

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-7447-2010 (O&M)
Date of decision:-20.11.2013

Satbir Singh Hooda

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI**

Present: Mr. Anurag Goyal, Advocate,
with Mr. Satbir Singh Hooda, Advocate (petitioner in person).

Mr. Ajay Gupta, Additional Advocate General, Haryana,
for respondents No. 1 to 5.

Mr. Ankit Kaushal, Advocate,
for Mr. Sanjiv Bansal, Advocate,
for respondent No. 10.

Mr. Rose Gupta, Advocate,
for respondent No. 13.

Mr. Ashish Chopra, Advocate,
for respondent No. 14.

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SANJAY KISHAN KAUL, C.J. (ORAL)

The present Public Interest Litigation has been filed with the objective of seeking implementation of Rule 134-A of the Haryana School Education Rules, 2003 (hereinafter referred to as the said Rules) framed under the powers vested in pursuance to Section 24 of the Haryana School Education Act, 1995 (hereinafter referred to as the said Act). The sequitur relief sought is that where private unaided recognized schools do not comply with the mandate of the said Rules,

their recognition should be withdrawn in terms of the provisions of Section 21(4)(b) of the said Act.

The aforesaid petition has been pending for the last three years and much water has flown since the filing of the petition. There have been various directions issued by the Court from time to time and the pleadings also in fact have become voluminous. It is in this context that we have heard learned counsels for the parties as well as Ms. Surina Rajan, Principal Secretary, School Education, Haryana to understand the mode and manner of implementation of the provisions of the said Act and the Rules as inter-play has arisen on account of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the Central Act) having come into force w.e.f. 01.04.2010.

In order to appreciate the aforesaid, it is necessary to discuss some of the provisions of the said Act and the Rules as well as the Central Act.

In the said Act, the expression used is “private school” which has been defined under Section 2(o) to mean a school which is not run or sponsored by the government, Director, a local authority or other authority designated or sponsored by the government. Chapter VI deals with admission to schools and fees. Section 15(3) provides for admission to recognized schools or to any class thereof to be regulated by the rules made in this behalf. Expression “recognized school” has been defined in Section 2(p) to mean a school recognized by the appropriate authority, while Section 2(q) defines “recognition” to mean

a formal certification granted by the appropriate authority to a privately managed educational institution which conforms to standards and conditions laid down by the appropriate authority. The “appropriate authority” has been defined under Section 2(d) to be one which is designated or sponsored by the government as such. Section 24(1) empowers the government to make rules for carrying out purposes of the said Act by notification in the official gazette. Under Section 24(2) of the said Act, without prejudice to the generality of the powers certain specific instances have been given where such rules may be provided for. The relevant clauses (a) and (o) read as under:-

“(a) the manner in which education may be regulated by the government in the State.

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(o) admissions to a recognized school.”

It is the say of the State of Haryana that in pursuance to the provisions of the said Act and the Rules and in order to give intent to the provisions of the said Act and the Rules and in furtherance of the object of universal primary education, 14,968 government schools have been set up in order to ensure that there is a school from Classes I to V within the proximity of 1 km from habitation and in case of Classes VI to VIII within 3 kms from habitation. All habitations are stated to be thus covered under this norm in the State of Haryana except 64 of those where there is paucity of children requiring the education and, thus, transport has been provided to assist in this behalf.

The Principal Secretary, School Education, Haryana has explained that the Ministry of Human Resource Development issued a communication dated 08.02.2006 circulating the recommendations of the Committee of Central Advisory Board of Education (CABE) on Girls' Education and Common School System. The Committee which was constituted on 08.09.2004 submitted a report in June, 2005 and the specific aspect which was required to be addressed by the State Governments/U.T. Administrations was set out as under:

“The unaided private schools should reserve 25-30% seats for meritorious but poor students. A percentage of fees from the elite students may be used to create a corpus fund for meeting the fees of the above students.”

It is with the object of ensuring compliance with the aforesaid that amendments to the Rules were made in 2007 introducing Rule 134-A as under:-

“134-A. Reservation for poor meritorious students. Sections 24(2) and 15 – The recognized private schools shall reserve 25% seats for meritorious poor students. The school shall charge fee from these students at the rate as charged in government schools. The deficit of difference of fee shall be charged from the other students of the school.”

The aforesaid Rule, thus, while permitting reservation of 25% seats for meritorious poor students in private schools sought to provide for a mechanism to make up the financial deficit by permitting the school to charge the same from other students of the school. It, however, appears that this met with some resistance from the parents of

the other students who persuaded the State Government to amend the Rule in 2009 as under:-

“134A. Reservation for meritorious students belonging to economically weaker sections. Sections 24(2) and 15. The recognized private schools shall reserve 25% seats for meritorious students belonging to economically weaker sections. The school shall charge fee from these students at the same rate as charged in government schools.”

The effect of the aforesaid was that the private schools could charge fee for these 25% seats at the same rate as charged in government schools, but without burdening the other students. This again gave rise to another set of problems on account of the fact that tuition fee had been abolished by the State Government long back, though there are certain other charges which are levied and after the Central Act came into force even those charges have been waived off upto Class VIII. This possibly gave rise to representations to the State Government by the private schools and in consideration of such representations a further amendment was made to Rule 134-A by a notification published in the official gazette on 19.06.2013 reducing reservation to 10% and the Rule now reads as under:-

“134A. The recognized private schools shall reserve ten percent seats for meritorious students belonging to Economically Weaker Section (EWS) and Below Poverty Line (BPL) categories. The school shall charge fee from these students at the same rate as charged in Government Schools.”

The Principal Secretary, School Education, Haryana present before us has explained that the background of this amendment to the

Rule had been discussed between the representatives of the private schools and the government whereby there was an understanding that if the reservation was restricted to 10%, then even without charges, it would be possible to accommodate these students in the over all budgeting of the school. We may, however, add that Mr. Ashish Chopra, learned counsel appearing for respondent No. 14/Haryana Progressive Schools' Conference seeks to dispute this position and submits that even if the reservation is 10%, the Government of Haryana ought to re-compensate the private schools.

We make it clear that there is no challenge laid to the Rule 134-A either at the stage of filing of the writ petition or as amended and, thus, we would not like to examine this aspect in the present petition. If the private schools are aggrieved by the Rule, as it exists today, it is upto them to take up appropriate proceedings in accordance with law.

In the affidavit affirmed on 30.09.2013, some of the queries raised earlier by the Court have been answered, inter alia, qua the extent of reservation of 10% now available. It has been pointed out that in the order dated 15.02.2012 passed by this Court, the term 'economically weaker section' has been defined as parents who have income of Rs. 2 lacs or less and would be considered as such under Rule 134-A for the academic session 2012-2013 and, thus, all the District Education Officers in the State of Haryana were directed to ensure compliance of the same. Due publicity is stated to have also been given. A Committee is stated to have been constituted for proper

enforcement of the Rule consisting of the Deputy Commissioner, Superintendent of Police, Additional Deputy Commissioner, District Education Officer and District Elementary Education Officer to hold periodic meetings with the private schools at district level and ensure that meritorious students belonging to the economically weaker section are admitted to the private schools. We may note that as to who is a meritorious student is defined by the department vide its letter dated 22.09.2011 the operative part of which is as under:-

“Meritorious student means a student who has secured 60% or more marks in the preceding exams of Board or Institution itself. If the requisite quota of 25% is not fulfilled, the head of the institution can relax the same upto 50% or more, so as to enable him to complete the quota in right earnest. If there is no exam either at the level of the Board or school, in that eventuality, the grade obtained in CCE (Continuous Comprehensive Evaluation) or otherwise will be the decided factor at the level of the head of institution so as to ensure fulfilling the required quota completely.”

Qua the aforesaid aspect, the Principal Secretary, School Education, Haryana fairly states that they would possibly revisit the question of the composition of the Committee to make it more effective in its functioning and to prevent any misuse. She, thus, submits that the Committee will be reconstituted with proper representation of independent persons who are socially active in this field so that a check and balance is maintained to ensure due compliance of Rule 134-A of the said Rules as it exists today.

We need to emphasize at this stage itself that keeping in mind the basic prayer in the petition as well as the objective with which the

Rule has been enacted and the Rule as it exists now (of course subject to any challenge which may be laid in the future) every endeavour is required for enforcement of the same in its true letter and spirit. This is especially so as the grievance is sought to be raised before us that the private schools at a ground level do not accommodate the meritorious students and the percentage of such students in the schools is abysmally low at 2% to 3%. Of course, we do not have any data before us, but check and balance mechanism must be put in place to ensure that wherever seats are available, due publicity is given by the school itself so that all students who are seeking to avail the benefit under this 10% reservation are able to so get it. Needless to say that if there is any violation of the said Rules, there is no paucity of powers with the State Government to take appropriate action under the said Act and the Rules to enforce its enforcement. The only thing which is required is the will to do so.

We would like to add that even the private schools must look at this matter in the larger perspective of social responsibility especially when Rules have been enacted and it is their bounden duty to ensure that there is no breach of the said Rules which have the statutory force and if they are violated they will have to blame themselves for it.

Now coming to the Central Act, it has been stated in the affidavit that the Government of Haryana has already framed the Haryana Right of Children to Free and Compulsory Education Rules, 2011 which have come into force w.e.f. 03.06.2011. It has been pointed out to us that the objective of Section 3 of the Central Act is to provide

free and compulsory education at primary and middle level for age groups 6 to 14. In the aforesaid context, our attention has been drawn to Section 8 of the Central Act. Qua State schools, the appropriate authority, as defined under Section 2(a) of the Central Act, is the State Government. The duties of the appropriate government have been set out in Section 8 of the Central Act. Provisos (a) and (b) read as under:-

“(a) provide free and compulsory elementary education to every child:

(b) ensure availability of a neighbourhood school as specified in section 6.”

Section 6 of the Central Act casts a duty on the appropriate government and local authority to establish school for carrying out the provisions of the Act within such area or limits of neighbourhood, as may be prescribed, within three years of commencement of the Act.

It is in the aforesaid context that in the affidavit of the State Government it has been explained that the Department of Education has started registration by private schools under the Central Act and the Rules framed thereunder. The extent of schools' responsibility for free and compulsory education has been set out in Section 12 of the Central Act where in Sub Section (1) Clause (c) admission to children belonging to weaker section and disadvantaged group in the neighbourhood and provision of free and compulsory elementary education has been provided. Under Sub Section (2) of Section 12, such schools are to be reimbursed the expenditure so incurred by them to the extent of per-child-expenditure incurred by the State or the actual amount charged from the child whichever is less in such a manner as

may be prescribed. Sub Section (2) of Section 12 makes it clear that where such school is already under the obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

The important aspect emphasized in the affidavit is that the provision for reimbursement, as provided in Section 12(2) of the Central Act, was meant only for unaided private schools and would be applicable when there is non-availability of government school, government aided school or specified school in a particular neighbourhood on account of the responsibility of the government to provide free elementary education to every child in the neighbourhood school. Since the State Government has already made available neighbourhood schools in every part of the State, this mandate already stands complied with and, thus, no private non-aided school has been declared as a neighbourhood school for providing free elementary compulsory education under Section 12 of the Central Act. It has, however, been made clear that where land has been provided by the Haryana Urban Development Authority on certain specified concessions, they are liable to meet the requirement as per the terms of allotment of the land.

Learned counsel for respondent No. 14 expresses an apprehension that there should not be addition of reservation under different categories, but such an apprehension appears to be mis-placed,

as appears from the stand of the State of Haryana today before us and as it is made clear that no stage would come when reservation exceeds 25% and if and when any school is notified as a neighbourhood school and reservation has to be made under the Central Act, principles under Section 12(2) would come into play. In fact, since no private unaided school has been labelled as a neighbourhood school, they are not even required to provide reservation of 25% as the facility of neighbourhood school is already available in the State of Haryana which is stated to be peculiar to the State. The provision of 10% reservation is under Rule 134-A of the said Rules framed under the said Act which is a different matter and has its own mandate under that Act and the Rules enforcement of which has to take place by the State Government.

In the end, we may note that on account of an objection sought to be raised by the petitioner that the amendment to Rule 134-A notified on 19.06.2013 has not been laid before the State Assembly on account of the mandate of Sub Section (3) of Section 24 requiring every Rule to be laid as soon as it may be before the House of the State Legislature, learned Additional Advocate General states that the Rule would be laid before the House in the next session.

We, thus, dispose of the petition with the hope that both the State Government and the private schools will realize their responsibilities in view of the mandate of Rule 134-A of the said Rules in the amended form, as it exists today, so that children coming from economically under-privileged sections of the society also get the best of education.

We appreciate the assistance rendered by learned Counsels for the parties and Ms. Surina Rajan, Principal Secretary, School Education, Haryana.

**(SANJAY KISHAN KAUL)
CHIEF JUSTICE**

**(AUGUSTINE GEORGE MASIH)
JUDGE**

20.11.2013

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