

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

225

CWP-13204-2016

Decided on : 26.09.2016

Manpreet Kaur and others

... Petitioners

Versus

State of Punjab and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present : Ms.Veena Kumari, Advocate
for the petitioners.
Mr.S.S.Chandumajra, Addl.AG, Punjab
for respondents No.1 to 3.
Mr.Abhilaksh Vyas, Advocate for
Mr.Prateek Mahajan, Advocate for respondent No.4.

G.S.Sandhawalia, J. (Oral)

The petitioners seek quashing of the impugned order dated 15.06.2016 (Annexure P-9/T) whereby application for giving admission to petitioners No.1 and 2 in class 1st and 4th respectively had been declined by respondent No.3 on the following grounds:-

“On the subject cited above inviting your kind attention it is submitted that the three representations received in this office under 25% reservation are not covered under the right of children to free and compulsory education rules, 2011, therefore, the applications are consigned to record.”

State counsel has tried to justify or divert the attention of this Court to the alternative remedy under Rule 7(7) of the ***State Right and Compulsory Education Rules, 2011*** which provides that the aggrieved person may file appeal to the State Government within a

period of one month from the date of decision of the committee.

As noticed above, the claim is only regarding the right of free and compulsory Education. The impugned order passed above does not indicate any reason or application of mind by respondent No.3 who is supposed to consider the situation with sensitivity regarding admission of the minors under the Right to Children to Free and Compulsory Act, 2009. The order does not depict any reason which could justify the refusal. Efforts have been made to refer to the written statement in which it has been submitted that the petitioners are residing in a different area which is not close to respondent No.4, and they are residing in a particular locality where there is a govt. school, therefore, they are not entitled for admission with respondent No.4-school.

It is a settled principle of law that an order has to speak for itself, and by a subsequent affidavit, the reasons cannot be implanted in the said order.

Reference can be made to the judgment of the Apex Court in ***Mohinder Singh Gill Vs. Chief Election Commissioner 1978 (1) SCC 405*** that reasoning should be there in the order and it cannot be put in place by filing of an affidavit. The relevant part reads as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case:

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

Thus, this Court is of the opinion that the impugned order suffers from an illegality which is not capable of being justified by referring to the written statement. It is for the said respondent to give reasons which can be tested not only before this Court or before the appellate forum as provided under the rules. In such circumstances, this Court does not feel that the statutory remedy is a efficacious and alternative remedy in the facts and circumstances of the present case and the whole purpose of the Act has been frustrated by passing of the impugned order.

Resultantly, this writ petition is allowed and the impugned order dated 15.06.2016 (Annexure P-9/T) is quashed. The respondent No.3 shall decide the representation/application already submitted by the petitioners, afresh within a period of one month from the date of receipt of a certified copy of the order.

Petition stands disposed of.

[G.S.Sandhawalia]
Judge

26.09.2016

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No