



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109+219

Decided on :29.05.2025

1. CWP-3881-2020 (O&M)

INDEPENDENT SCHOOLS ASSOCIATION CHANDIGARH AND
ANOTHER . .Petitioners

Versus

CHANDIGARH ADMINISTRATION AND OTHERS

. . . Respondents

2. CWP-10560-2001 (O&M)

VIVEK HIGH SCHOOL,CHANDIGARH . .Petitioners

Versus

UT CHD.

. . . Respondents

3. CWP-323-2024 (O&M)

BHAGWANT SINGH CHARITABLE TRUST AND ANR.
. .Petitioners

Versus

CHANDIGARH ADMINISTRATION AND ORS.

. . . Respondents

4. CWP-29404-2022 (O&M)

INDEPENDENT SCHOOLS ASSOCIATION CHANDIGARH (REGD)
AND ANOTHER . .Petitioners

Versus

CHANDIGARH ADMINISTRATION AND OTHERS

. . . Respondents

5. CWP-29479-2022 (O&M)

INDEPENDENT SCHOOLS ASSOCIATION CHANDIGARH (REGD)
AND ANOTHER . .Petitioners

Versus

CHANDIGARH ADMINISTRATION AND OTHERS

. . . Respondents

6. CWP-11310-2023 (O&M)

INDEPENDENT SCHOOLS ASSOCIATION CHANDIGARH AND
ANOTHER . .Petitioners

Versus

CHANDIGARH ADMINISTRATION AND OTHERS



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connected matters -2-**

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Aashish Chopra, Senior Advocate with
Mr. Yash Pal Sharma, Advocate and
Ms. Swati Dayalan, Advocate for the petitioners.

Mr. Amit Jhanji, Senior Standing Counsel
for U. T. Chandigarh with
Mr. Sumeet Jain, Advocate,
Ms. Sukhmani Patwalia, Advocate,
Ms. Aashna Gill, Advocate and
Ms. Kudrit Kaur, Advocate and
Mr. Jaivir S. Chandel, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

1. By this common order, all the above mentioned writ petitions are being disposed of as all the writ petitions involve the same question of law arising from similar facts.

2. The primary grievance raised through the present bunch of petitions by the members of the Independent Schools' Association of Chandigarh amongst others are two;

First with regards to manner in which the provisions of The Right Of Children To Free And Compulsory Education Act, 2009 (hereinafter referred to as the "2009 Act") qua reservation of seats for children belonging to Economically Weaker Sections (hereinafter referred to as "EWS") of society in schools as well as qua reimbursement of expenditure incurred upon them, are being interpreted and applied qua private non-minority schools operational within the jurisdiction of union territory of Chandigarh by respondent Chandigarh Administration.



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Second, with respect to manner in which certain of conditions specified in notification dated 31.01.1996 (hereinafter referred to as “1996 Scheme”) which was a Scheme under which land was allotted to certain private non-minority and minority schools operating in the Union Territory of Chandigarh are being interpreted and enforced by the respondent Chandigarh Administration against all the private non-minority and minority schools.

3. That for the purpose of adjudicating the said issues, the petitioner schools are categorized in four Classes which are as under:-

***Class I).** Private Non-Minority Schools which were operational and were also allotted land prior to 31.01,1996.*

***Class II).** Unaided Minority Schools which were allotted land prior to 31.01.1996.*

***Class III).** Private Non-Minority Schools which were allotted land under the 1996 scheme and were bound by the terms and conditions of the 1996 scheme.*

***Class IV).** Unaided Minority Schools which were allotted land under the 1996 scheme and were bound by the terms and conditions of 1996 scheme.*

4 That certain facts are necessary to state for better understanding of the issue being decided and the same are stated as under:-

4.1 It is a conceded position between the parties that out of the total 83 schools operational within the territory of Chandigarh, a total of



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50 schools which includes 37 private recognized unaided non- minority schools and 13 unaided minority schools were allotted land prior to 31.01.1996 and were also operational prior to 31.01.1996, whereas the remaining 33 schools which is inclusive of both unaided minority and private non-minority schools were allotted land after 31.01.1996 and started operating thereafter on the said allotted land.

4.2 That the Chandigarh Administration issued a notification on 31.01.1996 wherein, the procedure and criteria for allotment of the land to educational institution (Schools) etc. on lease hold basis from 1996 onwards was formulated. The scheme prescribed certain eligibility parameters and conditions for allotment of land to schools which were to be achieved by the concerned educational institution along with the method of allotment. One of the condition imposed in the said scheme as enumerated in its clause 18 was that 15% or more seats as may be determined by the Chandigarh Administration from time to time in education institutions covered under the said scheme, will be filled up from children belonging to EWS of society and the fees to be charged from such children shall be nominal in range preferably the same fees as being charged from the students of Government institution. Therefore for the purpose of allotment of land after 1996 the institutions were governed by the 1996 Scheme. Schools which came in class III and IV as mentioned in para 3 herein before were allotted land under the said 1996 scheme and were therefore governed by the terms and conditions prescribed under the same.

4.3. It is pertinent to notice here that though the said scheme



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came into operation only in 1996, but in the year 2006, the Chandigarh Administration started implementing clause 18 of the said Scheme even qua schools which were already allotted land prior to the year 1996 and on account of the same there has been resistance from such schools which were allotted land prior to 1996 under the then relevant scheme, which issue remained undecided and has now been raised before this Hon'ble Court for the purpose of adjudication.

4.4. Further in the year 2009, the Government of India promulgated The 2009 Act and through the same made it compulsory for all schools covered under the definition of “schools” under the said act to admit and provide free education to children belonging to EWS category and reserve upto 25 % of the total seats to be filled in each school for them up to elementary classes. As per the settled law on the subject, as conceded by parties, the 2009 Act is not to be made applicable upon unaided minority institutions (Class II and IV schools).

4.5. The 2009 Act further provided for reimbursement of expenditure to certain category of schools primarily being the private unaided schools against the 25 % seats to be filled compulsorily under EWS category, subject to the provisions contained in the said Act. The relevant provisions of the said act which are germane to issues under adjudication in the present bunch of petitions which includes the definition of “Schools” and specific provisions pertaining to reserving seats for EWS category and qua reimbursement of expense incurred against the same are reproduced hereunder: -

“2. Definitions.—In this Act, unless the context



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otherwise requires,—

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“school” means any recognised school imparting elementary education and includes—

a school established, owned or controlled by the appropriate Government or a local authority;

an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

a school belonging to specified category; and

an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

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12. Extent of school's responsibility for free and compulsory education.—

For the purposes of this Act, a school,—

specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause



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(n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre- school education.

The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.”

4.6 A perusal of the above reproduced provisions of 2009 Act will show that under Section 12 (2) and the proviso given therein, in case the school was already under any obligation to provide free education to children on account of any concession qua land, building, equipment or other facilities received by it, then to the extent of such obligation the school shall not be entitled for reimbursement qua the said liability as provided for under the said section.

4.7. After the promulgation of 2009 Act, the Chandigarh



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administration while considering the claim of respective schools for reimbursement of their claim under 2009 Act qua 25 % seats filled up from the EWS students started impressing clause 18 of 1996 Scheme upon all private non-minority schools along with the provisions of the 2009 Act in a manner wherein with respect to the liability of reimbursement under section 12 of 2009 Act, the position taken by respondent Chandigarh administration is that it is only liable to reimburse to the extent of 10% of seats being filled from EWS children out of the total 25% mandated under the 2009 Act by all the private non-minority schools under its jurisdiction by reading Proviso to Section 12 (2) of 2009 Act along with 1996 scheme so as to say that all the private non-minority schools were already under obligation to fill 15% seats from EWS children for free i.e. without any fee under 1996 Scheme.

4.8 Against the said position taken by respondent Chandigarh administration the stand taken by schools falling under **Class I** and **Class II** is firstly that they fall outside the ambit of 1996 Scheme and secondly that on account of the same **Class I** schools are thus entitled for complete reimbursement against the 25% seats filled by them from EWS children in elementary classes in terms of 2009 Act.

4.9. That with respect to schools falling under **Class III** the stand taken is that the 1996 Scheme does not obligate them to provide 15% seats to EWS children for free and the proviso section 12(2) of the 2009 Act will not be therefore, applicable qua them, hence the respondent administration was required to reimburse them qua the total number of seats filled under 25 % quota as mandated by the 2009 Act for which they



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are entitled as per the manner provided for in 2009 Act.

4.10 That with respect to schools falling under **Class IV** the stand taken is again that under 1996 scheme they are entitled to charge nominal fees from the 15% students they admit from EWS children and that the said scheme does not obligate them to provide education for free and with respect to the applicability of 2009 Act it is again a conceded position between the parties here that as per settled law on the subject the concerned provisions of the same does not apply to unaided minority institutions.

5. That at the stage of arguments learned Senior counsel appearing on behalf of the petitioners'-association submits that it is a conceded fact that 37 private non-minority schools were in operation prior to the day 1996 Scheme came into operation and were already allotted land prior to the same and submits that making clause 18 of the 1996 scheme applicable upon such institutions so as to have a retrospective operation of said scheme cannot be sustained under law and implementation of clause 18 of 1996 by the Chandigarh Administration qua such 37 private non-minority institutions who are already operating prior to coming in effect of 1996 Scheme and having been allotted land prior to the said scheme is liable to be set aside and they be also made entitled for reimbursement of expenditures against the total 25% seats which they provide to EWS children under the provisions of the 2009 Act as mandated by the provision of the said act without making the same subject to 1996 Scheme.

6. Learned Senior counsel appearing on behalf of the



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respondents-Chandigarh Administration argues that the argument which is being raised by the learned Senior counsel on behalf of the petitioner is incorrect as the 1996 scheme in its clause 4 specifically mentions that the same covers educational institutions, therefore the said clause 18 of 1996 scheme has to be applicable upon all the educational institutions irrespective the date on which the 1996 Scheme came into existence and the applicability of clause 18 of 1996 scheme is de-horse the date notification of the said 1996 scheme and is not to be restricted only to schools which were allotted land in pursuance to the 1996 Scheme.

7. Learned senior counsel appearing on behalf of respondents -Chandigarh Administration further submits that as the members of the petitioners associations including all private non-minority schools and all the unaided minority schools are under obligation under clause 18 of the 1996 scheme to admit 15 % of the students belonging to EWS Category out of their total strength hence in accordance to proviso to section 12 (2) of 2009 Act as well as clause 18 of the 1996 scheme as the case may be, no reimbursement can be claimed by such institutions qua 15 % of the seats and therefore reimbursement which has already been granted against the rest 10% of seats being filled by a particular school as per its entitlement is perfectly valid and legal keeping in view the facts and circumstances of the present case.

8. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

9. Before proceedings further, it may be noticed that with regard to the non-minority institutions, learned Senior counsel for the



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petitioners-associations has stated before this Court that though certain issues qua filling of 25 % seats of the EWS students were raised in their petitions but petitioner-associations has decided to forgo the same and decided that 25 % seats will be given to the students belonging to EWS Category under the Right to Education Act, 2009 by such institutions without fail.

10. Learned Senior counsel for the petitioners'-associations submits that only liberty be given to the respective schools that in case any students recommended by the Chandigarh Administration under 25 % EWS category under 2009 Act who does not fulfill the eligibility criteria for grant of the admission under the EWS category, concerned school be given liberty to object to the same in reference to the eligibility of such recommended students to be decided by Chandigarh Administration.

11. Keeping in view the said statement of the learned senior counsel for the petitioners'-association recorded herein above, it is made clear that as per the undertaking given to the Court that all the private non-minority institutions i.e. **Class I** and **Class III** schools will be bound to give admission to children of EWS category to the extent of 25% of total seats to be filled by such schools under the 2009 Act.

12. It may be noticed here that the Chandigarh Administration will prepare the list of children belonging to EWS Category, who are to be admitted by a particular schools under 25 % quota reserved for EWS category under 2009 Act and the said list of children will be sent to the respective schools and in case, any school has any such objections qua eligibility of any child recommended in the list belonging to EWS



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Category or otherwise, the said objections will be referred back to the Chandigarh Administration for consideration and in case, any such request is received from the school concerned, the Chandigarh Administration will re-look into the said aspect qua the particular child recommended in EWS Category and in case, the objections raised qua the particular child qua eligibility is found meritorious, the said child will be replaced by the another eligible child who is belonging to EWS Category and in case, the said objection is found not meritorious, recommendations will be made by the Chandigarh Associations to the School concerned accordingly and the school concerned will be bound by such recommendation made by the Chandigarh administration made after consideration of the objection raised by it and will have no other option but to admit such children without there being any further correspondence with the Chandigarh Administration on the subject.

13. Now, the question which arise before this Court is whether, the private non-minority schools which grant admission to 25 % children belonging to EWS of society upto elementary classes under 2009 Act are entitled for reimbursement against the total 25 % seats which are being filled up them in terms of the said 2009 Act or the claim of the Chandigarh Administration that they are only liable for reimbursement against 10 % of such students and not of remaining 15 % in terms of clause 18 of 1996 scheme by placing reliance upon Section 12 (2) of the 2009 Act is correct or not.

14. That both the parties upon being asked do not dispute that as of now, the applicability of 1996 upon the schools concerned has not been



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decided by any Competent Court of law and the same has to be addressed by this Court to find out whether application of clause 18 of 1996 Scheme upon the institutions which were allotted land prior to coming in force of 1996 Scheme is valid or not.

15. That the question whether any scheme can be operated with in retrospective effect or not is to be decided on the basis of the settled principle of law in the said regard. It is observed here that though, the rules which are statutory, can be made with retrospective effect in case such retrospective applicability is provided under the statute itself but no scheme which does not have statutory effect and is only a policy decision, cannot be made with retrospective effect. Further, even if, any policy/scheme is being framed under the power given under any Act, then also, the policy so framed has to enumerate as to whether the same has retrospective effect in case the same has to be made operational with retrospective effect.

16. That a bare perusal of the 1996 Scheme, clearly shows that the same was framed for the allotment of the land to the educational institutions prospectively. Said scheme was proposed under Capital of Punjab (Development and Regulations) Act 1952.

17. The said 1996 scheme enumerated various eligibility conditions to be satisfied for the allotment of land to the educational institutions and the procedure to be adopted by the Chandigarh Administration, also mentioning the liabilities to be discharged by the schools claiming land under the said scheme. The said scheme if read in totality was for prospective operation with respect to how, the land is to



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be allotted henceforth for establishment of educational institutions without contravening any law. While prescribing such yardsticks for the allotment of the land, clause 18 of the 1996 scheme mentioned that such schools which will be allotted land under 1996 scheme will also have to admit the students to the tune of 15 % of their total strength from the children belonging to EWS of society on the terms and conditions mentioned therein. The 1996 scheme does not enumerate that the said clause 18 of 1996 scheme will be applicable even upon schools who have already been allotted land and were already operational as on 31.01.1996. Once, the scheme 1996 does not operate retrospectively or expressly include the institutions which were already allotted land prior to 31.01.1996, the endeavour of the Chandigarh administration to bring all the operational schools under the ambit of clause 18 of the 1996 scheme is not sustainable under law and is incorrect.

18. Further, it has been mentioned in the 1996 Scheme that the same will come into force from the date of its publication by the Chandigarh administration which fact is clear from the clause 2 of the said scheme. Said clause is reproduced as under :-

“2. It shall come into force from the date of its publication in the Chandigarh Administration Gazette.”

19. Respondent- administration has been unable to show as to how, once, the said 1996 scheme came into operation on 31.01.1996, the same can be made applicable upon an institution, which had already been allotted land prior to the coming in force of said 1996 scheme and has not



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availed the benefit of said scheme.

20. The reliance here can be placed upon Civil Appeal No. (s) 1699-1723 of 2015, titled as ***Bharat Sanchar Nigam Ltd. And others etc. Versus M/s Tata Communications Ltd. Etc. decided on 29.09.2022***, wherein Hon'ble Supreme Court of India has held that though, the legislature has competence to enact a law from retrospective effect and with respect to administrative/executive orders it has been held that the same cannot be made effective from retrospective effect unless the statute under which the same is being passed grants power to give effect to the same from retrospective effect, further, it has been held that in absence of any legislative mandate, any executive decision which is given retrospective effect cannot be sustained under law.

The relevant paragraphs No. 29 and 30 of the said judgment are as under:

“29. It is a settled principle of law that it is the Union Parliament and State Legislatures that have plenary powers of legislation within the fields assigned to them, and subject to certain constitutional and judicially recognized restrictions, they can legislate prospectively as well as retrospectively. Competence to make a law for a past period on a subject depends upon present competence to legislate on that subject. By a retrospective legislation, the Legislature may make a law which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.

30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the



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amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment.”

21. Learned senior counsel appearing on behalf of the respondents on the said issue further submitted that in case, the scheme of 31.01.1996 is read in totality it covers all the schools which were in existence prior to 31.01.1996. The said contention of the learned counsel for the respondents is not borne out from the reading of the said 1996 scheme. It has only been mentioned in the scheme that there are large number of schools which are working or operating in violation of the Capital of Punjab (Development and Regulations) Act 1952 (herein after referred to ‘1952 Act’), which is applicable in the territory of the Chandigarh Administration and in order to streamline, scheme has been framed for allotment of land to such institutions who are operating in violation of 1952 Act. Nothing has come on record to show that the schools to which the Chandigarh Administration has allotted land prior to 31.01.1996 were operating in contravention of the 1952 Act. Nothing



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has been brought to the notice of this Court that the 37 institutions which are private non-minority institutions of the petitioners'-associations and had already been allotted land as per the scheme which existed prior to 31.01.1996 were operating in any violation of the 1952 Act, hence, the contention being raised by the learned counsel for the respondents-U. T. Chandigarh Administration, that the 1996 scheme was to be made operational on all the schools, cannot be accepted as same is not borne out from the plain reading of 1996 scheme.

22. Learned counsel for the respondents- Chandigarh Administration further submits that in clause 4 of 1996 scheme , the word used is educational intuitions and does not specify the educational institutions as one which are to be allotted land under 1996 scheme and therefore, the same be read in harmony to include the existing educational institutions. Qua the said argument it may be noticed that the clause 4 of the 1996 scheme deals with eligibility criteria for the allotment of the land to the particular school/institutions. Clause IV of the 1996 scheme reproduced is as under :-

“Eligibility for allotment.--Unless otherwise provided under this scheme, an Educational Institution (School)/Society/Trust shall be eligible for allotment of land subject to the following:--

(1) The Educational Institution (School)/Society/Turst is having atleast one year of experience in running a recognised/affiliated Educational Institution (School) on the date of notice inviting applications.

(ii) The Educational Institution/Society/Trust has enough. funds at the time of applying to pay atleast



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25% of the advertised cost of the land and 25% of the estimated cost of the building to be erected there-upon and shall give sufficient proof for the same.”

23. Once land was never being claimed by Class I and Class II schools of petitioners-associations under 1996 scheme which were in existence and were allotted the land prior to 31.01.1996, therefore, the said schools cannot be covered under the definition of “education institutions” as given in 1996 Scheme. The institutions which claimed allotment of land under clause 4 of the 1996 scheme, are only to be envisaged as educational institutions within the ambit of the said 1996 scheme and not the educational institutions who were already allotted the land and were operational prior to the 31.01.1996.

24. Learned Senior counsel appearing on behalf of the Chandigarh Administration submits that as per the terms and conditions of the allotment letter of educational institutions who were allotted land prior to 31.01.1996 they were bound by any direction given by Chandigarh Administration in future and therefore, the said institutions will by default be bound by clause 18 of the 1996 scheme keeping in view the said terms and conditions.

25. With regard to said argument it may be noticed that the conditions of reservation of 15% of seats in favour of the students belonging to EWS category as prescribed by clause 18 was only a part of policy i.e. 1996 scheme which was envisaged for allotment of land to educational institutions upon them fulfilling the conditions mentioned therein. The said policy was not exclusively with regard to grant of reservation of seats in favour of the students belonging to EWS category. Had the same been a generalized policy with regard to the reservation of the seats independent



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of the primary character of the scheme which was with respect and for the express purpose of allotment of land to educational institutions, the State would have been within its right to impose the said conditions on all the institutions. Once, 1996 policy is basically a land allotment scheme and expressly prescribes conditions for the same, the said conditions can only then be applied qua the institutions which benefit under the said scheme. A specific clause of the said scheme which only forms as one of its ancillary part cannot be then treated as a general clause to be implemented upon all the institutions hence, the arguments raised by learned senior counsel for the Chandigarh Administration that keeping in view the conditions of the allotment letter qua the institutions who were allotted land prior to 31.01.1996, clause 18 of the 1996 scheme can be made applicable qua them, cannot be accepted.

26. Further, 1996 scheme was notified on 31.01.1996. Nothing has come on record to show that the same was implemented upon schools which were allotted land prior to coming in effect of 1996 scheme. Clause 18 of 1996 scheme was directed to be implemented upon the educational institutions which were in operation having been allotted land prior to 31.01.1996 for the first time only in the year 2006 even as per the respondents themselves and the same was objected by such schools. Once, for a period of 10 years, even the Chandigarh Administration never raised any claim to implement the said clause 18 of 1996 scheme upon the institutions which were already in operation as on 31.01.1996 and were allotted land prior to the said date for a period of one decade, the said action of the Chandigarh Administration itself proves that they never intended to implement clause 18 of 1996 scheme upon the institutions which were



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already in operation as on 31.01.1996. Even the notice was given to the institutions in the year 2006. The dispute regarding the said issue remained pending from 2006 itself and before it could be settled, the 2009 Act was enacted which envisaged 25 % seats to be reserved by such institutions to be given to the students belonging to the EWS category and such institutions became bound by such reservation.

The factual position as mentioned hereinbefore also shows that even Chandigarh Administration never implemented clause 18 of the 1996 scheme upon the institutions which were already in operation prior to 31.01.1996 after its publication till the coming in effect of 2009 Act. Therefore, only on account to save itself from reimbursement as mandated under 2009 Act the cushion of clause 18 of 1996 scheme is being sought to be taken in a totally arbitrary and legally unsustainable manner without their being any valid jurisdiction.

27. Hence, the claim of the Chandigarh Administration that the members of petitioners-associations which were already in existence prior to 31.01.1996 and were never allotted land under 1996 Scheme were bound to give 15% seats to the students belonging to EWS category under 1996 scheme held to be not sustainable under and law and is hereby rejected.

28. In light of the findings recorded by this Court herein before, it is thereby held that clause 18 of 1996 scheme cannot be made applicable qua schools covered under **Class I**. Further, as schools which form part of **Class II** were also allotted land prior to coming in force of 1996 Scheme and as nothing has brought on record even qua them to show that they were operating in violation of 1952 Act, therefore on account of the same rationale elucidated hereinbefore it is held that clause 18 of 1996 scheme cannot be



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enforced even qua them.

29. Now once, the said issue has been finalised in the above terms by this Court, the shelter being taken by the Chandigarh Administration under Proviso to Sub Section 2 of the Section 12 of the 2009 Act that the Chandigarh Administration is not liable to reimburse such schools i.e. those belonging to **Class I** qua the 15% seats under clause 18 of the 1996 scheme, the same is also held to be incorrect and unsustainable. It is made clear that non-minority educational institute which were granted land prior to 31.01.1996 and were operational as on 31.01.1996 and were never allotted land under 1996 scheme will be entitled to full reimbursement of total seats filled by such institutes keeping in view the 25 % quota provided, under 2009 Act for economically weaker section, without any deduction on account of clause 18 of the 1996 Scheme.

30. Even if, it is assumed for the sake of argument that clause 18 of the 1996 scheme is to be made operational qua the institutions which were allotted land prior to 31.01.1996 and that they are to be treated on the same footing as the educational institution which were allotted land under 1996 scheme, the question as to whether, the non-reimbursement to the tune of 15% of the seats to be filled from the economic weaker section by Chandigarh Administration to such schools is correct or not is also dealt with by this Court hereinafter in the instant judgment.

31. Now, the question which arise before this Court is with regard to interpretation of the clause 18 of the 1996 scheme in respect of institutions which were allotted land under 1996 scheme i.e. Class III institutions as mentioned in para 3 of this order.

32. The court will now ascertain as to whether the claim of the



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Chandigarh administration that they are not liable to reimburse any amount qua the 15 % seats which such institutions were liable to reserve for the students belonging to EWS category under clause 18 of the 1996 scheme by reading the same with the provisions of the 2009 Act is correct or not. In order to appreciate the issue better, the said Clause 18 of 1996 Scheme is reproduced hereunder:-

“Educational Societies/Institutions (Schools)/Trusts shall required to :--

(i) To have 25% nominees of the Chandigarh Administration and the total number of members of Management Committee shall not be more than 16.

ii) to reserve 15% or more seats as may be determined by the Chandigarh Administrations from time to time, in the schools for students belonging to economically weaker sections of the Society and the fee charged from those students shall be nominal preferably the same as is charged from the students Government institutions.

iii) follow instructions/guidelines/directions issued the Chandigarh Administration from time to by time regarding fee structure, reservations and Admission procedure etc.

iv) appoint qualified teaching/other Ministerial staff and pay them the salaries as is required to be paid in an aided school in the Union Territory,



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Chandigarh.”

33. It may be noticed here that the said clause since the coming in force of 1996 scheme has been amended twice wherein firstly the 15% reservation was reduced to 5% and thereafter again restored to 15%, therefore the initial clause as reproduced herein above, remains applicable upon the institutions which were allotted land under 1996 scheme.

34. A bare perusal of the above reproduction would show that the educational institutions allotted land under clause 18 of 1996 scheme were required to reserve 15 % of the total seats for EWS students as determined by the Chandigarh Administration from time to time.

35. The said clause 18 of 1996 Scheme further specifies that the fees to be charged from the students belonging to EWS category should be at nominal rate preferably the same as being charged from the normal students of the Government institutions. The language makes it clear that the nominal fee can be charged by the institutions concerned from the students belonging to EWS category who have taken the admission against the reserve quota of 15% but such nominal fee preferably should be equivalent to fee which is being charged from the students of any government institution.

36. That the said clause is being interpreted by the Chandigarh Administration to mean that fee to be charged from such students who are admitted by the school concerned under 15 % quota reserved for the students belonging to EWS category, has to be same as being charged from the students studying in the Government Institutions and as the Government Institutions do not charge any fee from the students studying



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in elementary class, no fee can be charged by such educational institutions from the students who are admitted by the school concerned under 15 % quota reserved for the students belonging to EWS category in accordance with clause 18 of 1996 scheme. Therefore as per respondent Chandigarh administration, those 15 % seats are to be treated as free seats without payment of any fee and when read with Section 12 (2) proviso of 2009 Act, State is not liable to reimburse such educational institutions qua 15 % of seats as the said institutions were already under liability to provide education against 15% seats for free.

37. That the argument which is being advanced by learned senior counsel for the respondents- Chandigarh Administration that as no fees up to the elementary education is being charged from the student who is studying in the Government institution, the private institution which are non-aided/ non-minority or minority institutions which are covered under Clause 18 of 1996 Scheme also cannot charge anything from the students who are admitted by such school concerned under 15 % quota reserved for the students belonging to EWS category as per clause 18 of 1996 scheme is not made out upon reading of clause 18 of 1996 scheme.

38. It may be noticed here that the language of clause 18 of 1996 scheme does not suggest that the **Class III** educational institutions are bound as to what the government does with regard to the students who are studying in the Government Institutions. The embargo put upon the institutions which came into existence after 31.01.1996 was that they have to admit 15% seats of their total strength from the EWS of society and that too on the nominal charges. The word “preferably” denotes only



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a suggestion which was given to such institutions to follow. Whether, such suggestion is followed by the institution in letter and spirit is their own decision but they cannot be stopped from charging “nominal fee” otherwise. Such institutions cannot be forced to say that they are bound not to charge any fees from the students who are admitted by the school concerned under 15 % quota reserved for the students belonging to EWS category, as the same is not being charged from the students who are admitted in the Government institutions. The word nominal has to be interpreted in a manner that such nominal fee can be charged from the students belonging to EWS of society as is within their means. A complete reading of clause 18 of 1996 scheme envisaged that charging of fee “preferably” as being charged by the Government institutions is only indication of suggestion and is not mandatory. Therefore, it is held that schools forming part of *Class III and Class IV* are within their jurisdiction to be allowed to charge “nominal fee” from students admitted against 15% seats under clause 18 of 1996 scheme.

39. A bare perusal of the proviso 2 of Section 12 of the 2009 Act makes it clear that where a particular school is already under obligation prior to the promulgation of 2009 Act, to provide free education to any number of the children under any scheme under any liability or on account of having received any land, building, equipment or any other facility either at free of cost or at concessional rate, such schools are not liable to be reimbursed under 2009 Act to the extent of such obligation by the State.

40. In the present case, as already noticed hereinbefore, when



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clause 18 of 1996 scheme is read with Section 12 (2) proviso of 2009 Act, there is no liability ever fasten upon the petitioner- associations to give “free” education to the 15 % of Students belonging to the EWS Category. Even under Clause 18 of the 1996 scheme “nominal fees” was allowed to be charged, hence, the proviso to sub section 2 of section 12 of 2009 Act in the facts and circumstances of the present case will not cover clause 18 of 1996 scheme so as to discharge the respondent Chandigarh Administration from its obligation to reimburse such educational institutions against the 25 % seats which they fill from children belonging to EWS quota under 2009 Act. Further it may also be noticed that nothing has been brought on record to further suggest that there was any other obligation on the non-minority institutes which came into existence after 31.01.1996 to provide free education to children of EWS of society prior to the promulgation of the 2009 Act which might have given the respondent Chandigarh Administration the benefit of proviso to subsection 2 of section 12 of 2009 Act. Hence, it is held that the deduction of reimbursement of fee qua 15% of seats being filled by the institutions under 2009 Act by the Chandigarh Administration is not correct and the respective schools are entitled for total reimbursement of fee qua the 25% of the seats being filled by them from the EWS category under 2009 Act.

41. The next question which needs to be determined is with respect to the manner for determination of the said “Nominal Fee” and with respect to the applicability of the clause 18 of the 1996 scheme upon the unaided minority institutions forming part of ***Class IV*** schools as 2009



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Act is not applicable upon such educational institutions. It may be noticed that as detailed earlier, under clause 18 of 1996 Scheme, the class IV institution is free to charge nominal fee from such students.

42. With regard to determination “nominal fee”, the same has to be decided by the Government in consultation with the such institutions concerned so that no ambiguity with regard to the fixation of the such nominal fees which is to be charged from students who are admitted by the unaided minority-school concerned under 15 % quota reserved for the students belonging to EWS category under 1996 scheme remains. Hence, it is held that qua the 15 % students which are to be admitted by **Class IV** schools under clause 18 of 1996 scheme, the nominal fee to be charged by such educational institutes will be fixed by the Government in consultation with the institution concerned or the associations as the case may be so that the institution does not suffer any financial prejudice. The said consideration should be finalized within the period of three months from the receipt of copy of this order.

43. It may be noticed herein that as per law applicable to such unaided minority educational institutions, 85 % of the income generated by the institutions is to be invested upon the intuition only for its betterment and hence, in case, 15 % seats reserved for EWS students are not to be made chargeable even qua the nominal fee structure, the institution will suffer financial prejudice which has to be take care of by the State so that neither EWS students suffer nor the unaided minority educational institutions feels the brunt of said financial embargo.

44. The ancillary question which now arise for determination



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raised by learned senior counsel for petitioners'-association is with respect to the modalities for reimbursement to be done against 25% seats to be made to **Class I** and **Class III** schools under 2009 Act by respondent Chandigarh Administration. As, the Schools are to function on the basis of the fees, the same has to be streamlined, so that none of the educational institutions suffer any further prejudice so as wait for their dues from the Government concerned endlessly.

45. Keeping in view the totality of the circumstances, as the reimbursement under 2009 Act qua 25 % seats to be given to the students belonging to EWS category by the U.T. Chandigarh is to be done from the budgetary finances received from the Union of India, it is directed that within the period of three months of finishing of a particular session of school the schools/institutions be made the reimbursement for which they are entitled under the 2009 Act against the 25% students of EWS society admitted by them.

46. In case, the said reimbursement is not done by the Chandigarh Administration within the period of three months as stated herein above, the institute will be entitled for the interest on the said delayed amount of reimbursement @6% per annum for the period, the same is delayed by the Chandigarh Administration so as to compensate the institute concerned.

47. Until now, the Chandigarh Administration was granting reimbursement against only 10 % of seats out of the total 25 % seats mandated to be reserved under 2009 Act and the quantum of fee stood decided by the Chandigarh administration. Learned Senior counsel for the



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petitioners- associations submits that petitioners-associations has some grievance qua the quantum of fee fixed for reimbursement per student, which needs to be adjudicated.

48. With respect to the determination/calculation of the quantum of the said reimbursement as being requested by Learned senior counsel for the petitioner-associations in accordance with the manner prescribed by 2009 Act, it is noticed that this Court is not an expert body to fix the said quantum of fees. The same can be done by the Chandigarh Administration, hence, the petitioners-associations are given liberty to raise the said issue with the Chandigarh Administration by filing representation and in case, any representation is received by the Chandigarh Administration from the Institution concerned, the same be decided within the period of four months after due consultation with the institution concerned keeping in view the expenditure which the institute concerned incurs upon a particular student and to balance the equity so that neither of the party suffer any financial prejudice. Learned State counsel submits that any such representation received will be decided within the period of 4 months by passing speaking order and necessary consultations with the institutions will be done before passing the requisite order on the issue.

49. Further in view of the position of law settled hereinbefore qua their entitlement of reimbursement qua actual seats filled under 25 % quota from EWS category under 2009 Act, the respective schools are given liberty to submit their respective claim petitions before the Chandigarh Administration qua the arrears which is due to them and



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Chandigarh Administration is directed to decide the said claim petition filed by the institutions within a period of four months of the receipt of such claim petition, by keeping in mind the order passed by this Court qua the entitlement for reimbursement of the said schools and the said reimbursement will be made to the respective institution within the period of four months from raising such claim.

50. In case, such claim of reimbursement for which, institutions are entitled qua previous years is not decided within the period of four months, the institution concerned will be entitled for the interest @ 6% per annum on the delayed payment of the arrears as stated herein above from the date of passing of four months of the claim being raised by the institutions till actual payment is made.

51. The last argument which has been raised by the learned senior counsel for the petitioners-associations is that recognition granted to two educational institutions who are the members of petitioners-associations has been withdrawn on the ground of violation of requirement to admit 25 % under EWS category under 2009 Act.

52. Learned Senior counsel for the petitioners-associations submits that as all the members of the petitioners-associations which are unaided and non-minority institutions have already undertaken to comply with the requirement of giving admission against 25% seat to students belonging to EWS category under 2009 Act, and they will admit the students as recommended by the Chandigarh Administration without fail henceforth, the said issue no longer exists, hence, the ground which has been raised to the cancellation of the recognition no longer exist, hence,



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such impugned orders may kindly be set-aside in view of the undertaking given by institutions as recorded in the order being passed today.

53. Learned senior counsel for the respondents- Chandigarh administration submits that despite the earlier undertakings, the schools have violated the requirement to admit children from EWS category to 25 % seats, hence, they should be put to the strict condition including the penalty for any future default on this count.

54. Keeping in view the totality of circumstances, the impugned order canceling the recognition which has been passed on the ground of violation of 2009 Act, are set aside. This Court feels that once, those educational institutions are building the next generation, any undertaking given by educational institutions especially to the Court will be fulfilled by them without failure. They will comply with the admission of EWS students as envisaged under 2009 Act subject to observation made herein above. But in case, any such institution violates the said undertaking given before this Court qua the admission of 25% seats under 2009 Act, the Chandigarh Administration is free to pass an appropriate order in accordance with law after giving due notice to such schools with regard to the cancellation of recognition and the Chandigarh Administration will as to be free even to impose penalty of withholding reimbursement which is also pending to be done to such schools qua reimbursement claimed by such institutions.

55. Learned Senior Counsel for the petitioners-associations submits that though there are certain other issues which arise but keeping in view the fact that the main issue has been decided, the said issues are



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not being pressed at this stage, with liberty to agitate the said issue at later stage in case the need arises.

- 56. Ordered accordingly.
- 57. No other argument is raised by either of the parties for the consideration of this Court.
- 58. The present petitions are disposed of in above terms.
- 59. Pending miscellaneous applications, if any, shall also be disposed of.
- 60. A photocopy of this order be placed on the files of connected cases.

**(HARSIMRAN SINGH SETHI)
JUDGE**

29.05.2025

Riya
Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~