

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision : 15.12.2017

1. CWP No.20323 of 2017 (O&M)

Surinder Adlakha and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

2. CWP No.27659 of 2017 (O&M)

DPSG Parents Association

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. A.K.Jain, Advocate
for the petitioners (CWP No.20323 of 2017).

Mr. Rajesh Lamba, Advocate
for the petitioner (CWP No.27659 of 2017).

Dr. Sushil Gautam, D.A.G., Haryana.

Mr. D.S.Chadha, Advocate
for respondent No.4 (CWP No.20323 of 2017).

Mr. Akshay Bhan, Senior Advocate with
Mr. A.S.Talwar, Advocate
for the caveator (CWP No.27659 of 2017).

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two writ petitions.

CM No.17934-CWP of 2017 in CWP No.20323 of 2017

This is an application for staying the impugned notices (Annexures A-1 to A-36) whereby the names of the wards of petitioners have been struck off. By consent of parties the main case is pre-poned and the case is taken up for final disposal today.

In writ petition bearing **CWP No.20323 of 2017** the petitioners are parents of children who are studying in respondent No.4-school. The dispute is with regard to the fees which are being claimed by the school and which as per the petitioners are excessive. In the other writ petition bearing **CWP No.27659 of 2017** the petitioner has challenged an order of the Additional Chief Secretary whereby it was held that Form-VI which was submitted by the respondent-School (giving the justification for the increase in fees) had to be considered. Shorn of this technical difference, the dispute in this case also centres around the validity of the fees and other charges claimed by the respondent-School. On 12.12.2017 the following order was passed :-

*“Having gone through the judgment in **Anti-Corruption and Crime Investigation Cell vs. State of Punjab and others (P & H) (D.B.) 2013(2) LAW Herald 1207** I am of the tentative opinion that Rule 158-A of the Haryana School Education Rules 2003 which was incorporated on the statute book does not really answer the requirements of the Division Bench as enumerated in paragraph 82 because as it is laid it has reduced the FFRC to a clerical organization rather than a quasi judicial organization headed by the officer of the rank of Commissioner of the Division. I have suggested to learned counsel that I propose to direct the State Government to reconsider the provisions of Rule 158-A. This is so because the entire thrust of the unaided Institution fee jurisprudence which has emerged over the last three decades is to provide on the one hand, a check on the absolute discretion of such institutions to increase their fees while not denying them the autonomy which their status as private unaided institutions entitles them to. It was for this purpose that the Court had noticed in paragraph 82 that despite there being a provision for examining the justification of increase in fees there was no*

mechanism for the same and the State was directed to frame a mechanism, however, as noticed above, Section 158-A does not provide a mechanism for that. I further propose to the counsel that during such time as is required by the State to reconsider Rule 158-A, the existing FFRC could be asked to look into the aspect of the justification of the fee increase.

Learned counsel seek a short adjournment to respond.

Adjourned to 15.12.2017.

Copy of this order be handed over to learned counsel appearing for the parties under the signature of the Court Secretary.

Photocopy of this order be placed in the file of connected case.”

Today the learned Deputy Advocate General has informed the Court that even before the passing of this order the Government was alive to the fact that Rule 158-A of the Haryana School Education Rules 2003 needed to be amended and in fact the process is already underway. He has, however, accepted that any amendment which may be made would be prospective and the arrangement which may now be made for judging the justification of the fees would only become effective in future.

Paragraph 82 of the decision of the Division Bench in ***Anti-Corruption and Crime Investigation Cell vs. State of Punjab and others (P & H) (D.B.) 2013(2) LAW Herald 1207*** is as follows :-

“ 82. No doubt, in the instant cases before us, as per the replies filed by the official respondents themselves, most of the schools are fulfilling the requirements of submitting the Annual Reports etc. At the same time, it is also a matter of record that there is hardly any examination of these records which are simply dumped by the schools with the Boards/Regulatory Authorities and keep lying there in their archives. Needless to mention that it is the duty of the official respondents to ensure that increase in the fees undertaken by a particular school is justified and necessitated by other circumstances like increase in expenditure or because of developmental activities needed and does not result into profiteering. It is also to be ensured that the funds are not diverted elsewhere. However, there is no mechanism for checking the same. In a situation like this, we are of the opinion that the States of Punjab and Haryana as well as

Union Territory, Chandigarh should also provide for some permanent Regulatory Bodies/mechanism which would go into this aspect on regular basis. We accordingly give directions to the States of Punjab, Haryana as well as Union Territory, Chandigarh to examine the feasibility of establishing such a mechanism and take decision thereupon within a period of six months from today. Till that is done and in order to sort out the issue as to whether the hike in fees by the schools is proper or not, we would like to follow the same path as done by the High Court of Delhi, namely, setting up a Committee with the task to go into the accounts of the Schools and find out the reasonableness of increase in fees by the schools. Accordingly, we appoint three committees, one each for the State of Punjab, State of Haryana and Union Territory, Chandigarh, with the following constitutional members:-

FOR STATE OF PUNJAB:-

- i) Hon'ble Mr. Justice Ranjit Singh (Retd.): Chairperson
- ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.
- iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

FOR STATE OF HARYANA:-

- i) Hon'ble Mrs. Justice Kiran Anand Lall (Retd.): Chairperson
- ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.
- iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

FOR UNION TERRITORY CHANDIGARH:-

- i) Hon'ble Mr. Justice R.S. Mongia (Retd. Chief Justice): Chairperson
- ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.
- iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board, U.T. Chandigarh.

The fee of the Chairperson(s) shall be Rs. 25,000/- per sitting and that of the members Rs. 10,000/- each per sitting. The said fee shall be shared by the schools in the respective States. In addition to the aforesaid fee, the Committee(s) shall also be reimbursed the amount of clerical and other expenses. They shall also be provided suitable place/office for undertaking the task assigned.

Since the schools are submitting the accounts with the Boards, these accounts and records can be given by the Boards to the Committees. In addition all the schools shall also render full cooperation to the Committee(s) by submitting the Account and other necessary information demanded by the Committee(s). The scope of the work undertaken by the Committee(s) shall be restricted to the academic year 2012-13. Likewise, for the academic year 2013-14, though the schools shall have the right to fix their fees structure, they will have to justify the same by producing necessary material before the Committee(s). The Committee(s) shall be entitled to specifically look into the aspects as to how much fees increase was required by each individual school on the examination of records and accounts etc. of these schools and taking into consideration the funds available etc. at the disposal of the schools. While doing this exercise, it shall keep in mind the principles laid down by the Supreme Court in Modern School case (supra) as well as Action Committee Unaided Pvt. Schools case (supra) and other decision noted by us in this judgment. Needless to mention in case it is found that the fees hiked by the schools was more than warranted, the direction can be given to those schools to refund the same to the students.”

In the circumstances pointed out above, I find myself facing the same situation which confronted the Division Bench. In my opinion, the option before the Court is either to examine the issue itself or to consider some alternative. In my opinion it would be appropriate if the Additional Chief Secretary (Education), Haryana constitutes a committee which would go into the issue of the fees which are being demanded by the respondent-Schools (for the period after the academic session 2013-2014) till such time as the Govt. puts into place an amended Rule as has been submitted before me. Till the time the Committee decides the issue of justification the petitioners will pay the fees demanded by the respondent-Schools.

As regards the arrears which are due from 2014-15 onwards, the same will be cleared on or before 28.02.2018. Both the schools shall file undertakings (by the head of the Body which governs them) to the effect

that in case the Committee now to be appointed determines that any fees which have been obtained by them was excessive and un-justified they would be liable to refund the excess money which they have collected and would have no objection if the property of the institution has to be sold for that purpose. These undertakings be filed on or before 22.12.2017 with copy to the counsel for the petitioners. The Additional Chief Secretary (Education), Haryana would constitute the Committee on or before 31.12.2017 and the Committee would furnish its report on or before 28.02.2018. It is made clear that the Committee which is now to be constituted would not be bound by any order which was passed earlier.

In CWP No.20323 of 2017, learned counsel are agreed that the petition qua petitioners No.3, 12, 15, 16, 23, 29, 32, 33, 38, 45, 49 and 50 be dismissed.

As soon as the petitioners deposit the current quarter fees of 2017-2018 any order of rustication would cease to be operative.

Both the petitions stand disposed of.

A copy of this order be given to the learned counsel for the parties under the signatures of the Bench Secretary.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

15.12.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No