

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

222

CWP-4852-2019 (O&M).

Date of Decision: 28.03.2023.

DHARAMPAL

.. Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vipin Pal Yadav, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
for respondents No.1 to 6.

Mr. Pankaj Maini, Advocate,
for respondent No.7.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed for seeking issuance of directions to the respondents to take appropriate action on the pending Enquiry Reports and also to consider representation dated 31.12.2018 (Annexure P-7) by examining the fact regarding violation of norms.

A further prayer was made that respondent No.7 be restrained from running classes of 10+1 and 10+2, for want of requisite recognition/permission from the competent Authority since it is recognized only till Middle Level.

The petitioner, who claims to be the President of Kissan Club Village Kapriwas, Dharuhera, District Rewari, is stated to have submitted representation against respondent No.7-Model High School, Kapriwas, District Rewari (hereinafter referred to as 'School') in respect of the

illegalities committed by the Institute and regarding admitting the students to Classes for which it has no recognition. It is averred that a representation was submitted by the Block Development Officer dated 12.01.2016. The petitioner has, however, made a reference to the report dated 12.01.2016 in the petition in different paragraphs. In para No.3, the said report is stated to have been submitted by the Block Development Officer. In the same para, report is also stated to have been submitted by Naib Tehsildar (Respondent No.6) as well. A request is thereafter stated to be submitted by the Additional Deputy Commissioner to the Deputy Commissioner, Rewari on 31.03.2016. Vernacular of the said report mentions that report of Block Education Officer was obtained on 12.01.2016. The report was however to the effect that School building was constructed on land other than for which lease was executed and that the School was recognized till Middle level and also had temporary recognition till High School.

Without reference to any background, a report dated 14.10.2016 from the Deputy District Education Officer is appended as Annexure P-2, which is in purported compliance of order dated 15.03.2016 of the District Education Officer. The said report says that students were attending classes of 10+1 and 10+2 in School despite no recognition or affiliation. The said report was forwarded to Director Secondary Education, Haryana for further action. Simultaneously, Deputy Commissioner Rewari, is also stated to have sent a letter dated 12.04.2016 to Director Middle School to take action for showing wrong lease documents. Various letters written by petitioner are also attached.

It is averred that the petitioner has been espousing the grievances before the competent Authority, however, for reasons inexplicable, there has been no action.

A short reply on behalf of respondents No.1 and 2 was filed by the Deputy Director, Secondary Education, Haryana, wherein it was averred that an Enquiry by the Deputy District Education Officer, Rewari has been forwarded as per which the School was running 10+2 classes illegally and without any authority/recognition. It is further averred that the School Management in its response to the Authorities, contemplated shifting of the School premises to a new site for which the CLU had purportedly been granted by the Department of Town and Country Planning, Haryana. The said CLU was although for nursery classes, however, the management shifted the classes upto 10+2 level to the said premises. Pursuant to the recommendations made by the Enquiry officer, a show cause notice dated 07.02.2018 under Rule 42 (2) of the Haryana School Education Rules, 2003, as amended in 2007 was served upon the respondent No.7-School as to why the recognition be not withdrawn with effect from the subsequent academic sessions.

In response to the said show cause notice, the respondent No.7 submitted its reply that the School has provisional recognition for the year 2017-18 upto Classes 9th and 10th. An opportunity of personal hearing was granted to respondent No.7-School on 31.01.2019 whereafter the Director, Elementary Education, Haryana had accorded a period of six months to the respondent No.7-Institute for removing the deficiencies and failing of which action was to be taken in accordance with law.

Vide letter dated 15.03.2019, issued by the District Education Officer, Rewari, to the Manager of respondent No.7-School, it was directed not to shift the building of the school without approval of the Director Secondary Education, Haryana. A report was called for from the District Education Officer regarding the school in question wherein it was informed that the Management of the school has shifted the school building to some other place without approval of the Director. Upon receipt of the aforesaid report and noticing the fact that the respondent School Administration was running two schools with similar name i.e. "Model High School, Kapriwas" at two different places, it was held that in the absence of any recognition from the competent Authority, the School running at the new place was without any recognition and the same was unauthorized.

A separate affidavit of Special Secretary to Government, Haryana, School Education, Department, Panchkula had also been filed as per which the Deputy Commissioner, Rewari had submitted the Enquiry report vide memo dated 1244/Misc. dated 12.04.2016, wherein it was reported that the School was running classes upto 10+2 in violation of the applicable rules. It is further averred that the above said school was granted recognition upto 8th Standard vide Order No.G-3/10/2 dated 31.03.2010. The said school was running under the control of Directorate of Elementary Education. The case along with the report of the District Administration was forwarded to the Directorate of Elementary Education on 05.01.2017 for taking appropriate action in compliance thereof but Directorate of Elementary Education passed an order for withdrawal of the recognition of the Model Public School, Kapriwas, District Rewari, vide order No.6/64-

2016 PS(E) dated 28.12.2022 which came into effect from the next academic session i.e. 2023-24.

In its separate reply, respondent No.7 alleges that the case is mischievous and malicious. The petitioner wanted to pressurize the respondent School to purchase his land at a higher cost. When the School refused to submit to the pressure, the complaint was filed. Wrong parties were impleaded and Director Elementary Education was not made a party. A Committee was constituted by the Director Elementary Education which also associated the petitioner and filed a reply (Annexure R-2) that no classes of 10+1 and 10+2 were being held in the School.

It was reported by the Enquiry Committee that if the new building is as per rules, the school may be shifted to new building and the students be given new/safe/fully equipped building as per the environment available. The above said report was forwarded by the District Elementary Education Officer, Rewari, to the Director of Elementary Education, Haryana, wherein it was duly noticed that complaint submitted by the petitioner-complainant herein has been duly enquired into and that the Directorate may take appropriate decision with regard to the new building after getting the same inspected from the authorized officers. It is further averred that the order bearing order No.6/64-2016 PS(E) dated 28.12.2022 is already under challenge in CWP No.2971-2023 wherein notice of motion has been issued and the same is now fixed for 12.07.2023.

No replication/rejoinder to the written statements filed by the respondents has been filed by the petitioner.

Learned counsel for the petitioner contends that the respondent-Authorities are not taking appropriate action in accordance with

law despite the report to duly establish that Classes of 10+2 are being run from the school premises. He further contends that even though the respondents have recommended that the classes may be shifted in the new building that has been constructed by the petitioner, however, as per the reply filed by the Deputy Director, Secondary Education, the CLU for the said building had been granted only for nursery classes. It is vehemently argued that the petitioner having been noticed to be running 10+1 and 10+2 classes, a response from the office of Director, Secondary Education, was required and that necessary action is required to be taken by him. Instead the reply has been filed by the Director of the Elementary Education and a decision has been taken by him. He further contends that even the said decision is to take effect from the next academic year and the delayed decision was only to accord benefit and protection to respondent No.7.

While responding to the aforesaid contentions, learned counsel for the State contends that the short affidavit has been filed not by the Director of Secondary Education however, but in his the capacity as Special Secretary, School Education. Consequently, the said affidavit has to be read on behalf of Department of School Education and cannot be read as one filed by the Director of Elementary Education. He further points out that the school in question was never granted recognition for Secondary Education and as such, there was no occasion at all for Director Secondary Education, to exercise any jurisdiction on the said premises. Since the recognition to the school was granted only for Elementary Education, the competent Authority i.e. the Director, Elementary Education, has already passed an order withdrawing the recognition. Consequently, there is no further action that is required to be taken by the Directorate of Secondary

Education in the concerned matter. He submitted that as respondent No.7-School has also taken recourse to its remedies against the said order and that the orders so passed shall be duly implemented w.e.f. from the current academic session subject to any other interim order passed by the Court in the writ petition filed raising a challenge to the order whereby the withdrawal has been ordered.

Counsel for respondent No.7-School contends that the reference by the petitioner to the Enquiry Report of the Deputy District Education Officer forwarded to the District Education Officer, Rewari, pertains to the year 2016 wherein a reference was made to the school carrying out 10+1 and 10+2 classes. He contends that a subsequent complaint was also submitted by the petitioner wherein the Enquiry Committee was constituted by the District Education Officer associating petitioner herein. The said Enquiry Committee specifically reported that no 10+1 and 10+2 classes were being operated from the premises in question. He further contends that respondent No.7-School is running only a secondary school and not a Senior Secondary School. He contends that respondent No.7 has never applied for grant of recognition for Senior Secondary School. The application was submitted for running only a secondary school wherein the Committee reported that the infrastructure created by the petitioner is sufficient even to operate senior secondary classes. However, since no such application for grant of recognition for senior secondary school has been submitted, hence, there was no occasion for respondent No.7-School to run senior secondary classes. He vehemently argues that the report in their favour submitted by the Enquiry Committee after the earlier report of 14.10.2016 is not a subject matter of challenge at

all. The finding recorded in the said Enquiry Report thus cannot be dispelled despite no challenge. He submits that the averments thus at best can be disputed questions of fact which cannot be examined by this Court in exercise of writ jurisdiction. Moreover, as the recognition of the aforesaid school stands withdrawn and the respondent has taken recourse to the remedies available to it in accordance with law. He submits that the Directorate of Secondary Education has no competence to pass any orders. The exercise of the powers under Rule 42 of the Haryana Education Rules 2003 as amended in the year 2007 is only with the Authority which grants recognition/affiliation to the body in question. The Directorate of School Education not being the controlling Authority so far as the respondent No.7-School is concerned, it could had, at best, forwarded/recommended the matter to the competent Authority for passing an appropriate order. He submits that since recognition itself has been withdrawn, the order of provisional recognition granted to him to run Classes 9th and 10th would merge in the said order itself. He further contends that as recognition for shifting the school has also not been granted to the petitioner so far qua the new building, hence, the grouse espoused by the petitioner regarding any activity which is yet to be undertaken is pre-mature. No directions on the basis of apprehensions or probabilities can be issued by the writ Court.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present writ petition.

The controversy in question relates only to an illegality of action, if any, on the part of respondent No.7-School for continuing classes of 10+1 and 10+2 in the premises in question. The reliance of the petitioner

at the time of institution of the present petition was on the report dated 14.10.2016 submitted by the Deputy District Education Officer to the District Education Officer, Rewari. It is not disputed that subsequently as well, an Enquiry Committee was constituted which enquired into the said allegations after associating the petitioner and has returned a finding that 10+1 and 10+2 classes are not being run from the premises in question since 2017. It has also been reported that the new building of the school has already been constructed and the application for grant of recognition/affiliation for the aforesaid building is already pending for consideration with the Department of Secondary Education, Government of Haryana.

In so far as the allegations of the purported breach of non-removal of the deficiencies pointed out by the Department of Elementary Education are concerned, the response of the Special Secretary, School Education, Haryana, is categorical that pursuant to the Enquiry Report and after granting an opportunity of hearing to respondent No.7-School, an order has been passed and the recognition granted to respondent No.7-School has been withdrawn from the commencement of the next academic session 2023-24. Even though the Court expresses its displeasure for an inordinate delay in taking of decision considering that the report in question was submitted way back in the year 2017 and a decision in this regard was taken only in December 2022 i.e. after a lapse of more than 05 years, however, considering that a decision has nonetheless been taken, there is thus no occasion for issuance of any further directions to the respondents, at this stage. It is, however, expected and desired that the implementation of the aforesaid order be effectively monitored by the Directorate of

Elementary Education, Government of Haryana, on the commencement of the new Academic Session. Any non-compliance of the said order would entail consequences in accordance with law.

In so far as the next contention of the petitioner that the Directorate of Secondary Education is required to take action against the respondent No.7-School for carrying out classes without any recognition is concerned, the petitioner has, however, failed to refer to any provision of the Haryana School Education Rules 2003, amended in the year 2007 where-under the Directorate of Senior Secondary Education could take any action against the school which does not have any recognition/affiliation with the Directorate of Secondary Education especially when the said classes are no more being operated from the premises in question. Moreover, there is no complaint by any student or his parent.

In so far as the contention of the petitioner that the respondent-Directorate of Senior Secondary Education shall grant recognition to respondent No.7-School for senior secondary classes without ensuring compliance of the mandate of Rule 34 of the Haryana School Education Rules, 2003, is concerned, the said contention is pre-emptory and conjectural. No such application has currently been submitted by respondent No.7 to Director Secondary Education nor any such order has been passed granting recognition, hence, there is no occasion for this Court to examine the legality of any action of the Directorate of Senior Secondary School Education and/or to presume that the Authorities concerned shall not act in accordance with the statutory rules. In the absence of any cause of action, there can be no presumption of violation of the statutory procedure or the mandate of law.

Referring further to the issue espoused by the petitioner that the response of the Directorate of Senior Secondary Education has not been filed, the said contention is dispelled since a response by the Deputy Director Senior Secondary Education, has already been filed wherein they had in some way supported the case of the petitioner. Considering that the subsequent developments have also taken place after the submission of report in the year 2016 in the form of Enquiry Committee submitting its report, which such report has remained undisputed and uncontroverted and the findings of the Enquiry Committee having not been challenged by the petitioner in any proceedings or even the present writ petition, the finding of the subsequent Enquiry Committee has to be accepted, for the sake of adjudication of the present writ petition. It is thus to be presumed for the instant petition that the classes of 10+1 and 10+2 are not running from the premises in question.

In so far as the apprehension of the petitioner that the respondent Authorities are likely to permit/allow respondent No.7-School to carry out illegal operations and running of the school even after the commencement of the next academic session, the same, at this juncture, in my opinion is misconceived. There can be no such presumption that the Authorities will not act in accordance with law. In any case, in the event of the respondent Authorities not complying with the order, the petitioner would be at liberty to seek enforcement of the said order which has already been passed in a manner known to law.

In view of circumstances noticed above and taking into consideration the subsequent developments and also the order passed by the Directorate of Elementary Education, I feel that no further orders are

required to be passed in the present petition. The same is accordingly disposed of at this stage.

March 28, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No