservation issue though for students within the age group of 6 to 14 years. Therefore, this Court proceeded to consider the feasibility of passing interim orders as to whether 15% seats earmarked for Economically Weaker Sections (for brevity, 'the EWS') of students should be filled up by such students and the following order was passed:-

“ In view of the voluntary efforts made by a large number of schools in the above direction, as recorded in our previous order dated 24.2.2011, we do not propose to decide any legal rights of the parties on the basis of our interim order. In fact, our interim order to fill up 15% seats from the EWS category proceeds on the basis of the voluntariness expressed by most of the schools as already recorded. An incidental matter which is also recorded in our previous order is that the advertisements indicating the aforesaid percentage of seats to be available for EWS category has not met with positive response and many of the schools have not been able to fill up students upto the required percentage. If, in spite of all possible efforts, requisite applications from the EWS category are not received and 15% quota is not filled up, we do not propose to find any fault with any such school, inasmuch, as we have already observed that our interim order does not determine the legal entitlements of any of the parties before us. However, considering the eminent social

purpose that the earmarked seats for the EWS category is intended to be fulfilled, we direct the Chandigarh Administration to widely advertise the said fact indicating the names of the schools where such seats are available to enable all such eligible candidates to submit applications so as to be able to undergo studies in a school of their choice. The said fact will also be widely broadcast by the Chandigarh Administration in the Door Darshan Network as well as through the local channels. The result of the aforesaid exercise i.e. the responses that the above efforts may evoke will be indicated to us on the next date fixed. The aforesaid observations and directions would also apply to St. Joseph's School which would naturally be subject to reimbursement of the costs incurred by the Chandigarh Administration, if the school is found to be so entitled. The said directions and observations will not apply to the 28 schools represented by Sh. Rajiv Atma Ram, learned Senior counsel, list of which is enclosed as Annexure P-2 with C.W.P. No. 18147 of 2008. To carve out the above exception, submissions have been made on behalf of the aforesaid 28 schools that in majority of the schools, leaving aside one or two, the admission process has already been completed on 12.12.2010 and as on date, no seats are available in the said schools. The cases will be listed again tomorrow i.e. 1.3.2011 but only for the purpose of production of records on behalf of the 28 schools showing that they have closed their admissions

on 12.12.2010 along with the records showing the dates of closure of admission in the three preceding academic years.

At this stage, Shri Atmaram, has submitted that four Minority Schools out of the 28 schools may be excluded from the purview of the aforesaid order as they have withdrawn from the writ petition. If such schools have withdrawn from the writ petition, it is ordered accordingly.”

11. It is suffice to state that the petitions were thereafter considered on various dates and it was emphasised on behalf of the privately managed unaided schools that the admissions may be confined to the entry level. The attention of the Court was invited to a short report where criteria for reservation of 15% seats for EWS has been prescribed. Reference was also made to a letter dated 16.2.2006, according to which 15% seats are to be provided at the entry level in the 1st year and later on extended to further classes every year. However, the said condition in the letter has to be read with the policy where in the first para, it has been clarified that all schools are to follow a uniform academic year from 1st April to 31st March and 15% quota would mean 15% of the students to be admitted to each class in a year. In other words, the quota of 15% is not required to be maintained at the entry level alone. It has to be maintained in the subsequent classes as well.

12. On 8.11.2011, during the course of hearing, Mr. Sanjay Kaushal, learned Senior Standing counsel for U.T. Chandigarh submitted that for the purposes of admission in the session 2012-13, a meeting of all the schools was held in the office of the

Education Secretary but the issue with regard to reservation of 15% at entry level and further level could not be resolved. Mr. Kaushal further stated that the controversy regarding reimbursement of the fee by the State Government/U.T. was also involved. In that regard reference was made to Section 12(2) (unnumbered proviso II) of the Right of Children to Free and Compulsory Education Act, 2009. Keeping in view the above, this Court vide order dated 8.11.2011 directed the parties to hold a meeting to discuss the aforesaid issues.

13. We would have undertaken the various issues but such a necessity has been obviated on account of judgment of Hon'ble the Supreme Court rendered in the case of **Society for Un-aided Private Schools of Rajasthan v. Union of India and others** [Writ Petition (C) No. 95 of 2010, decided on 12.4.2012]. The majority view is discernible from paras 20 and 21 of the judgment, which reads thus:

“20. Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

- (i) a school established, owned or controlled by the appropriate Government or a local authority;
- (ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) a school belonging to specified category; and

(iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

However, the said 2009 Act and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, applying the R.M.D. Chamarbaugwalla v. Union of India [1957 SCR 930] principle of severability, the said 2009 Act shall not apply to such schools.

21. This judgment will operate from today. In other words, this will apply from the academic year 2012-13. However, admissions given by unaided minority schools prior to the pronouncement of this judgment shall not be reopened.”

14. The parties are *ad idem* that the interlocutory orders dated 24.2.2011 and 28.2.2011 need to be made absolute. Consequently, any admission made in pursuance of those orders would remain intact and their validity would not be open to any challenge. The issue with regard to allotment of land at concession rate is left open, so would be the position with regard to reserve funds.

15. The writ petitions stand disposed of. However, it is needless to add that the petitioners’ school would abide by the provisions of Right of Children to Free and Compulsory Education Act, 2009 and the judgment of Hon’ble the Supreme Court rendered in the case of **Society for Un-aided Private Schools of Rajasthan (supra)**.

16. A photocopy of this order be placed on the files of connected cases.

**(M.M. KUMAR)
ACTING CHIEF JUSTICE**

**(ALOK SINGH)
JUDGE**

April 25, 2012

PKapoor

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Sr. No.	CWP No.	Title
1.	18147 of 2008	The Independent Schools Association (Regd.), Chandigarh v. Chandigarh Administration and others
2.	9826 of 2010	St. Joseph High School v. Union of India and others
3.	10411 of 2010	The Independent Schools Association (Regd.), Chandigarh v. Chandigarh Administration and others

**(M.M. KUMAR)
ACTING CHIEF JUSTICE**

**(ALOK SINGH)
JUDGE**

April 25, 2012

PKapoor