

viii) It is well settled law that the school/educational institutes can enhance and fix the fees keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teacher and staff, future plans for expansion and/or betterment of the institution etc. and in the case in hand when the respondent school started functioning on 10 bighas of land now the school has 18 bighas of land which is being developed for expanding the school and the sports facilities for the students.

The Judgment

67. Keeping in view the legal principles in mind we proceed to deal with the issues spelt out in the orders dated 01.05.2012 on which replies from the various parties were solicited:-

i) *Whether the schools affiliated to them have submitted the annual profit and loss accounts to them during the last five years, and if not, what action has been taken by them against the defaulting schools?*

68. ✓ As far as Indian School Certificate Education is concerned, in response filed by it, it is mentioned that in terms of provisions of the affiliation guidelines, it does not ask the school to submit their annual profit and loss account on year to year basis. However, if any, specific complaint is received against a school, the same is duly looked into by the Council. Further the schools are required to furnish their annual accounts statement with the Education Department of the respective State Governments annually as per the relevant local laws.

69. ✓ Punjab School Education Board has replied by stating that it is mandatory to all the private affiliated institutions to submit the annual account

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reports/balance sheets duly counter signed by the Chartered Accountants along with Annual Progress Reports failing which the affiliation of the concerned institutions cannot be continued. It is also mentioned that if a school does not submit the balance sheet, it is asked to submit the same. However, no specific information is provided as to whether any schools have defaulted in submitting the annual accounts and if so action taken against them. This affidavit, therefore, does not give answer to the query raised. Thus as far as I.S.C.E. is concerned, we direct that those schools who have defaulted in submitting the annual accounts, immediate action be taken and show cause notices be issued for de-affiliation of such schools.

70. Punjab School Education Board has stated that all the affiliated schools have complied with the requirements of submitting their annual account statements.

- ii) *Whether the schools affiliated to them have followed the mandatory requirement of the Right to Education Act, 2010, i.e. giving admission to 25% students of weaker section of the society and have supplied books and addresses as per the requirement, and if not, what steps have been taken by them in this regard?*

71. It is apparent from the position taken by the petitioners, the Government/Statutory Bodies as well as Schools/Association of Schools in question, though there may be endeavour to fulfill the mandatory requirements of giving admission to 25% students of weaker section of the society, the fact remains that the aforesaid provision has yet to be turned into reality. Even when some

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children belonging to Economically Weaker Section are given admission, many seats in these schools meant for E.W.S. go unfilled.

72. The RTE Act was enacted in implementation of the mandate and spirit of Article 21A of the Constitution of India inserted vide 86th Amendment Act, 2002. Article 21A provides for free and compulsory education of all children in the age group of 6 to 14 years as a Fundamental Right. To achieve this goal, Section 12(1)(c) requires private unaided schools, some of which in Chandigarh are represented by respondent No.9 to admit in Class-I, to the extent of at least 25% of the strength of that class children belonging to Economically Weaker Sections (EWS) and disadvantaged groups in the neighbourhood and provide free and compulsory elementary education till its completion. Such Schools, under Section 12(2) of the RTE Act shall be reimbursed expenditure so incurred by them to the extent of per child expenditure incurred, by the State or the actual amount charged from the child whichever is less. Since some Schools are already under obligation (as per the term of allotment of land to them) to provide free education to a specified number of children, the second proviso to Section 12 (2) provides that the Schools shall be not entitled to reimburse to the extent of the said obligation. Though the RTE Act in Section 12 (supra) also elsewhere uses the word "neighbourhood" but does not define the same.

73. In first place, it thus becomes incumbent upon the authorities to frame the Rules to define 'neighbourhood'. We may mention that the Government of Delhi has framed such Rules known as Right of Children to Free and Compulsory Education Rules, 2010 (RTE Rules) which prescribe the limit of neighbourhood in respect of children in Classes-I to V as within walking distance of 1 Km. and in respect of children in Classes VI to VIII as within 3 Kms. If similar Rules are made

children in the neighbourhood of a particular school can always have the access to the schools for admission and the schools can also be compelled to admit those students. While fixing the limit to define 'neighbourhood', the authorities can also take into consideration the report of April, 2010 of the Committee on Implementation of the RTE Act and to the 213th Report on the RTE Bill of the Department related Parliament Standing Committee of Human Resource Development which report was presented to the Rajya Sabha. Still it may not be necessary to confine the admission only to those children living in neighbourhood inasmuch it is the bounden duty of the all concerned to ensure that the aforesaid provision of the Act is implemented. The Government, therefore, while framing the Guidelines can provide for the following:-

- (i) Admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 Km. of the specific schools;
- (ii) In case the vacancies remain unfilled, students residing within 3 kms. of the schools shall be admitted;
- (iii) If there are still vacancies, then the admission shall be offered to other students residing within 6 kms. of the institutions;
- (iv) Students residing beyond 6 kms. shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 kms. area.

74. The Supreme Court in a recent judgment in the case of Society for Unaided Private Schools of Rajasthan Vs. Union of India and another 2012(6) SCC 1, has also discussed the issue elaborately which should be kept in mind while giving proper implementation to this provision.

- iii) *Whether the salaries paid to the teachers and other employees, by the schools affiliated to them, are in accordance with the rules and guidelines framed by them or the State Government?*

75. In so far as the payment of salaries to the teachers and other staff is concerned, it appears that most of the institutions are paying salaries in accordance with the Rules and Guidelines framed by the State Government and in certain cases they are even paying higher salaries than the salaries paid by the Government Schools to their teachers. However, there may be certain schools who are violating these norms by not paying the salaries in accordance with the Rules and Regulations framed by the State Government. It is also possible that certain schools may be showing salaries paid as per the Government norms on papers but infact paying lessor salaries. There has to be some mechanism to check this malpractice in respect of which directions are issued at the appropriate place.

- iv) *Whether the schools affiliated to them are prescribing the books of private publishers, if yes, what steps have been taken by them for directing the schools to prescribe the books published by NCERT?*

76. No doubt, there should be an attempt to prescribe the books of NCERT wherever available. However, it is also a matter of fact that there is no law or Regulation which mandates the schools to prescribe books of NCERT only to the students. It is stated by various schools that the books are chosen keeping in view the intellectual competitive world as also the intellectual autonomy of the teachers to teach the students and any restriction in that regard would only hamper

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O the horizons of the students to attain knowledge. This issue is mainly raised in Civil Writ Petition No. 3834 of 2010 which pertains to Green Grove Public School, Khanna. It is specifically pleaded by the said school in its reply that the said petition filed as Public Interest Litigation is totally motivated and has been filed at the instance of certain book sellers only because this school did not prescribe the books of those book sellers for the studies in the curriculum for the students. This school appears to be correct in its submission that when there are 13 schools in Khanna region which prescribe the text books other than the NCERT/Punjab School Education Board, it is only the Green Grove Public School which is singled out and targeted. Further more, the petitioner has also filed a civil suit claiming identical relief.

As per the information supplied by the Central Board of School Education (CBSE) to this school under the Right to Information Act, the recommendation of private publisher is not a bar provided the number of text books does not exceed the number of books prescribed by the NCERT for that subject and class. The school maintained that their syllabi is strictly in accordance with the NCERT guidelines and norms and number of text books does not exceed those prescribed by the NCERT. Thus, in absence of any statutory regime putting any obligation on these private schools to have only the NCERT books, it is difficult to give any specific direction in this behalf. However, we leave it open to the government authorities to look into this issue in greater depth and to decide as to whether it would be necessary for the private schools to prescribe only NCERT/Boards books. It will also be examined as to whether any Regulatory mechanism is required and whether it is feasible to regulate the prices fixed by the private publishers in respect of books prescribed in the Schools.

77. Coming to the thorny issue of charging of fees which is the bone of contention between the parties, the position of law in this behalf has already been stated in detailed above extracting the ratio of various judgments of the Supreme Court. Specific question on this issue was framed by the Supreme Court in Modern School (supra), in the following manner:-

- a) Whether the Director of Education has the authority to regulate the quantum of fees charged by un-aided schools under section 17(3) of Delhi School Education Act, 1973?

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78. No doubt, the issue was answered having regard to the provisions of Section 17(3) of Delhi School Education Act, 1973. There is a similar provision in Haryana School Education Act, 1995 and there is no similar law in Union Territory, Chandigarh or State of Punjab. At the same time, the Court took into consideration the general principles laid down in earlier decisions of this Court while answering this question. Referring to the judgments of TMA Pai Foundation (supra) and Islamic Academy of Education (supra), it was held in no uncertain terms that the fees to be charged by unaided educational institutions cannot be regulated except that capitation fees and profiteering were forbidden. There could not be any rigid fees structure and each institution must have freedom to fix its own fees structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. In the process, such educational institutions were even empowered to generate surplus funds, which must be used for betterment and growth of the educational institutes with clear embargo that these profits/surplus funds cannot be diverted for any other use or purpose and cannot be used for personal gain or any business or enterprise.

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○ For fixing the Fee structure, following considerations are to be kept in mind:

- (c) The infrastructure and facilities available;
- (d) Investment made, salaries paid to teachers and staff;
- (e) Future plans for expansion and/or betterment of institution subject to two restrictions, viz., non-profiteering and non-charging of capitation fees.

The majority view thereafter applied the aforesaid principles in the context of 1973 Act and Rules framed thereunder. It was emphasized that Rule 175 indicates the accrual of income and Rule 177 indicates utilization of that income and answered to the first question by holding that the Director of Education was authorized to regulate fees and other charges to prevent commercialization of educational institutes in the following terms:

"17.....Therefore, reading section 18(4) with rules 172, 173, 174, 175 and 177 on one hand and section 17(3) on the other hand, it is clear that under the Act, the Director is authorized to regulate the fees and other charges to prevent commercialization of education. Under section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading section 17(3) with section 18(3)&(4) of the Act and the rules quoted above, it is clear that the Director has the to regulate the fees under section 17(3) of the Act.....(emphasis supplied)".

79. What follows from the above said is that freedom is to be given to the schools to fix their fees structure as fixation thereof depends upon the infrastructure and facilities available in the schools, investments made and salaries paid to the teachers and staff as well as the future plans for expansion and/or betterment of institution. Obviously, there cannot be any uniformity in all the

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schools in respect of aforesaid parameters. Various schools in their replies have highlighted and boosted about the high quality of infrastructure which has been provided by them. We have taken note of these facilities in detail as stated by Sita Grammer School, Malerkotla. Thus, the legal position, which cannot be denied is that there cannot be any rigid fees structure prescribed by the Government. Each institute has to be given freedom to fix its own fees structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefits of the students.

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80. At the same time, the Supreme Court has also laid down categorical principles that the schools cannot indulge in profiteering and they cannot charge capitation fee higher, therefore, the fees fixation is subject to the aforesaid two restrictions. It is also to be ensured that the fees/funds collected by the Schools from parents/teachers are not transferred from the school funds to the society or the trust which runs such schools or any other institutions. Here again, however, the recognized unaided schools are entitled to set up Development Fund Account and for this purpose they can charge from the students but such a charge do not exceed 50% of the annual tuition fees. The position in this behalf is summarized by Delhi High Court in its judgment dated 12.08.2011 in Delhi Abhibhavak Mahasangh case (supra) in the following manner:-

“62. With this, we revert back to the issues **On Merits:**
The clear legal position which emerges from the combined reading of the judgments of the Supreme Court, directly on the issue of revising tuition fee by Delhi schools under the Delhi Education Act, and already stated in detail above, demonstrates that the schools cannot indulge in commercialization of education which would mean that the fee structure has to be kept within bound so as to avoid profiteering. At the same time, “reasonable surplus” is permissible as fund in the form of such surplus may be

required for development of various activities in the schools for the benefit of students themselves. The guiding principle, in the process, is "to strike a balance between autonomy of such institution and measures to be taken in avoiding commercialization of education". The autonomy of the schools can be ensured by giving first right to such schools to increase the fee. At the same time, quantum of fee to be charged by unaided schools is subject to regulation by the DoE which power is specifically conferred upon the DoE by virtue of Section 17(3) of 1973 Act. This is specifically held by the Supreme Court in *Modern School (supra)* and *Action Committee Unaided Private Schools and Anr. (supra)*. Normally, therefore, in the first instance, it is for the schools to fix their fee and/or increase the same which right is conferred upon the schools as recognized in *TMA Pat (supra)*. The DoE can step in and interfere if hike in fee by a particular school is found to be excessive and perceived as "indulging in profiteering". It would be a procedure to be resorted to routinely."

81. The moot question is while giving freedom to the schools to fix their own fees structure; how to ensure that these schools are not indulging in profiteering/commercialization of education and are also not diverting funds through unauthorized channels. In Delhi Abhibhavak Mahasangh case (supra), Delhi High Court expressed the view that there was a need for establishing a permanent Regulatory Body/mechanism, the rationale whereof is given in paras No. 72 and 81, already extracted above.

82. No doubt; in the instant cases before us, as per the replies filed by the official respondents themselves, most of the schools are fulfilling the requirements of submitting the Annual Reports etc. At the same time, it is also a matter of record that there is hardly any examination of these records which are simply dumped by the schools with the Boards/Regulatory Authorities and keep lying there in their archives. Needless to mention that it is the duty of the official respondents to

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Ensure that increase in the fees undertaken by a particular school is justified and necessitated by other circumstances like increase in expenditure or because of developmental activities needed and does not result into profiteering. It is also to be ensured that the funds are not diverted elsewhere. However, there is no mechanism for checking the same. In a situation like this, we are of the opinion that the States of Punjab and Haryana as well as Union Territory, Chandigarh should also provide for some permanent Regulatory Bodies/mechanism which would go into this aspect on regular basis. We accordingly give directions to the States of Punjab, Haryana as well as Union Territory, Chandigarh to examine the feasibility of establishing such a mechanism and take decision thereupon within a period of six months from today. Till that is done and in order to sort out the issue as to whether the hike in fees by the schools is proper or not, we would like to follow the same path as done by the High Court of Delhi; namely, setting up a Committee with the task to go into the accounts of the Schools and find out the reasonableness of increase in fees by the schools. Accordingly, we appoint three committees, one each for the State of Punjab, State of Haryana and Union Territory, Chandigarh, with the following constitutional members:-

FOR STATE OF PUNJAB:-

- i) Hon'ble Mr. Justice Ranjit Singh (Retd.): Chairperson
- ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.
- iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

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FOR STATE OF HARYANA:-

- i) Hon'ble Mrs. Justice Kiran Anand Lall (Retd.): Chairperson
- ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.
- iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

FOR UNION TERRITORY CHANDIGARH:-

- i) Hon'ble Mr. Justice R.S.Mongia (Retd. Chief Justice): Chairperson
- ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.
- iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board, U.T. Chandigarh.

The fee of the Chairperson(s) shall be Rs. 25,000/- per sitting and that of the members Rs. 10,000/- each per sitting. The said fee shall be shared by the schools in the respective States. In addition to the aforesaid fee, the Committee(s) shall also be reimbursed the amount of clerical and other expenses. They shall also be provided suitable place/office for undertaking the task assigned.

Since the schools are submitting the accounts with the Boards, these accounts and records can be given by the Boards to the Committees. In addition all

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the schools shall also render full cooperation to the Committee(s) by submitting the Account and other necessary information demanded by the Committee(s). The scope of the work undertaken by the Committee(s) shall be restricted to the academic year 2012-13. Likewise, for the academic year 2013-14, though the schools shall have the right to fix their fees structure, they will have to justify the same by producing necessary material before the Committee(s). The Committee(s) shall be entitled to specifically look into the aspects as to how much fees increase was required by each individual school on the examination of records and accounts etc. of these schools and taking into consideration the funds available etc. at the disposal of the schools. While doing this exercise, it shall keep in mind the principles laid down by the Supreme Court in Modern School case (supra) as well as Action Committee Unaided Pvt. Schools case (supra) and other decision noted by us in this judgment. Needless to mention in case it is found that the fees hiked by the schools was more than warranted, the direction can be given to those schools to refund the same to the students.

All these writ petitions stand disposed of in terms of directions given hereinabove.

"Sd/-"

(A.K. SIKRI)
CHIEF JUSTICE

"Sd/-"

(RAKESH KUMAR JAIN)
JUDGE

09.04.2013

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