

Norms and Standards: Only for Private schools?

- Prashant Narang with inputs from Mimansa Ambastha

In *Punjab Private School Organization v. Union of India and Ors.*, Civil Writ Petition No. 7770 of 2014, order dated 25.04.2014, the High Court of Punjab and Haryana at Chandigarh dismissed the petition filed under Art. 226 challenging the constitutionality of Section 18-19 and the Schedule of the Right of Children to Free and Compulsory Education Act, 2009 ('Act') which deal with norms and standards for recognition of private schools.

Facts

The petitioner - an association of private schools in Punjab, filed a petition under Article 226 challenging the provisions of Sections 18 and 19 of the Act along with Rules 11 and 12 of the Punjab Right of Children to Free and Compulsory Education Rules, 2011 and the selective enforcement qua private schools only as being *ultra vires* of Articles 14, 19, 21 and 21-A of the Constitution. The Court dismissed the contentions of the petitioners, upholding the impugned provisions.

Analysis

The impugned Section 18 prohibits the establishment of any private school without first obtaining a certificate of recognition from the prescribed authority. Such a certificate of recognition is to be granted subject to fulfillment of norms and standards prescribed under Section 19. There is ambiguity with respect to applicability of these norms to government schools.

The High Court dismissed the petitioners' objections, in a rather cursory manner, with a brief statement that "[t]o our mind, there is no satisfactory answer to the same (*how a challenge can stand to the impugned norms and condition*) 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." Indeed, schools closed down due to impugned sections and school closure is certainly an outcome contrary to the intended objectives of RTE Act. However, there was no reference to any written pleadings or any legal discussion on this point further.

A ground raised by the petitioners was that the norms under the impugned provisions were not being applied to Government schools despite non-compliance, whereas private schools were being strictly treated and closed down. Rejecting this contention, the Court held that lax implementation of the Act with respect of Government Schools would not qualify as a reason to not implement it on private schools; neither would such lax implementation become a challenge to the constitutional validity of the impugned provisions. This is logically flawed, and the court does not explain at all how selective enforcement is not a ground for contending discrimination and violation of Article 14.

Further, the Court assigns a motive to the petitioner – "effectively seeks to negate the orders which have been passed in different proceedings by this Court..." There seems to be a bias in

favour of school closure orders passed by the same Chief Justice and therefore it is not surprising that the order begins with questioning the credibility of the petitioner organisation.¹

Law allows an accused/defendant to challenge the constitutionality of a statute/ provision. The challenge cannot be thwarted merely on the presumption that the defendant is attempting to evade the penalty. Courts are still bound to consider the challenge on merits and give a reasoned order. Moreover, the non-compliant schools were already shut down as per the directions passed vide order dated 20.08.2013 in CWP No. 7388 of 2010, as mentioned in the present order.

Citing the case of *Society for Unaided Private Schools of Rajasthan v. Union of India and Anr.*², the Court reasoned that all provisions of the Act, including Section 19 were examined and upheld, and thus no need arose to go into the constitutionality of the impugned provisions. However, a close perusal of the said judgment would show that it was Section 12(1)(c) of the Act that was examined on merits and upheld. The rest of the Act was merely discussed to highlight ends and means of the Act. Para 36.4 of the *Society* case states – “[I]ndeed, matters relating to the right to grant of recognition and/or affiliation are covered within the realm of statutory right, which, however, will have to satisfy the test of reasonable restrictions.” These provisions were nowhere specifically subjected to a thorough investigation in the *Society* case in light of Article 14, 19, 21 or 21A.

So far, there is no appeal filed before the Hon'ble Supreme Court.

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¹ Ad hominem: attacking your opponent's character or personal traits in an attempt to undermine his arguments; a kind of fallacy.

² (2012) 6 SCC 1