

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

**(1) CWP-26598-2019(O&M)
Date of Order: 24.11.2020**

Haryana Senior Secondary School ..Petitioner

Versus

State of Haryana and others ..Respondents

(2) CWP-7709-2020(O&M)

Haryana Senior Secondary School ..Petitioner

Versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Padam Kant Dwivedi, Advocate,
for the petitioner (in both the petitions).

Mr. Samarth Sagar, Addl.A.G.,Haryana

Mr. K.K.Gupta, Advocate,
for respondent no.5 (in CWP No.26598-2019)

Mr. B.S.Saroha, Advocate,
for respondent no.5(in CWP No.7709-2020)

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing,
on account of restricted functioning of the Courts.

This judgment shall dispose of Civil Writ Petition No.26598 of
2019 and Civil Writ Petition No.7709 of 2020. The petitioner as well as the
contesting respondents, as well, their counsels are common in both the
petitions. The issue which needs adjudication is also identical. Hence, it is
considered appropriate to pass a common judgment.

Article 41 of the Constitution of India, falls in the Chapter of

Directive Principles of State policy which provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. In order to achieve the aforesaid objective, the government has been making efforts to increase the literacy rate amongst the residents of the country. The private educational institutions also play a significant role. The Government apart from establishing government run schools, has also been coming forward to make its contribution, by giving the grant-in-aid, to the private educational institutions.

The question which this Court has been called upon to determine is “as to whether the decision of the Director, School Education, Haryana, refusing to grant further recognition to the petitioner's school on the ground that it does not fulfill the norms laid down in the Haryana School Education Rules, 2003, is correct or not?”

In the State of Haryana, school education is governed and regulated by the Haryana Education Code, the Haryana School Education Act, 1995 (hereinafter referred to as 'the Act of 1995') and the Haryana School Education Rules, 2003 (hereinafter referred to as 'the Rules of 2003'). Section 24 of the Act of 1995, enables the Government to make rules with regard to matters enlisted therein. In exercise of that power, Hon'ble the Governor, made and notified the Haryana School Education Rules, 2003, which have been amended from time to time. Rule 30 of the Rules of 2003, lays down the requirements which a school must possess, if a private school wants its school to be recognized. Rule 30(1)(b) of the Rules

of 2003, enlists the minimum norms required with respect to land and building for establishing various kinds of schools. The proviso to Rule 30 (1)(b) of the Rules of 2003, enlists the minimum size of the plot which shall be required for the existing schools, to continue. This tabulated information also contains information as to what extent, the competent authority is entitled to relax the norms for existing schools, which is extracted as under:-

"/(b) minimum norms for land and buildings:-

(i) Land

<i>School</i>	<i>Rural/Urban/Controlled areas</i>
<i>Primary</i>	<i>0.5 acre</i>
<i>Middle</i>	<i>1.0 acre</i>
<i>Secondary</i>	<i>2.0 acre</i>
<i>Senior Secondary</i>	<i>2.0 acre</i>

Provided that the norms of land for the schools running recognized/unrecognized before commencement of Haryana School Education Rules, 2003, may be relaxed as under:-

<i>Schools</i>	<i>Rural/Urban/Controlled areas (for single storey building)</i>	<i>Rural/Urban/Controlled areas (for single storey building)</i>
<i>Primary</i>	<i>500 Square Meters</i>	<i>350 Square Meters</i>
<i>Middle</i>	<i>800 Square Meters</i>	<i>600 Square Meters</i>
<i>Secondary</i>	<i>2000 Square Meters</i>	<i>1500 Square Meters</i>

Senior Secondary

<i>(i) Arts and Commerce</i>	<i>3000 Square Meters</i>	<i>2250 Square Meters</i>
<i>(ii) Arts/Commerce and Science</i>	<i>4000 Square Meters</i>	<i>3000 Square Meters</i>

In addition to above, such schools shall provide or make arrangement for adequate playground within a reasonable distance according to the number of students. If the distance of playground is more than 500 meters from the school than the school authority shall provide free transportation to the students.

The school can tie-up with the government schools, any educational institution, stadium, open space used as playground of

local bodies. Upto two schools can tie-up with one authority managing the playground:

*Provided further that these relaxed norms of land shall also be applicable to the schools ***(separately notified vide No.8/7-09 PS (2), dated 21.02.2009)** that were in existence before 31.03.2007 and had applied to the department by 10.04.2007 for recognition/up-gradation.*

The covered area and open area shall be in the ratio of 35%/65%. However, where the Urban Local Bodies or Town and Country Planning Department have prescribed different Floor Area Ratio norms, the same shall be applicable.

***Note:-** A private school can be run in a rented building or land on irrevocable lease hold basis with a minimum period of twenty years; provided such school fulfills the norms of land and buildings as specified under these rules.”*

The petitioner's school, is a Senior Secondary School. Learned counsel for the petitioner has informed the court during hearing of the case that there were 1100 students studying in the school. The total land available with the School is 250.83 Sq. Mts., which is equivalent to 2700 square feet area. The school building is constructed on ground floor plus two additional floors(Ist and Second floors).

Dharampal and another, residents of the surrounding area, filed Civil Writ Petition No.10472 of 2016, claiming that the petitioner's school is being run in a residential area and against the norms laid down by the State of Haryana. During the pendency of writ petition, on 02.06.2018 a committee came to be constituted to probe into the matter and submit a report. The petitioner's school was asked to provide certain information vide letter dated 29.11.2017. Thereafter, the Committee gave its report on 22.12.2017. After the report of the Committee, a show cause notice was issued to the school on 16.10.2018, which was responded to on 26.10.2018 by the petitioner-School.

It is pertinent to note that the petitioner's school is running

since the year 2000. On 15.09.2000, the petitioner's school was granted permanent recognition for running classes from 06th to 08th. Thereafter, a temporary recognition was granted on 31.08.2001, permitting the school to admit the students in Classes 9th and 10th. The petitioner's school applied for recognition upto 12th class in the year 2003. It has come on record that the petitioner's school has been granted provisional recognition in the academic sessions 2015-2016, 2016-2017 and 2017-2018.

The Director, Secondary Education has passed two orders. The first order was passed on 05.09.2019, withdrawing the recognition given to the school. The petitioner filed Civil Writ Petition No.26598 of 2019, challenging the order dated 05.09.2019. During the pendency of the 1st writ petition, on 14.02.2020, the District Education Officer, has directed the petitioner not to admit the students in the next academic session starting from 01.04.2020. This direction has been issued on the basis of a detailed order passed by the Director, School Education, on 10.02.2020, Annexure P-18, with the paper book of Civil Writ Petition No.7709 of 2020.

Learned counsel, for the petitioner, has contended that the orders in question have been passed by alleging that the petitioner has violated Rule 30(1)(XXVIII). He submits that the petitioner is not running a school from a residential building and therefore, the order is illegal. Since the petitioner is running the school prior to the date when the Rules of 2003, came to be notified therefore, the rules cannot be made applicable to the petitioner school.

On the other hand, learned counsel for the State of Haryana, has submitted that in fact the petitioner's school does not fulfill the requirement of Rule 30(1)(b) of the Rules of 2003, which has been extracted above. He

submits that a wrong reference to a particular sub rule would not entitle the petitioner to continue to run a school which is otherwise, not permissible. He further highlighted that the school is being run from a residential area. He while drawing attention of the Court to the rules has submitted that for existing schools, relaxed norms have been provided, however, once the petitioner does not even fulfill the relaxed norms, therefore, the writ is liable to be dismissed.

This court has carefully analyzed the arguments of learned counsel for the parties and with their able assistance, perused the paper books.

A school can be permitted to continue to run/operate provided it fulfills the norms/requirements, as provided in the rules. The rules are made by way of delegated legislation. These are also known as subordinate legislations. The Haryana Government enacted the Haryana School Education Act, 1995. Section 24 thereof enables the Government of Haryana, to make rules. In the exercise of this power, the rules have been made and notified.

At this stage, it would be important to note that there is no challenge to the validity of the Rules. Even otherwise, the rules framed are presumed to be valid and enforceable unless proved otherwise.

In the present case, it is apparent that the total size of the plot available with the petitioner's school is 250.83 square meters. It has been projected that approximately 1100 students used to study in that school. As per relaxed norms, the petitioner's school is required to have a minimum of 2250 sq. meters of area, for existing Senior Secondary School, in Arts and Commerce. Whereas the size of plot available with the petitioner is only

1/9th of the minimum area required. The petitioner's school is located in the municipal limits of Samalkha, which is an urban area. Thus, there is no escape from the conclusion that the school does not fulfill the norms.

It is well settled that a wrong reference to a particular sub-rule does not vitiate the order. The court while examining such orders, can, in appropriate cases, ignore the wrong reference to the rule in order to do substantive justice. No doubt, the school is an existing school which came to be established before the rules were made and notified. However, from the reading of the rules, it is apparent that these rules are applicable to the already existing schools.

In the facts of this case, the order passed by the Director does not result in applying the rules retrospectively. The rules cannot be said to have been applied, retrospectively only because these have been made applicable to the existing schools. The recognition of the petitioner's school has not been cancelled with a retrospective effect. The authorities have refused to renew or extend the recognition for the next academic session.

Now let's examine the arguments of learned counsel with regard to non-applicability of the subsequently notified rules because the school was constructed/established before the rules came into effect.

It is well settled that a delegated/subordinate legislation cannot be applied, retrospectively unless so provided by the primary law or in other words, unless the legislative Act permits the making of retrospective rules, making of retrospective rules is not permissible. It is not the case of the State that the 1995 Act authorises retrospective application of the rules. The question which arises is “as to whether merely because the rules notified in the year 2003, have been applicable to the existing schools, can the rules be

said have been made applied, retrospectively”?

In the considered view of this court, plain reading of the rules do not suggest that these have been made retrospectively applicable. The rules, as framed, are to regulate the school education, in State of Haryana. These rules have been framed in exercise of powers conferred by the Act. Still further, learned counsel for the petitioner has failed to bring to the notice of the Court that the State had made any promise that its school would be permitted to continue irrespective of any subsequent legislation. Further learned counsels have also failed to draw the attention of the court to the relevant Act or Rules, which may be applicable at the time when the school was established. The rules subsequently notified are regulatory.

In this regard, reference can be made to a judgment passed by the Supreme Court, in **Panjab University vs. Subhas Chander, (1984) 3 SCC 603**. In this case, the respondent-Subhash Chander took admission in MBBS course in the year 1965. The Senate amended the calendar with regard to grant of grace marks in the year 1970. Subhash Chander appeared in the examination in the year 1974. He contended that the subsequent amendment in the calendar would not be applicable to him. A full bench of the High court, agreed with him. However, the Supreme Court while reversing, held that such an amendment cannot be called retrospective. The Supreme Court further relied upon a previous judgment passed in **Bishnu Narain Mishra vs. State of Uttar Pradesh and others, AIR 1965 SC 1567**. In this case, at the time of recruitment, the retirement age of the employees was 55 years which was subsequently increased to 58 years. Thereafter, once again it was reduced to 55 years. The Supreme Court noticed that merely because an employee came to join the service before the amendment

would not be sufficient to hold that the amendment affecting the rights of existing employees, is being applied retrospectively. It was held that the amendment in the rules is applicable to the employees, who are in the service, even if they may have been recruited before the date of the amendment.

Still further, this aspect can be examined from another perspective.

The rules have been framed to regulate the working of School Education, Haryana. It is the school where young kids are groomed. The schools are required to be prepare the kids to face challenges of all kinds in the life. In the schools, apart from the space required for imparting academic education, a lot of space is required for extra curricular activities including sports. Thus, the aforesaid rules have been made for the benefit of general public as a whole. In such circumstances, even if for argument sake, the rules are considered retrospective, still these are applicable, particularly when these are for the benefit of the society at large. It would not be appropriate to cramp more than 1000 students, in a building constructed over an area of 250 meters, only.

In this case the government officials did not take any action, although there was blatant violation of the rules. A writ petition had to be filed by the residents of the area which led to the constitution of a Committee. Thereafter, a report was submitted. The order in question has been passed after granting sufficient opportunity to the petitioner's society. The petitioner's society has already been given sufficient time to make alternative arrangement or construct a new building. As noticed above, the writ petition was filed against the petitioner's school in the year 2016.

Since, then the matter has been actively pursued.

In these circumstances, this court, although reluctantly, does not find any substance in both the petitions. Once the school does not fulfill the minimum requirements, it would not be appropriate for the court to come to its rescue and facilitate its continuous operation.

Hence, no ground to interfere. Consequently, both the writ petitions are ordered to be dismissed.

24th November, 2020

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No