

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.16624 of 2014
Date of decision:24.11.2017

Raj Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P.R.Yadav, Advocate
for the petitioner.

Mr. Sandeep Moudgil, Addl.A.G.Haryana.

Mr. Arvind Seth, Advocate
for respondent No.5.

Mr. R.S.Kundu, Advocate
for respondent No.6.

AMIT RAWAL J.

1. Petitioner- Raj Kumar son of Hari Singh claiming himself to be a farmer by occupation and involved in various social activities in the village like cleanliness, education of the children, eradication of disease in the village, has preferred the Public Interest Litigation claiming the following relief:-

- i) *summon the record of the case;*
- ii) *issue a writ in the nature of mandamus for taking action*

against Rao Kishan Lal Public School, Manesar (respondent No.6) which is being run unrecognized in a residential area within the Lal Dora of village Manesar violating Haryana School Education Rules, 2003 (as amended upto 2009) endangering the health and safety of the children studying therein;

iii) any other writ, order or direction which this Hon'ble Court may deem proper in the facts and circumstances of the present case.”

on the premise that he has no direct or indirect personal motive involved in the present case.

2. As per the averments made in the writ petition, the main concern of the petitioner is safety of the children studying in Rao Kishan Lal High School, Manesar-respondent No.6 as it involves the human rights of the children pertaining to their safety, therefore, the petition is maintainable as per Rule 6(f) of the Maintainability of Public Interest Litigation Rules, 2010 (hereinafter referred to as '2010 Rules').

3. Mr. P.R.Yadav, learned counsel for the petitioner, in support of averments made in the petition has raised the following submissions:-

i) The school under the name and style of Rao Kishan Lal High School is being run in the Lal Dora of the village Manesar, Tehsil Manesar, District Gurgaon on the land which was once allotted to weaker sections of the society.

ii) There is no fire fighting arrangements nor any 'No

Objection Certificate' from the concerned department or Municipal Corporation had been taken.

iii) The school is being run in unauthorized residential area which is thickly populated.

iv) The school is being run in the residential building within the Lal Dora of the village having no passages for plying of buses or vehicles of Fire Brigade.

v) The students are dropped at Bus Stand Manesar and they travel on foot more than one KM to reach the school.

vi) The provisions contained in Rule 30(1)(a) (xxviii) of Haryana School Education Rules 2003 (as amended upto 2009), (in short 'The 2003 Rules') put embargo in running the school in the residential building.

vii) The representations for the said purpose [Annexure P-5 (collectively)] and (Annexure P-15) have remained un-decided.

viii) Prior to 2005, the school was being run since 1998 under the name and style of Baba Bisham Dass Educational Society Manesar which was registered with the Registrar of Societies.

ix) As per the information obtained under Right to Information Act, there were 830 students in the school from class Nursery to 10th. There is no playground in the school and the children are taken to a ground which is situated away from the school. There is great risk to the life and safety of the children.

x) The lease deed dated 01.08.2007 (Annexure P-9), executed by the same person, i.e., Sanwat son of Kishan Lal shows that the total area is 462 square yards. As per the site plan (Annexure P-8), there are total 12 classrooms in a three-storey building measuring 82'6" and 54'9" and thus, the total area over which the building is constructed is approximately 450 square yards.

xi) There is no playground attached to the school nor there is any proof of ownership in the name of Sanwat, therefore, question of executing a lease deed in favour of the society or respondent no.6 does not arise.

4. Learned counsel referred to the affidavit dated 15.02.2012 [Annexure P-35 (collectively)] at page 346 of the paper book alleged to have been executed by Sanwat deposing that he had planted number of plants and trees in the land adjoining to his house which shows that he was not owner of the land.

5. During the course of hearing, Mr. Yadav drew our attention to the order dated 23.03.2015, whereby, the written statement filed on behalf of respondents No.1 to 4 was rejected and they were directed to file a fresh written statement. It was urged that fresh written statement is also reproduction of the previous written statement and therefore, there is no substantial material placed on record to controvert the aforesaid averments and grounds raised in the writ petition. On these premises, it was claimed that writ petition deserved to be allowed.

6. Per contra, Mr. Sandeep Moudgil, learned Additional Advocate General, Haryana for respondents No.1 to 4 submitted that after the order dated 23.03.2015, the Deputy Director, State Council of Education Research and Training Gurgaon (SCERT) was appointed as inquiry officer to conduct the inspection of the school and submit report. The inspection of respondent no.6-school was conducted by the Deputy Director, SCERT on 09.07.2015. The inspection report dated 10.07.2015 revealed that the school conforms to all the requirements and was directed to remove minor deficiencies which were pointed out at the time of inspection. By referring to the aforesaid argument, he drew the attention of this Court to paragraph 3 of the written statement, at page 247 of the paper book, regarding the conclusion of the report which reads thus:-

“(i) The society of the school i.e. Baba Bisham Dass Education Society, Manesar, Gurgaon is registered vide order dated 8.1.1998 by the Registrar, Cooperative Societies, Haryana, Chandigarh.

(ii) That the total area of the school is 1812 sq. yards (1350+462 sq. yards) on lease 20 years which is in single patch. The school has a three storey building constructed on the area of 500 sq. yards and some construction is also going on in the other area. For sports activities, the playground of Govt. Sr. Sec. School, Bal, Manesar is being used by the school since 2014-15.

(iii) The school is multi-storeyed but no ramp has been

constructed by the school for the children. The school has 7.3 ft. wide stairs upto 2nd floor.

(iv) There are 19 classrooms, the size of which is from 8.10 ft.x9.10 ft. to 20.5 ft.x18.10 ft. The size of verandah in front of the rooms is from 7.5 ft. to 10.5 ft.

(v) There are eight toilets in the school out of which four toilets are for girls.

(vi) There are two drinking water tanks. Each tank is of 1000 ltr. capacity. Besides, there is arrangement of water by submersible pump. To purify the water, there is arrangement of RO and water cooler.

(vii) For fire fighting, there are two water tanks of capacity of 5000 ltr. each.

(viii) For uninterrupted electricity supply, there is arrangement of generator set of 25 KV.

(ix) Ten computer sets are installed in the laboratories and the computer lab and there was adequate arrangement of science instruments in the science lab.

(x) The school was granted permission under Rule 29 to establish a new school from 1st to 10th by the Department vide order No.23/216-2003 S-I(2) dated 27.9.2005.

(xi) The approval of the managing committee of the school was granted by the Department, vide order No.22/7-2009 PS (2) dated 20.1.2009.

(xii) The building safety certificate has been issued by Sh. Guru Dutt. B.E.(Civil).

(xiii) The another building safety certificate has been issued by Gupta Associates on 10.3.2007 in favour of Rao Kishan Lal Sr. Sec. School, Manesar, Gurgaon and not in favour of Rao Kishan Lal High School, Manesar.

(xiv) The fire safety certificate has been issued by Municipal Corporation, Gurgaon vide order No.FS 2013/17/2752 dated 2.10.2013 for the period 16.5.2013 to 9.5.2014. Thereafter it has been renewed for the period 11.9.2014 to 11.10.2014.

(xv) The salary to the teachers/employees of the school is being paid in cash.”

7. It was further argued that as per the aforesaid inquiry report, there are 681 students (from 1st to 10th class) in the school, therefore the allegation that the school had 450 square yards land and there are about 1200 students with 12 classrooms only was found to be baseless and incorrect. Respondent No.6 was granted permission to establish a school in the name and style of Rao Kishan Lal High School, Manesar by the department, vide order dated 27.09.2005 and it conforms to the provisions of Rule 30(1)(b) of 2003 Rules amended from time to time which also provided that a private school can be run in a rented building/land on lease hold basis with a minimum period of 20 years of irrevocable lease deed.

8. With regard to recognition of the school, it was submitted that as per the amended rules, vide letter dated 06.04.2007, certain relaxation in

various norms for the private school was prescribed. In view of the aforesaid amendment, private schools running before 31.03.2007 were directed to apply to the concerned District Education Officer upto 10.04.2007 alongwith relevant documents for claiming to be an existing school.

9. Respondent No.6 alongwith other schools applied to the department with the proof of its permission upto 10th standard. After scrutiny of cases of such schools, the list of approximate 2600 existing schools, upto the level they were running before 31.03.2007 either on temporary recognition or affiliation with the Board of School Education, Haryana was notified by the Government, vide notification dated 21.02.2009. The name of respondent No.6 also figured at serial number 93 in the said notification. The Government had been granting affiliation every year to such schools as the matter of recognition is pending at the District levels. All the existing schools which are running on the basis of permission/temporary recognition/affiliation are being granted yearly affiliation with the Board of School Education, Haryana by the respondent-department, since 2009.

10. Mr. R.S.Kundu, learned counsel for respondent no.6 submitted, that writ petition has been filed in order to settle personal score with Davinder Singh, i.e., headmaster of respondent No.6-school. To elaborate the aforesaid objection, he submitted that on 07.12.2010, post of Numberdar of village Nanda Patti, Manesar fell vacant on the demise of numberdar-Jas Ram. The aforesaid post was advertised by the authorities. Respondent

No.6, Raj Kumar-petitioner alongwith his real brother Virender Singh as well as some other persons applied for the same. Reference was made to the application dated 07.01.2011 (Annexure R-6/1) submitted by the petitioner. During the pendency of proceedings for selection of numberdar, petitioner-Raj Kumar withdrew his candidature in favour of his real brother - Virender Singh which is evident from the letter dated 25.08.2011 (Annexure R-6/2). The petitioner started putting pressure upon respondent no.6 to withdraw his name from numberdari case so that his brother could be appointed as numberdar. When respondent no.6 refused to come under pressure, petitioner started making baseless complaints against him. The Assistant Collector Ist Class, vide order dated 08.12.2013 (Annexure R-6/3), recommended the name of respondent no.6 for appointment as numberdar but the Collector did not agree with the recommendation.

11. It was further argued that in the year 2013, petitioner also moved an application (Annexure R-6/4) against respondent no.6 and other family members under Section 7 of the Punjab Village Common Land Act, before the Assistant Collector Ist Class-cum-SDM (Civil) South, Gurgaon alleging the illegal occupation of the property. Rao Kishan Lal High School/respondent No.6 is being run for the last more than 15 years having been recognized since 1998, initially as middle school and later on as High School. There are other schools than that of respondent no.6 which are running within Lal Dora. The particulars of “recognized” and “un-recognized” schools have been given in paragraph 5 of the written statement. However, the petitioner has only pointed a finger at the present

school which shows the clear-cut *malafide* and personal interest.

12. It was further argued that Municipal Corporation had been issuing the no objection certificates for the year 2012 and 2013-14 (Annexures R-6/5 and R-6/6) running since 1998 on an area of 500 square yards with three storey building having 22 rooms and more than 80% students are of the village, who come from a walking distance from the school.

13. As regards the playground, it was submitted that play ground of Government School is only about 700 meters from the school and two motor cabs are put into use for ferrying the students. There are three ways entry and exit to the school and thus prayed for dismissal of the writ petition with exemplary costs.

14. We have heard learned counsel for the parties, appraised the paper book and in our opinion, it is not a fit case falling within the parameters of Maintainability of Public Interest Litigation Rules 2010 (in short '2010 Rules'). For the sake of brevity, the same reads thus:-

“1.(i) These Rules shall be called as MAINTAINBILITY OF PUBLIC INTEREST LITIGATION RULES, 2010.

(ii) These Rules shall come into force with effect from the date of approval by the Full Court.

2. No Public Interest Litigation shall be entertained by the Registry unless the petitioner(s) has specifically disclosed his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit.

3. *Every Public Interest Litigation shall be separately numbered and categorized.*
4. *All the Public Interest Litigations shall be listed before a Division Bench by the orders of the Chief Justice of the High Court.*
5. *The Bench, wherever it appears so desirable, may ask the petitioner to deposit an appropriate amount with the Registry to be paid as compensation/costs to the person/institution who may be forced to contest the litigation, which is ultimately found to be vexatious, frivolous or mala fide.*
6. *Ordinarily, the PIL may be entertained on any subject of vital public importance, such as:*
 - (a) *Bonded Labour matters.*
 - (b) *Neglected Children.*
 - (c) *Petitions from riot victims.*
 - (d) *Petitions complaining of harassment or torture of persons belonging Scheduled Castes, Scheduled Tribes and other Backward Classes by the others or by the police.*
 - (e) *Petitions pertaining to environmental pollution, disturbance of ecological balance, forest and wild life.*
 - (f) *Petitions complaining violation of human rights.*
7. *The Registry shall be entitled to verify the antecedents of a person, society or an association who invokes the jurisdiction of the High Court on the cause of public interest. Wherever the*

Registry has any doubt on such antecedents, an office note to this effect shall be put up, except on the petitions which are received by post.

8. The Public Interest Petitions received through post shall not be entertained except in the following cases:-

- (i) Petitions sent by prisoners and detenues;*
- (ii) Petitions complaining violation of human rights;*
- (iii) Petitions seeking a writ in the nature of habeas corpus;*
- (iv) Petitions with a cause of such nature that it may require suo-motu proceedings by this Court in 'Public interest';*
- (v) Petitions by financially or physically disabled persons, minors and/or oppressed sections of Society. The petitions falling in this category may be sent to the Member Secretary of the State Legal Services Authority concerned, who, on satisfaction regarding genuineness of the petitioner, may provide adequate legal aid including a counsel to the victim.*

9. All the suo-motu petitions initiated by the High Court shall be put up before the Chief Justice for enlisting the same before an appropriate Bench as per roster within three days”

15. Learned counsel for the petitioner has not been able to controvert the submission of application for the post of numberdar by brother of the petitioner and the contest by respondent No.6. It would be apt to reproduce the statement suffered by the petitioner before the Assistant Collector, Manesar on 25.08.2011 (Annexure R-6/2) which reads thus:-

“Sh. Raj Kumar s/o Sh. Hari Singh r/o Manesar, Teh. Manesar, aged 42 years on oath.

It is stated that I have applied for the post of numberdar, Nanda Patti of village Manesar. I am not desirous of this post now so my application be rejected and in my place it will be appropriate that Virender s/o Sh. Hari Singh r/o Manesar be appointed as numbersar, Nanda Patti, Manesar as he is more educated than the applicant. The grandfather and great-grandfather of the applicant had been numberdar of the village of this Patti. The applicant owns 2A kanals of land in Manesar and 16 kanals land in Rajasthan. The applicant had pakka house. The financial position of the applicant is good. The applicant had ensured 6 cases of family planning and also have an FD of Rs.2 lakhs in post office. He has also persuaded his friends and got deposited ₹20 lakhs in the post office. The photocopy of the same is attached. The applicant does not participate in any party function (function) in the village and the applicant participates in all government and non-government functions, so it would be appropriate to appoint the applicant as numberdar of Nanda Patti.

Sd/-

*RO&AC
Raj Kumar”*

A.C.IInd Gr. Manesar 25/8/2011

16. Even the certificates issued by the Municipal Corporation Gurgaon annexed as Annexuers R-6/5 and R-6/6 giving 'No Objection

Certificate' have not been disputed. The silence on the part of the petitioner since 1998 when the school had commenced its functioning but agitating the said cause only after 2011 when the process of filling up the post of numberdar was initiated, clearly shows the malafide interest on the part of the petitioner against respondent No.6. Further feeble attempt to bring the present writ petition under the ambit of 2010 Rules, in our view, is with ulterior motive against respondent No.6 as unsubstantiated and wild allegations have been made, which *prima facie* is an attempt to settle the personal score under the garb of safety of school going children without establishing defiance of any rule under 2003 Rules.

17. Still further, the department, on inspection found that school is conforming to all prevalent rules, guidelines except minor discrepancies which stood rectified. On consideration of aforementioned facts, it is not the case which fall within realm of judicial review under Article 226 of the Constitution of India as a Public Interest Litigation.

18. The question of maintainability of Public Interest Litigation came to be debated upon before the Division Bench of this Court in **Ajaib Singh and Anr. Versus The State of Punjab & Ors., 2014 (4) PLR 367.**

The relevant paragraphs 3 and 4 of the said judgment read thus:-

“3. We have also perused the Maintainability of Public Interest Litigation Rules, 2010, which have laid down the guidelines for entertaining a public interest petition. The nature of grievance set out in the petition does not fall within the defined Clauses of Para-6 where a PIL may be ordinarily entertained. In fact,

the present nature of grievance, a cause on which many PILs are filed, is really in the nature of allegations against the municipal authorities for failure to perform their statutory duties and that should be the style of the petition.

4. *The other aspect we want to emphasis is that the petitioner has to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression "specifically disclose his credentials" must, naturally, imply that he has to set forth what he does for his living, what public interest he has been espousing, the work done by him in that behalf, the particulars of any matter preferred by him as PIL earlier on which the Court has passed orders, etc. It cannot imply merely writing a sentence that a person is residing in the State, is public spirited and is, thus, filing a PIL."*

19. As per the facts narrated above, the present writ petition relates to settlement of personal dispute between petitioner-Raj Kumar and respondent No.6. Under the circumstances, such an interest cannot clothe the present petition to be a Public Interest Litigation as noticed hereinbefore. Additionally, we even refrain ourselves to tread any further as factual dispute involved in the matter also does not call for adjudication within the writ jurisdiction under Articles 226/227 of the Constitution of India.

20. In view of what has been observed above, in our opinion the

present writ petition is bereft of any merits and lacks bonafides as Public Interest Litigation. Resultantly, the same is dismissed with costs of ₹2,00,000/- to be deposited with the Punjab and Haryana High Court Lawyers Welfare Fund, within a period of one month from the date of receipt of a certified copy of this order failing which the Registry is directed to list the matter for compliance of the order.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

November 24, 2017
savita

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No