

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

Sr. No.205

**CWP No.7597 of 2021 (O&M)
Date of Decision : August 19, 2021**

Diksha Kohali and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gurcharan Dass, Advocate, for the petitioners.

Ms. Anju Sharma Kaushik, DAG, Punjab, for respondent No.1.

Mr. Alok Mittal, Advocate for respondents No.2 to 6.

SUDHIR MITTAL, J. (ORAL)

The petitioners are students of GGSSTP Model School, Power Colony, Rupnagar. Some of them are in the age group of upto 14 years. They have filed this writ petition challenging the order of respondent No.2 closing down the school at its present location and shifting the students and staff to GGSSTP High School at Nuhon Colony, District Rupnagar.

2. Minutes of the meeting dated 21.07.2020, whereby a decision was taken to close down the school and transfer the assets to the school at Nuhon Colony, is annexed as Annexure P-7. Para 4 of the said Minutes states that for optimal utilization no new houses would be allotted in the power colony and all employees would be adjusted in Nuhon Colony. This was one of the steps taken to reduce the cost of generation as is evident from the introduction to the minutes.

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3. Learned counsel for the petitioners has submitted that Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the RTE Act) was enacted for providing free and compulsory elementary education. Under the provisions of the said Act, all children in the age group of 6 to 14 years are entitled to free and compulsory primary education in neighbourhood schools. The Act has been passed to give effect to Article 21-A of the Constitution of India. Rules entitled the Punjab Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as the Punjab Rules) have been framed by the State of Punjab under the RTE Act and Rule 4 thereof lays down a limit of one kilometer from the habitation of a child for a school from Classes-I to V and a distance of three kilometers for a school from Classes VI to VIII. Nuhon Colony is at the distance of 15 kilometers from the present location and thus, the provisions of the RTE Act and Punjab Rules are being violated. Moreover, respondent No.2-PSPCL is covered within the meaning of 'local authority' mentioned in Section 2(h) of the RTE Act and under Section 6 of the same Act, it is duty bound to establish schools for the purposes of the Act. Learned counsel for the petitioners has also placed reliance upon a judgment dated 20.07.2019 passed by the Rajasthan High Court in CWP No.8990 of 2016 titled as ***Jule Khan Bai and another vs. The State of Rajasthan and others*** and judgment dated 04.05.2021 passed in WP(C) No.27401 of 2020 titled as ***School Managing Committee of Amaramunda Govt. Primary School, Amaramunda and others vs. State of Odisha and others and connected cases*** decided by the Odisha High Court.

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4. Learned counsel for respondents No.2 to 6 has submitted that the school and the colony are being shifted to cut down costs at Rupnagar as power generation in the Rupnagar power house is reducing. This is evident from the minutes of the meeting dated 21.07.2020 (Annexure P-7). The PSPCL is not a 'local authority' as defined in Section 2(h) of the RTE Act and it has no duty to establish a neighborhood school. Schools have been established by it only for the welfare of its employees. Still further, right of the students under the RTE Act are not being violated as there are a large number of elementary schools in the vicinity of the place in question. Thus, the writ petition has no merit and deserves to be dismissed.

5. Parties are at issue regarding whether the PSPCL is a 'local authority' or not. Section 2(h) of the RTE Act is reproduced below:-

“2(h) 'local authority' means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village.”

6. From the above definition, it is evident that Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat comes within the definition of 'local authority'. It also includes any other authority or body having administrative control over the school or empowered by or under any law to function as a 'local authority' in a city, town or village. Thus, only Municipal Corporations etc. and such other

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bodies are covered by the definition of 'local authority'. PSPCL does not exercise any kind of control nor does it have any function in relation to the administration of a city, town or village and thus, it is not covered under the aforementioned definition. The expression 'administrative control over the school' is with reference to a school being run by a 'local authority'. This would not convert any authority which establishes a school into a local authority within the meaning of the RTE Act. Thus, the argument of learned counsel for the petitioners that PSPCL is duty bound to establish a neighbourhood school is rejected. Under the RTE Act and Rules framed thereunder, the appropriate Govt. and local authorities have been enjoined to establish neighbourhood schools which are within the limits specified in Rule 4 of the Punjab Rules. The written statement filed on behalf of respondents No.2 to 6 enumerates the primary schools available to students of the locality and the same are within the prescribed limits. Accordingly, no fundamental or statutory right of the children is violated by closing down the school. The judgments in *Jule Khan Bai (supra)* and *School Managing Committee (supra)* are distinguishable on facts and are not applicable.

7. The decision is also not arbitrary or irrational in any manner requiring interference under Article 226 of the Constitution of India.

8. Thus, the writ petition has no merit and is dismissed.

August 19, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes