

CWP No. 4664 of 2012 & other connected case

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: April 23, 2012

CWP No. 4664 of 2012 & other connected case

Haryana Schools Welfare Association and another

...petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE ALOK SINGH

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Vishal Malik, Advocate
for the petitioner (in CWP No. 13809 of 2010).

Mr. Rajesh Khandelwal, Advocate
for the petitioner (in CWP No. 16036 of 2010)

Mr. Rakesh Gupta, Advocate
for the petitioner (in CWP No. 21855 of 2011)

Mr. Rahul Sharma, Advocate
for the petitioners (in CWP No. 4664 of 2012)

Mr. Rajiv Kawatra, Sr. DAG, Haryana
for respondent Nos. 1 and 2.

Mr. O.S. Batalvi, Advocate
for respondent No.3.

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* as the common question of law and facts have been raised. The primary prayer made by the petitioners in all these cases is that Rule 134-A of the Haryana School Education Rules, 2003 (for brevity 'the Rules') as amended on 21.02.2009, is

unconstitutional and after declaring the same, as such, a direction is required to be issued to the respondents restraining them from enforcing the aforesaid Rule.

2. It is appropriate to mention that respondent-State of Haryana enacted the Haryana School Education Act, 1995 (for brevity, 'the 1995 Act') which was enforced w.e.f. 20.07.2001. It was under Section 24 of 1995 Act that the Rules were framed which confer powers on the Government to make rules for carrying out the purpose of the Act. Rule 134-A of the Rules as amended on 21.02.2009 reads as under:

“134-A Reservation for meritorious students belonging to economically weaker sections, section 24(2) and 15.

The recognized private school 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.”

3. In substance and contents, the Rules providing for reserving 25% seats for meritorious students belonging to economically weaker sections is similar to the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for brevity '2009 Act') enacted by the Parliament. Section 12(1) (c) of 2009 Act provides for reserving at least 25% of the strength of the class for children belonging to weaker section and disadvantaged group for providing free compulsory

elementary education to them. Likewise, Section 18(3) of 2009 Act provides further strength to the aforesaid provision as recognition could be withdrawn if there is contravention of any condition of recognition. The aforesaid rule came up for consideration of Hon'ble the Supreme Court in the case of Society for Un-aided Private Schools of Rajasthan v. Union of India and another (Writ Petition (C) No. 95 of 2010 decided on 12.04.2012). However, the aforesaid provisions were found to have infringed fundamental freedom guaranteed to unaided minority schools under Article 30(1) of the Constitution. It has been declared by their Lordships of Hon'ble the Supreme Court that those provisions would not apply to any such school. In respect of 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 would, thus, be governed by the provisions of the Rules. Even this question has been answered by their Lordships of Hon'ble the Supreme Court in paras 20 and 21, which read as under:

“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.”

4. In view of the above, learned counsel for the petitioners has stated that they would give up their claim with regard to constitutional validity of Rule 134-A of the Rules. However, in writ petition No. 4664 of 2012, Mr. Rahul Sharma, learned counsel for the petitioner has stated that he has no

instructions to give up the challenge to Rule 134-A of the Rules. Even in the absence of any instructions, the challenge to the Rule cannot be sustained in view of the authoritative pronouncement of Hon'ble the Supreme Court in the case of Society for Un-aided Private School of Rajasthan's case (supra). Therefore, the question concerning constitutional validity would not survive. However, Mr. R.K. Malik, learned Senior counsel for the petitioner has argued that in terms of Section 12(2) of 2009 Act enacted by the Parliament, the petitioner school would be entitled to reimbursement of expenditure incurred by it to the extent of per child expenditure incurred by the State or the actual amount charged from the child, whichever is less.

5. The aforesaid submission is based on the principle laid down in Section 12(2) of 2009 Act and there cannot be any doubt that if the petitioner school falls within the parameters of Rule 12(2) of 2009 Act then it may be entitled to such a claim. Therefore, it make representation to the State Government setting out all the details concerning the admission of 25% of children as per Rules, and also proving that it is unaided and without any further support from the State Government in the form of allotment of land at concessional rate or any other concession. The State Government shall consider the case of the petitioner and determine the same in accordance with law. If any such claim is made within a period of four weeks then the same shall be disposed of by the respondent-State within a period of three months from the date of receipt of copy of such representation.

5. These petitions are disposed of in the above terms.

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

(M.M. KUMAR)
ACTING CHIEF JUSTICE

(ALOK SINGH)
JUDGE

April 23, 2012
Atul

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Sr. No.	Party Name	Writ Petition No.
1.	Haryana Schools Welfare Association and another v. State of Haryana and others	CWP No. 4664 of 2012
2.	Haryana Recognized (Un-aided) Schools Association (Regd.) v. State of Haryana and others	CWP No. 13809 of 2010
3.	BRM Gaur High School Shiv Nagar Hisar and others v. State of Haryana and other	CWP No. 16036 of 2010
4.	Vivekanand Bal Mandir v. State of Haryana and others	CWP No. 21855 of 2011

(M.M. KUMAR)
ACTING CHIEF JUSTICE

(ALOK SINGH)
JUDGE

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