

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

CWP No.3705 of 2017 (O&M)

Date of Decision: 21.05.2018

Ritesh Pandey

... Petitioner

Versus

Union of India and others

... Respondents

**CORAM:-HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present:- Mr. A.S.Barnala, Advocate and
Mr. Ranjit Singh, Advocate for
Mr. D.S.Pheruman, Advocate,
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Varun Issar, Advocate,
for respondent No.1-UOI.

Mr. Manoj Kumar, Advocate for
Mr. Harsh Aggarwal, Advocate,
for respondent No.6.

Ms. Alka Sarin, Advocate,
for respondent No.7.

Mr. Vikas Bali, Advocate,
for U.T., Chandigarh.

Mr. Ashok Goel, Advocate,
for the applicant in CM.

TEJINDER SINGH DHINDSA, J.

Petitioner who is a practicing Advocate has filed the present writ petition by way of Public Interest litigation raising the issue of irrational and whimsical school fee hike resorted to by the private unaided schools (affiliated with CBSE) in Chandigarh.

Writ of Mandamus is sought for issuance of directions to

the Chandigarh Administration to adopt the Punjab Regulation of Fee of Unaided Educational Institutions Act, 2016. Further directions are sought to restrain the Private Unaided Schools as also its Association from indulging in commercialization of education and profiteering by running of academies on commercial lines, selling of books, stationary items, uniforms etc. from within the school premises as the same being violative of CBSE byelaws and the terms of land allotment by UT Administration on subsidized rates.

During the course of hearing today, we have been apprised that the Ministry of Home Affairs, Government of India has issued Notification dated 13.04.2018 in exercise of the powers conferred by Section 87 of the Punjab Re-organisation Act, 1966 and whereby the Punjab Regulation of Fee of Unaided Educational Institutions Act 2016 (for short the 2016 Act) has been extended to the Union Territory of Chandigarh.

We have perused the Notification dated 13.04.2018 which was furnished by Mr. Chetan Mittal, Senior Advocate appearing for respondent No.1-UOI.

Sections 3, 5, 6, 7 and 8 of the Notification are relevant and are extracted hereunder:-

3. Constitution of Regulatory Body-(1) There shall be constituted a Regulatory Body to be known as the Regulatory Body for Regulating Fee of Un-aided Educational Institutions at the Divisional level in the State of Punjab to exercise the powers conferred upon and perform the functions assigned to it under this Act.

2)The Regulatory Body shall consist of the following, namely:-

- | | |
|--|--------------------------|
| a) Divisional Commissioner
of the concerned division | Chair person; |
| b) Circle Education Officer
of the concerned division | Member-Secretary; |
| c)District Education Officer
(Secondary Education)posted at
the concerned Headquarter
of the division | Member; |
| d) District Education Officer
(Elementary Education)
posted at the concerned Headquarter
of the division; | Member; |
| e) Two members to be nominated by
the Government from amongst the
eminent educationist of the concerned
division; | Nominated Member; |
| f) One member to be nominated
by the Divisional Commissioner
form amongst the Deputy Controllers
(Finance and Accounts) or
Assistant Controllers
(Finance and Accounts) working
in the concerned division | Nominated members |

3. The nominated members referred to in sub-section (2), shall be paid such remuneration and travelling allowance for attending the meeting of the Regulatory Body, as may be prescribed.

5. Power to fix and increase fee- An Unaided Educational Institution shall be competent to fix its fee and it may also increase the same after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students:

Provided that while fixing or increasing fee, the factors mentioned in sub-section (1) of Section 6, shall be kept in view by the Unaided Educational Institution:

Provided further that increase in fee shall not exceed eight per cent of the fee of the previous year, charged by the Unaided Educational Institution.

Provided further that while fixing or increasing fee, an Unaided Educational Institution cannot indulge in profiteering and it cannot charge capitation fee.

6. Factors to be taken into consideration for fixing or increasing fee-(1) For fixing or increasing fee structure by an unaided educational institution, the following factors shall be kept in view, namely:-

a) the infrastructure and facilities available or to be made available in the Unaided Educational Institution;

b) the investment made and salaries paid to the teachers and staff; and

c) future plans for expansion and betterment of institution, subject however, to the restrictions of non-profiteering and non-charging of capitation fee.

2) The fee fixed under sub-section (1), shall be displayed by every Unaided Educational Institution at the conspicuous place in the School premises.

3) The Unaided Educational Institution shall also ensure that the fee or funds charged by it from the parents or guardians, are not diverted from such institution to the society or the trust, as the case may be, which runs such institution or to any other institution, except as permissible under sub-section (4) of section 10.

7. Powers and functions of the Regulatory Body.- Subject to the provisions of this Act, the Regulatory Body shall exercise the powers and discharge the functions as mentioned below:-

a) to hear complaints from the students or their parents or guardians with regard to the charging of

excessive fee or for doing or asking to do any other activity with a motive to gain financial benefit or profit in contravention of the provisions of this Act by any Unaided Educational Institution;

b) to ensure that the Unaided Educational Institutions are not indulging in commercialization of education;

c) to check that the fee structure is being kept within the limits as provided under this Act so as to avoid profiteering;

d) to strike a balance between autonomy of an Unaided Educational Institution, and measures to be taken in avoiding commercialization of education;

e) to check excessive hike in fee by an Unaided Educational Institution with the motive to earn profit;

f) to ensure that increase in the fee undertaken by an Un-aided Educational Institution is justified and necessitated by the circumstances like increase in expenditure or because of needed developmental activities, and does not result into profiteering; and

g) to check that funds charged from the students are not diverted to any other purpose, except as permissible under sub-section (4) of section 10.

8. Jurisdiction of the Regulatory Body.-Notwithstanding anything contained in this Act, the Regulatory Body may, if on information is satisfied that an Unaided Educational Institution has contravened or its contravening any of the provisions of this Act, it may call for the relevant record of such Unaided Educational Institution in order to verify the information."

The Notification envisages the Constitution of a Regulatory Body to be known as the Regulatory Body for

Regulating Fee of Unaided Educational Institutions. Under Section 5, an Unaided Educational Institution has been vested with the power to fix its fee and it would be open to even increase the same after taking into account the need to generate funds to run the institutions. However, a cap of 8% has been imposed as regards increase in fee compared to the fee charged in the previous year.

Section 7 of the Act defines the powers and functions of the Regulatory Body. Apart from exercise of powers in other matters, the Regulatory Body is vested with the power to hear complaints from the students or their parents or guardians with regard to the charging of excessive fee. The Regulatory Body has also been granted power to ensure that the Unaided Educational Institutions are not indulging in any commercialization of education and to keep a check that the fee structure is kept within the limits as provided under Section 5 of the Act so as to avoid profiteering.

We have been assured by the counsel representing the official respondents that after extension of the 2016 Act to the Union Territory of Chandigarh, the Regulatory Body contemplated under Section 3 of the Act would be constituted and set up expeditiously. The statement is accepted.

In our considered view, with the extension of 2016 Act to the Union Territory of Chandigarh and with the setting up of the Regulatory Body as per undertaking, a viable mechanism would be in place for redressal of the prayers raised in the instant petition.

No further directions are called for.

Petition is disposed of.

Pending applications, if any, shall also stand disposed
of.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

21.05.2018
vandana

Whether speaking/reasoned
Whether Reportable

Yes
No