

(2014) 11 RAJ CK 0133

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1861/2004, 2496/2006 and 7608, 7624, 7991, 7993, 11341, 11591, 11778, 14319 and 15602/2009

Abhibhawak Sangarsh Samiti

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2014) 11 RAJ CK 0133

Hon'ble Judges : Sunil Ambwani, Acting C.J.; J.K. Ranka, J

Bench : Division Bench

Advocate : Rajendra Soni, C.P. Sharma on behalf of Mahendra Goyal, Nikhil Simlote on behalf of, R.B. Mathur, N.K. Maloo, Senior Counsel assisted by, Ajeet Maloo, Ajeet Bhandari, Virendra Lodha, Senior Counsel assisted by, Vinod Goyal and Munesh Bhardwaj, Advocate for the Appellant; N.M. Lodha, Advocate General (Sr. Counsel) assisted by Sheetanshu Sharma, Anurag Kalawatiya and Ajay Gupta on behalf of J.M. Saxena (AAG), Advocate for the Respondent

Judgement

1. Heard learned counsel appearing for the petitioners and for the respondents.
2. D.B. Civil Writ Petition Nos. 1861/2004, and 2496/2006 have been filed seeking direction to the Management of the private schools to act in accordance with the Rajasthan Non-Government Educational Institutions Act, 1989, and the Rules of 1993. A prayer has also been made to direct the State Government and its departments to keep a watch over the Non-Government Educational Institutions to discharge their duties properly.
3. D.B. Civil Writ Petition Nos. 7608/2009, 7624/2009, 7991/2009, 7993/2009, 11341/2009, 11591/2009, 11778/2009, 14319/2009 and 15602/2009, have been filed by the Management of the private schools in the State of Rajasthan, to quash the order dated 01.06.2009, regulating the fee structure, and to declare Section 43(2)(d) and (e) of the Rajasthan Non-Government Educational Institutions Act, 1989, as ultra vires as there is no provision under the Act to

make the Rules to empower the State Government to regulate fee in the unaided institutions.

4. The prayers made in all the writ petitions have become infructuous after the enforcement of the Right of Children to Free and Compulsory Education Act, 2009, and the Rajasthan Schools (Regulations of Collection of Fee) Act, 2013.

5. It is submitted by some of the Counsel appearing for the petitioners in all the writ petitions that vide report of Justice P.K. Tiwari Committee, dated 16.11.2005, recommendations have been made in Chapter-8, including establishment of Regulatory Authority for arbitrary increase of fee, regulation and maintenance of accounts to be maintained by recognised aided-unaided schools, fee structure, collection of fees, fees/contribution/donation not to be collected by Society/Trust/Management, prohibition on transfer of funds from schools, one time fee, no caution money/security, building fund not to be charged, hostel rent, mess and transport charges, collection of money for uniform and text books, inspection audit etc. including regular inspection, special inspection and special audit, allotment of land, recruitment of staff, regulation of transport and insurance for accidents of the school buses, as also suggestions for audit. In the sum up, in the report it is stated that the main thrust of the recommendations is that commercialization in the field of education should not be permitted in any case. In case individuals and societies participate in the spread of education, they should operate it only as a philanthropic activity and not for earning profits.

6. The report had also emphasized that the idea of any central legislation on the issue of private educational institutions should not result in postponement of the decision as it would result in continuation of exploitation of lacks of students studying in the institutions in the State. The report also made specific and interim recommendations to the Hon'ble High Court to direct the State Government to frame the rules or to make necessary amendment/modification in the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions etc.) Rules, 1993, and to constitute the Regulatory Authority.

7. The recommendations in the report are still pending for implementation by the State Government. In the meantime, the Constitution of India was amended by the Eighty Sixth Amendment Act, 2002, inserting Article 21A in Part III, Fundamental Rights: providing that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. The Central Government has in pursuance of Article 21A, enacted the Right of Children to Free and Compulsory Education Act, 2009. After about four years, the Rajasthan Government has enacted the Rajasthan Schools (Regulations of Collection of Fee) Act, 2013, to regulate increase of fee in the private schools.

8. A number of writ petitions have been filed challenging the provisions of the

Rajasthan Act of 2013, which are pending in this Court.

9. We are of the view that after the enforcement of the Right of Children to Free and Compulsory Education Act, 2009, and the Rajasthan Schools(Regulations of Collection of Fee) Act, 2013, some of the recommendations of Justice Tiwari Committee's report have been put into motion. For the remaining recommendations, the report has not been scrutinized so far for its implementation by the State Government.

10. In these writ petitions, we cannot, in view of subsequent developments, give any effective direction to the State Government as Justice Tiwari Committee's report, in view of the Central and State Act, has to be looked into and considered for its implementation by the State Government.

11. We are informed that by an order passed by the Hon"ble Apex Court on 07.08.2009 in Special Leave to Appeal (Civil) No. 1070/2007-Society Un-aided Pvt. Schools Rajasthan v. State of Rajasthan & Ors., arising from the judgment dated 04.07.2006, passed in DBCWP No. 1861/2004 and order dated 26.07.2006 in DBCMA No. 20840/2006, the Special Leave Petition was disposed of with a request to the High Court to dispose of the writ petition within a period of six months from the date of receipt/production of copy of the order. A copy of this order has been produced before us. The order-sheet of the case shows that the matter was listed in the Court on various dates, but could not be heard for variety of reasons.

12. Now, in view of the subsequent legislative changes by enactment of the Central and State Acts, which have been challenged by way of filing separate writ petitions, any adjudication in these pending writ petitions is not necessary.

13. Considering the subsequent developments, we dispose of all these writ petitions with directions to the State Government to consider implementation of Justice P.K. Tiwari Committee's report dated 16.11.2005, if it has not already considered the same, taking into consideration Article 21A of the Constitution of India, the Right of Children to Free and Compulsory Education Act, 2009, and the Rajasthan Schools(Regulations of Collection of Fee) Act, 2013.

14. We expect the State Government to consider the matter, as expeditiously as possible.