

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.7770 of 2014 (O&M)

DATE OF DECISION: 25.04.2014

Punjab Private School Organization

.... Petitioner

versus

Union of India and others

..... Respondents

**CORAM: - HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Prashant Narang and
Mr. Ankit Grewal, Advocates for the petitioner

..

SANJAY KISHAN KAUL, CHIEF JUSTICE (Oral):

The petitioner claims to be an organisation of Punjab Private Schools. They claim to be schools affiliated, recognised and unrecognised in Punjab. It has not been explained as to which particular schools are the members of the petitioner nor does the petitioner appear to be a registered association or society. It appears from the documents that an application for registration has been filed with the Registrar of Firms, but that also happened as far back as 7.8.2000. Thus, the maintainability of the petition by the petitioner itself is clearly in doubt.

Be that as it may, this organisation seeks to assail the provisions of Sections 18 and 19 of the Right of

Children to Free and Compulsory Education Act, 2009 along with Rules 11 and 12 of the Punjab Right of Children to Free and Compulsory Education Rules, 2011, as being violative of Articles 14, 19, 21 and 21-A of the Constitution of India. In order to appreciate the controversy, it is necessary to reproduce the provisions of Sections 18 and 19 of the said Act as under:

"18. No school to be established without obtaining certificate of recognition. - (1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten

thousand rupees for each day during which such contravention continues.

19. Norms and standards for school. - (1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contravention, to a fine of ten thousand rupees for each day during which such contravention continues."

We put to learned counsel for the petitioner as to how the norms and standards for establishment of private schools can be said to be violating the provisions of the Constitution of India. To our mind, there is no satisfactory answer to the same other than seeking to contend that in view of these provisions of the Act a number of private schools have closed down which were providing essential education at different levels.

It is further canvassed before us that the norms and standards are not effectively applied to the Government schools and no closure of any Government school takes place if it does not meet the norms.

In our view, the aforesaid would not make the provisions as ultra vires the Constitution of India. The petitioner being the so called umbrella organisation effectively seeks to negate the orders which have been passed in different proceedings by this Court persuading the Government to ensure that the provisions of the said Act are effectively applied to the private schools. The private schools were given time to comply with the provisions of the Act and the rules, but they failed to do so and the issue of closure only arose after giving them sufficient time for compliance. It is no answer to non-compliance to contend that the standards of Government schools should also improve.

There can be no quibble with the proposition that standards of Government schools need improvement. Necessary steps may be required in that direction. It does not imply that the private schools are not to comply with the mandate where they recover effectively more fee than is charged in the Government schools. The petitioner has, in fact, annexed to the petition as Annexure P-6 the directions passed by the Division Bench of this Court on 20.8.2013 in CWP No.7388 of 2010 seeking to enforce provisions. We recognized in the order that the provisions of the said Act had made more stringent requirement of recognition and all existing schools were required to submit application for grant of recognition by the competent authority of the State Government. This was

in progress. The State of Punjab had identified the schools and given the non-compliant schools time to show compliance and only those schools were closed which failed to show compliance.

We may also note that the provisions of the said Act have been examined by the Hon'ble Supreme Court in **Society for Unaided Private Schools of Rajasthan vs. Union of India and another**, (2012) 6 Supreme Court Cases 1. A bare perusal of the said judgment would show that Section 19 was also examined in the said judgment and all the provisions were upheld. We are unable to accept the plea of the learned counsel for the petitioner that substantively the concern of the Hon'ble Supreme Court was only with fee regulation and other observations should be treated as obiter.

There is no ground made out to interfere in exercise of our jurisdiction under Article 226 of the Constitution of India.

Dismissed.

**(SANJAY KISHAN KAUL)
CHIEF JUSTICE**

25.04.2014
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**(ARUN PALLI)
JUDGE**