

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220

CWP-21434-2020 (O&M)
Date of decision: 31.03.2021

Sita Grammar School

.....Petitioner

versus

State of Punjab and another

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate
for the petitioner.

Mr. Aditya Sharda, AAG, Punjab.

Mr. Ferry Sofat, Advocate for respondent No.2.

GIRISH AGNIHOTRI, J. (Oral)

Petitioner-Sita Grammar School (through Office Superintendent),
has filed the present petition *inter alia* with a prayer for issuance of a writ in
the nature of certiorari quashing the order dated 23.11.2020 bearing file
No.SED-EDU303/44/2020-3EDU/107542/2020(1)(Annexure P-16) vide
which, respondent No.1-Department of School Education, Government of
Punjab, has cancelled No Objection Certificate of the petitioner-School by way
of a non-speaking order.

Records of the case show that this court, vide order dated
14.12.2020, issued notice of motion. The relevant extract of the order is
reproduced hereunder:-

“.....Learned counsel for the petitioner submits that the brief

facts which need to be noticed are that on 20.03.2020 (after completion of the previous academic year) respondent No.2 was admitted to 4th standard, however, on 21.03.2020 onwards, lockdown was declared due to COVID 19. The issue as to whether the schools are entitled to ask the students to deposit the fee for the new session was subject matter of writ petition CWP No.7409 of 2020. Vide order dated 30.06.2020, detailed directions were given and apart from the directions that schools were permitted to collect their admission fee, it was also directed that in case, the parent is still aggrieved in any manner with an adverse decision by the School on his application, he may approach the Regulatory Body, so constituted under Section 7 of the Punjab Regulation of fee of Un-aided Educational Institutions Act, 2016.

Learned Senior counsel then makes reference to a circular dated 03.07.2020 (Annexure P-9), whereby, all parents were requested to deposit their wards' fee from April to July 2020, latest by 15.07.2020. However it is the specific pleaded case of the petitioner (mentioned in Para 14 a) that on behalf of respondent No.2, there was a request to issue transfer certificate and accordingly, vide Annexure P-10 dated 14.07.2020, the said certificate was issued. However on 14.08.2020 on the intervention of a social worker, the SDM, Malerkotla had given its report, the relevant part of which is reproduced hereunder:-

“Both the parties were present on the next date of hearing of the complaint on 10.08.2020. Principal Sita Grammer School was asked to clarify the issuance of Transfer Certificate (TC) from the school. The Principal Sita Grammer School answered that they are ready to admit the name of the child and take a fee in installments from the

child's parents. She agreed to withdraw the TC issued from the school to Madhav Jindal.

After watching the complaint filed from the complainant it was found that the name of the child of the complainant has been struck off from the school and now the principal clarified in her answer that they are ready to readmit the child Madhav Jindal in the school and also to take a fee of Madhav Jindal in installments.

The Principal Sita Grammer School Malerkotla was instructed in the presence of the complainant to admit the child in the school immediately and to take a fee in installments and to cooperate with the parents of the child to avoid any problem like this in future and the principal agreed with this all. Under these circumstances it seems that no need of any further action is required.”

Learned Senior counsel by making reference to document Annexure P-12, submits that respondent No.2 had actually joined online classes, however, showcause notice was issued to the petitioner on 18.08.2020. The same was replied by the petitioner on 21.08.2020. The grievance as submitted by learned counsel for the petitioner is that by a cryptic non-speaking order, which is in violation to the directions especially Direction No.(d) of this Court and is also in violation to the report of SDM dated 14.08.2020, it was ordered that the State Government has decided to cancel the NOC issued to the school. He submits that in case, the said order is not stayed, the School, 1300 students who are studying in the school, 106 teachers teaching in the school and 68 non-teaching staff, would be adversely effected.

Learned Senior Counsel further submits that he has

instructions from the petitioner that they would not ask respondent No.2 to deposit three months' fee in advance and would rather allow him to pay fee in installments. He further submits that the petitioner would not stop respondent No.2 from attending online classes if respondent No.2 is willing to abide by the settlement arrived at before the SDM.

Notice of motion.

On asking of the Court, Mr. Suveer Sheokhand, Additional AG, Punjab and Mr. Ferry Sofat, Advocate, accept notice on behalf of respondent No.1 and respondent No.2 respectively.

Counsel for respondent No.2 however submits that in fact, the contention of the petitioner that respondent No.2 had applied for transfer certificate, is wrong. Learned counsel also submits that in fact after the show cause notice, a detailed enquiry was held by the District Education Officer, Sangrur. He further submits that in fact he has not taken admission back in the school. On a question put by this Court, learned counsel for respondent No.2 further submits that it is a matter of fact that till date, respondent No.2 has not deposited the fee and he would like to seek further instructions as to what shall be the decision of the parents of respondent No.2 regarding admission/continuation of classes of respondent No.2.

Adjourned to 25.02.2021.

In the meantime, operation of order dated 23.11.2020 (Annexure P-16), shall remained stayed.

Let the replies, if any, be filed within four weeks.”

Thereafter on 25.02.2021, this court further passed the following order:-

“Learned Senior counsel appearing for the petitioner

submits that after passing of the order dated 14.12.2020, passed by this Court, respondent No.2 has already taken admission elsewhere. He however submits that the urgency in the matter is on account of the fact that respondent No.2 for ulterior motive, is misusing the orders passed by respondent No.1.

Considering the urgency, respondent No.1 is directed to file reply within three weeks from today.

List for arguments on 31.03.2021.”

Today, on the resumed hearing of the case, on a court query, learned counsel for respondent No.2 has not denied the contention of learned senior counsel for the petitioner as recorded in the order dated 25.02.2021. In the said order, this Court had recorded the contention of learned senior counsel for the petitioner that respondent No.2 has already taken admission in some other school (that is not in the petitioner-school).

Learned counsel for respondent No.2 has submitted written synopsis with an oral request that the same be taken on record.

Oral request is accepted.

Registry is directed to paginate the same.

A perusal of the written synopsis submitted on behalf of respondent No.2 *inter alia* reveals that son of respondent No.2 (Master Madhav Jindal-hereinafter called as student) was a student of Class III in the petitioner-school and was to be promoted to Class-IV in the same school. However, due to COVID-19, a complete lockdown was announced. It is alleged that respondent No.2 was surprised to receive a letter dated 01.04.2020, whereby, Rs.27,950/- (rupees twenty seven thousand nine

hundred fifty only) was allegedly demanded as tuition fee for the months from April to June 2020.

Reference has been made to oral request(s) made by respondent No.2 to the School-Authorities to not to demand such huge fee bill. Reference has also been made to some alleged personal meeting held on 05.06.2020.

At this stage, it is relevant to record here that the specific pleaded case of the petitioner-school, with specific reference to para 9 of the petition, is that firstly approximately 150 new admissions were done over phone by the petitioner-school without even charging any fee or charges. Secondly, stand of the school is that inspite of repeated requests/reminders, respondent No.2 never came forward to enroll his son (student) for new session. Thirdly, it is submitted that inspite this, in all fairness, online education was continued by the petitioner-school. Forthly, the stand of the school as further mentioned in Para Nos. 10 & 11 of the petition, is that on 14.05.2020, respondent No.1 had issued circular regarding fee of private unaided schools-COVID-19. As per circular, the schools, which were providing online education during the period of lockdown, could charge only tuition fee. Accordingly, the petitioner-school issued its first fee circular dated 27.05.2020 to all parents including respondent No.2 demanding only tuition fee for the months of April and May without any compulsion on parents.

It is the specific pleaded case of the petitioner that all parents were free to deposited fee at their convenience, on monthly or quarterly

basis. It is then submitted by the petitioner that various parents came forward and deposited fee as per their convenience, however, respondent No.2 did not pay any fee and not even got enrolled his son (student) for the new session 2020-2021.

Lastly, it is pleaded case of the petitioner, specifically as mentioned in Para 14 A of the petition, that on 13.07.2020, respondent No.2 simply called the petitioner-school and stated that he does not wish to continue his child's education with the school. It is further pleaded that respondent No.2 also threatened the school authorities with dire consequences, if Transfer Certificate of his son was not issued immediately.

Accordingly, on 14.07.2020, a Transfer Certificate was issued which is appended as Annexure P-10.

On the other hand, the stand of respondent No.2 is that respondent No.2 made various complaints to several authorities including respondent No.1, National Commission for Protection of Child Rights, Deputy Commissioner, Senior Superintendent of Police etc., whereas, no action was taken. On 18.08.2020, a notice was issued to the petitioner by the office of the Director of Education Department (Sen. Sec.) SAS Nagar, Punjab School Education Board, Mohali. However, the stand of respondent No.2 is that when no action was taken on the show-cause notice dated 18.08.2020, respondent No.2 filed CWP-16106-2020 titled as Sahil Jindal@ Sahil Gupta vs. State of Punjab and others.

Vide order dated 01.10.2020, the above said writ petition was disposed of by this court with a direction to the authorities to look into

representation of respondent No.2. Thereafter, respondent No.2 filed COCP-2556-2020, which was also disposed of as having become infructuous, vide order dated 13.01.2021. It is lastly the contention of respondent No.2 that in the above background, the impugned order dated 23.11.2020 was passed by respondent No.1.

I have considered the rival submissions made by counsel for the parties.

For the facts so recorded, this Court deems it appropriate to allow the writ petition. The petitioner has made its stand clear that the petitioner-school had never demanded any fees or charges which was not in accordance with the directions given by respondent No.1. Learned senior counsel representing the petitioner has rightly placed heavy reliance on the circular dated 27.05.2020. From the perusal of the said circular dated 27.05.2020, it is evident that all parents were given an open option to deposit fee at their convenience on monthly or quarterly basis. Therefore, this Court finds that the impugned order has been passed in an arbitrary manner without examining true factual position. No document has been referred to which would on the contrary shows that demand was made by the school in violation to the directions of respondent No.1.

This court also finds that action of the petitioner-school was bonafide, which is evident from the fact that the petitioner on receipt of notice dated 18.08.2020 (Annexure P-14) had made its stand clear immediately vide reply dated 21.08.2020 (Annexure P 15). This court finds that once again there has been no document which has been placed on

record by the respondents to show that petitioner-school had issued any order or issued any circular contrary to the directions of respondent No.1. On this count also, this court finds that the impugned order dated 23.11.2020, deserves to be quashed. Still further, this Court further finds that on a complaint issued to the Deputy Commissioner, Sangrur, an inquiry was initiated by SDM, Malerkotla. In furtherance thereof, on 14.08.2020, SDM, had written to the Deputy Commissioner, Sangrur that the School is ready to admit the student in the school immediately and to take fee in installments. It is the pleaded case of the petitioner, with specific reference to Para 15B, that in compliance of the order dated 14.08.2020 (Annexure P-11), on the very next day i.e. 15.08.2020, the school had again started online classes for the student, but inspite this, respondent No.2 chose not to comply with its part i.e. to enroll the student for the new session and pay fee as convenient to him. It is also the specific case of the petitioner that respondent No.2 also did not give any application or representation for relaxation or waiver of fees. Such other students on whose behalf representation for relaxation or waiver of fee was made, the school had considered and granted the same. The list of such students has been appended as Annexure P-13. The petitioner has also made certain averments in Para 16-B of the writ petition but this Court is not inclined to go further on such contentions.

At this stage, it is also relevant to record that vide order dated 14.12.2020, this Court had noticed the contention of learned senior counsel for the petitioner to the effect that the school would neither insist upon

respondent No.2 to deposit three months fee in advance nor would stop the student from attending online classes. It was however left open to respondent No.2 and his son (student) to join online classes if they are willing to abide by the settlement arrived at before the SDM. On 14.12.2020 (when this Court had issued notice of motion), Mr. Ferry Sofat, learned counsel had put in appearance on behalf of respondent No.2. In the order dated 14.12.2020, learned counsel for respondent No.2 was permitted time to seek further instructions as to what shall be the decision of the parents of the student regarding admission/continuation of classes of the student.

Learned Senior counsel for the petitioner also informs that in the Session 2020-2021, the student (son of respondent No.2) has taken admission in 4th Class in some other School i.e. Primary School-GPS, Jandali Khurd, Sangrur.

In view of the above peculiar facts and circumstances of the case, this Court is of the considered view that the writ petition filed by the petitioner, deserves to be **allowed**. The impugned order dated 23.11.2020 (Annexure P-16) is quashed. The petitioner-school would be entitled to consequential relief as prayed for.

Ordered accordingly.

(GIRISH AGNIHOTRI)
JUDGE

31.03.2021

anju rani

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No