

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-11528-2023

Date of decision : 26.05.2023

Shri Ram Ashram Public School and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Arjun Pratap Atma Ram, Advocate and
Mr.Sanah Sahni, Advocate
for the petitioners.

Mr.Ferry Sofat, Addl.A.G. Punjab
for respondents no.1 to 4.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 18.04.2023 (Annexure P-9) passed by the District Education Officer, Amritsar and consequential orders dated 04.05.2023 (Annexure P-12) and 09.05.2023 (Annexure P-14). Other prayers have also been made in the present writ petition.

2. Learned senior counsel for the petitioners has submitted that in the present case, order dated 18.04.2023 (Annexure P-9) has been passed by the District Education Officer without affording any opportunity of hearing to the petitioners. It is further submitted that the order has been passed after taking into consideration the complaints filed by some students and their

been precluded from proceeding to the next class on account of non-payment of fees. It is stated that the petitioner school had filed a civil writ petition bearing no.CWP-15118-2017 and on 14.07.2017 the said case was adjourned to 03.08.2017 and was ordered to be heard along with CWP-5802-2017. It is further stated that on 29.08.2017, in the bunch of writ petitions, a coordinate Bench of this Court was pleased to pass the following order:-

“After hearing all the parties and considering all the facts it is directed that all the petitioners-schools shall file undertakings (by the head of the body which governs them) to the effect that in case their petition is dismissed they would be liable to refund the excess money which they have collected and would have no objection if the property of the institute has to be sold for that purpose. These undertakings be filed in this Court with a copy to the Advocate General office on the receipt of the undertakings. After the receipt of the undertakings no coercive step be taken to recover any money from the petitioners-schools in terms of the impugned orders.

All the students will start paying the due fees for the academic session within a period of two months from today. This payment would be subject to any right of recovery which they may have pursuant to the decision of this petition. The parents are further injuncted from disrupting the functioning of the schools in any manner.

In the meantime, let the pleadings be completed. Adjourned to 27.09.2017.

Photocopy of this order be placed on the files of other connected cases.

(AJAY TEWARI)
JUDGE

August 29, 2017”

It is submitted that in the said writ petition, the issue which had been raised by some of the students, was that the petitioner(s) school was charging excess money/fees and coordinate Bench of this Court had directed the petitioner(s)-school(s) to file an undertaking to the effect that in

excess money. It was also directed that after the receipt of the undertakings, no coercive steps be taken to recover any money from the petitioners school in pursuance of the impugned orders. Learned senior counsel for the petitioner has further highlighted that it was specifically noted that all the students would start paying the fees which was due from the academic session within a period of two months from the date of the passing of the order and the parents were injuncted from disrupting the functioning of the schools in any manner. The abovesaid interim order was also passed in CWP-15118-2017 by the coordinate Bench vide order dated 11.09.2017, while disposing of CM-12914-2017 in CWP-15118-2017.

Learned senior counsel for the petitioner has referred to CMs-15747-48-CWP-2017 (Annexure P-5) moreso, from page 49 to page 58, to show that all the respondents herein are the persons who have not paid the fees as per the chart which was annexed as Annexure P-30 in the earlier writ petition and had been annexed along with the said CM in the earlier writ petition. It is stated that since the said private respondents were not paying the fees, thus, prayer was made before the coordinate Bench of this Court that they be permitted to discharge the said persons (as had been detailed in the chart which included private respondents arrayed in the previous writ petition) and the coordinate Bench of this Court had observed in the order dated 02.11.2017 that no permission from the Court was required for the said purpose. It is argued that the petitioner-school is an unaided school and in case the students, who do not even belong to EWS category, choose not to pay the fees to the school, then it is impossible for the school to survive and function as there are numerous expenses which are to be incurred by the petitioner school. Learned senior counsel for the petitioner has submitted

that as per provisions of the Right of Children to Free and Compulsory Education Act, 2009, under Section 3, the right of child to free and compulsory education is with respect to “neighbourhood school” and as per Section 6 of the said Act, it is the duty of the appropriate government and local authority to establish such school(s) within a period of three years from the commencement of the Act which was uptill 2011. Further reliance has been placed upon Rule 6 of the Right of Children to Free and Compulsory Education Rules, 2010 framed under Section 38 of the RTE Act in support of his submission. It is submitted that a perusal of chart (Annexure P-15) would show that the Government has established neighbourhood schools and it is open to the students to study in the said schools. It is further submitted that there is no violation of the Act or Rules committed by the petitioner-school.

3. Learned State counsel appearing for respondents no.1 to 4 has submitted the petitioner school has filed a civil suit for recovery of fees for a certain period and for the period subsequent to the same, the students are ready to pay fees regularly as prescribed by the school. It is further submitted that the petitioner school is also demanding money/fees for the period for which the civil suit is pending and that issue apparently seems to be the bone of contention and for the said reasons, the petitioner school is returning cheques. It is stated that the civil suit which has been filed in the year 2022 is with respect to a dispute prior to the year 2022 and the students are ready to pay the fees for the period which falls after the date of institution of the suit till date and would further continue to pay the prescribed fees every month and have further submitted that for the period which is the subject matter of the civil suit, the final decision of the civil

court would be binding on all the parties in the said civil suit.

4. Learned senior counsel for the petitioner in rebuttal has submitted that after passing of the order by the coordinate bench in the year 2017, no fees has been paid to the petitioner school. It is further submitted that in view of the stand taken by the learned State counsel, every endeavour would be made by the petitioner school to finally settle the matter and in case, the impugned orders are set aside and an opportunity of hearing be given to the petitioner school and to all the affected parties, then there are chances of amicable settlement in the matter.

5. Learned State counsel has submitted that he has no objection in case the impugned orders are set aside and an opportunity is given to the parties to settle the matter. It is further submitted that in case the students are ready to pay the amount/ fees for the period which is after the institution of civil suit to date and also to undertake to pay the prescribed fees for the subsequent period, then the said students be permitted to join the next class and their results be declared. It is stated that however, as far as the period which is the subject matter of the civil suit, the parties be granted liberty to pursue their rights in the civil suit.

6. This Court has heard learned senior counsel for the petitioner and learned State counsel and is prima facie of the view that the entire matter can be settled in case an opportunity of hearing is given to the petitioner and the parents and students before the District Education Officer.

7. Keeping in view the above said facts and circumstances, the present petition is partly allowed and the impugned orders dated 18.04.2023, 04.05.2023 and 09.05.2023 are set aside and the petitioner school is directed to appear before respondent no.4 on 05.06.2023 at 11:00

AM. Respondent no.4 is directed to issue notice to the parents/ students and to hear all the parties in the matter and pass a fresh order. Respondent no.4 is also directed to consider the matter as expeditiously as possible, in accordance with law and after taking into consideration the submissions made before this Court.

(VIKAS BAHL)
JUDGE

May 26, 2023
Davinder Kumar

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