
(2013) 11 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24349 of 2013

Council of Secondary Education

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 2 SCT 403

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—This writ petition has been filed challenging the Punjab School Education Board (Amendment) Ordinance, 2013 (hereinafter referred to as the Ordinance 2013) (Annexure-P-32) being ultra vires the Constitution as Article 19(1)(g) stands violated by insertion of sub-section (1-A) after sub-section (1) in Section 17 in the Punjab School Education Board Act, 1969 (hereinafter referred to as the 1969 Act). It is the contention of learned senior counsel for the petitioners that petitioner No. 1-Council of Secondary Education (hereinafter referred to as the Council) is a Society registered on 2.5.2008 under the Societies Registration Act, 1860 (hereinafter referred to as the 1860 Act). The said Council was formed with the objective to function as an autonomous, independent and Non-Governmental Board for conduct of public examination upto Senior Secondary School Education providing an alternative to choose from either Government Aided Boards or a Non Government Independent Autonomous Body. Endeavour is to provide education to all children especially those in the rural and remote areas at least upto the secondary level. It is a private initiative on the part of the Council for establishment of a Non-Governmental Board for conducting common examination for students of Secondary and Senior Secondary in schools affiliated and likely to be affiliated with it.

2. For the said purpose, it has devised a detailed curriculum in consultation with

experienced professionals and educationists catering to the needs of current trend of examination as also taking care of future developments in the field of education by providing education in subjects which are not even taken note of by the Government Boards and institutions. The massive task of educating the masses cannot be left to one individual or organization alone and it is with this purpose, the Council stands established. Petitioner-Council in this endeavor has been able to grant affiliation to 100 schools in Punjab, Haryana, Chhattisgarh, U.P., Himachal Pradesh, Rajasthan and M.P. It has conducted examinations for the academic session 2008-09 onwards and the number of students have increased gradually. Rajasthan Board of Secondary Education, Ajmer, Rajasthan has accorded recognition to the petitioner-Council and the examinations passed by the students from the schools affiliated from the petitioner-Council are treated equivalent to that of the Rajasthan Board. Petitioner has obtained recognition from International Accreditation Organization which agency is working to enhance the standard of education around the world.

3. His submission is that the regulation of education standard throughout the nation is primarily controlled by two premier institutions i.e. Central Board of Secondary Education (CBSE) and the Council for Indian School Certificate Examinations (ICSE) which operate at the national level. These two institutions are Societies incorporated under the Societies Registration Act, 1860 as the petitioner-Council and are recognized by various State Governments as equivalent to their State Education Boards which are creation of the statute. The functions performed by the petitioner-Council are the same as that of these two institutions.

4. Petitioner-Council approached the Punjab School Education Board/respondent No. 3 (hereinafter referred to as the Board) under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act) with regard to the recognition which revealed that the respondent-Board only recognized and granted equivalence to those Boards which fulfill the criteria of:-

(i) must be formed/constituted by an Act, and

(ii) must be recognized and be a Member of Council for Board of School Education (COBSE).

5. COBSE is also a registered Society with the main purpose to take steps to improve the quality of school education in collaboration with its member boards, apart from providing a common platform for mutual consultation for reinforcing the quality of school education. It has no statutory mandate or powers to control the said spheres and thus, is on equal footing to the Council of the petitioner in the eyes of law. Petitioner applied for membership of COBSE as it fulfilled the requisite conditions, but the said application of the petitioner stands rejected, vide letter dated 28.3.2013 on the ground that it does not have authority to grant recognition to an institution/board and can only grant membership to education boards. This order stands challenged by the petitioner-Council by filing

Civil Writ Petition No. 8353 of 2013 which is pending before this Court.

6. Learned senior counsel for the petitioner has stated that earlier petitioner had filed Civil Writ Petition No. 29 of 2010 under Article 32 of the Constitution of India which was dismissed as withdrawn on 17.4.2010 with liberty to pursue other remedies. Petitioner-Council had earlier also filed a petition seeking equivalence to the respondent-Board i.e. Civil Writ Petitions No. 3651 of 2009 and 15947 of 2010 in this Court which were got dismissed as withdrawn on 19.12.2012 to approach COBSE regarding equivalence. Appeal before the Division Bench was dismissed and thereafter Special Leave to Appeal (Civil) No. 19939 of 2013 was preferred before the Honble Supreme Court, which was dismissed on 12.7.2013. However, the adverse observations and remarks made by the High Court stood expunged. Further liberty was granted to the petitioner to make representation before the authorities.

7. In pursuance thereto, petitioner-Council filed representation before the respondent-Board, but no response was received. Nevertheless, State of Punjab has promulgated the Punjab School Education Board (Amendment) Ordinance, 2013, vide notification dated 30.8.2013 whereby the Punjab School Education Board Act, 1969 stands amended with the insertion in Section 17 after sub-section (1) sub-section (1-A) which creates a monopoly in favour of the respondent-Board to hold examination for school education, publish results for such examinations and grant certificates to the persons who have passed such examinations. This, the learned senior counsel for the petitioner, contends is violative of Article 19(1)(g) of the Constitution. His submission is that with the introduction of Article 21-A of the Constitution, education has become a fundamental right and to make it a reality, only regulation would be permissible but not prohibition as has been resorted to by the respondent-State of Punjab. The reasonable restrictions could be imposed for preventing the coming up of fraudulent boards and institutions where their primary aim is duping the public in the field of education and operate as commercial enterprises. Permissible restrictions on a fundamental right can only be imposed even by an enactment which should not be excessive and in any case, not beyond what is necessary to achieve the object of law under which they are sought to be imposed. There is total absence of specific guidelines on the criteria leaving no avenue of seeking approval for establishment of a council or a board which could perform the responsibilities of holding examinations, publishing the result and grant of certificates to the persons who passed such examinations.

8. He submits that power of applying restriction on the fundamental right is not an absolute discretion of the executive authority without any standard or check of guidance or control. If that be so, it would be infringing upon the right as guaranteed under Article 19(1)(g). State is enjoined upon under the directive principles to promote social welfare and minimize inequalities between the citizens and the education being the most potent tool in development of ensuring the same thus, there can be no prohibition. The ordinance as passed by the

respondent-State goes against the object as laid down under Article 38 of the Constitution.

9. In support of the above contentions, reliance has been placed by the learned senior counsel upon various judgments of the Honble Supreme Court, such as Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, , State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another, , B.P. Sharma Vs. Union of India (UOI) and Others, and T.M.A. Pai Foundation v. State of Karnataka, (SC) 2003 (2) SCT 385. Accordingly, prayer has been made for quashing the impugned Ordinance and allowing the writ petition.

10. On giving our thoughtful consideration to the submissions made by the learned senior counsel, we are afraid that the challenge to the Ordinance cannot sustain. Learned senior counsel for the petitioner could not dispute the fact that education is a subject matter of laws as provided in Article 246 falls in List-III of the 7th Schedule i.e. the concurrent list. The competence thus, of the State of Punjab to legislate on this subject has not been disputed.

11. Article 19 is not an absolute right but qualified and the State is authorized under Clauses (2) to (6) of Article 19 to impose reasonable restrictions on this right in the public interest. No-one can claim a fundamental right to trade or business in activities which are not in public interest. The restriction imposed by the impugned Ordinance has a reasonable relation with the object sought to achieve and has not exceeded beyond its legislative competence. It has taken care to strike a proper balance between the freedom guaranteed under Article 19 and the special control permitted by Clause (6) of Article 19. The aforesaid impugned action of the respondents in passing ordinance is a regulatory measure to maintain proper checks and balances in the important field of education to prevent abuse and misuse of the cause for imparting education. The said action appears to be proper and a justifiable one.

12. It is a matter of common knowledge that many unrecognized and unaffiliated so called educational institutions are mushrooming and increasing day-by-day. These so called educational institutions are no less than commercial shops. The basic objective of the State to impart quality education to the aspiring needy students stands defeating due to malpractices and frivolous activities of these unscrupulous institutions. These institutions present imaginary and illusionary pictures for making a successful career to the innocent students, admit them in their institutions and spoil their careers. Then ultimately on the pretext of saving careers of the students, they make endeavor to approach the Courts for seeking interim relief to allow the students to sit in the examination by granting provisional admissions. The Honble Supreme Court in number of judgments has deprecated the practice of admitting the students to these unrecognized, unapproved and unaffiliated institutions. In Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others, , the Honble Supreme Court has deprecated the practice of educational institution admitting the students without requisite recognition or affiliation. In all such cases, the usual plea is the career of

innocent children who have fallen in the hands of the mischievous designated school authorities.

13. In case of State of Maharashtra Vs. Vikas Sahebrao Roundale and others, it has been observed in para-12 as follows:-

Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.

14. Meaning of education has been explained by the Honble Supreme Court in Siddhu Matriculation Hr. Secondary School Vs. K. Shyam Sunder and Others, in paras 18 to 24 which read as follows:-

18. In the post-Constitutional era, an attempt has been made to create an egalitarian society removing disparity amongst individuals, and in order to achieve that purpose, education is one of the most important and effective means. After independence, there has been an earnest effort to bring education out of commercialism/mercantilism. In the year 1951, the Secondary School Commission was constituted as per the recommendation of Central Advisory Board of Education and an idea was mooted by the Government to prepare textbooks and a common syllabus in education for all students. In 1964-1966, the report on National Education Policy was submitted by the Kothari Commission providing for common schools suggesting that public funded schools be opened for all children irrespective of caste, creed, community, religion, economic conditions or social status. Quality of education imparted to a child should not depend on wealth or class. Tuition fee should not be charged from any child, as it would meet the expectations of parents with average income and they would be able to send their children to such schools. The recommendations by the Kothari Commission were accepted and reiterated by the Yashpal Committee in the year 1991. It was in this backdrop that in Tamil Nadu, there has been a demand from the public at large to bring about a common education system for all children.

19. In the year 2006, in view of the struggle and campaign and constant public pressure, the Committee under the Chairmanship of Dr. S. Muthukumaran, former Vice-Chancellor of Bharathidasan University was appointed which recommended to introduce a common education system after abolishing the four different Boards then in existence in the State. Subsequent thereto, the Committee constituted of Shri M.P. Vijayakumar, IAS was appointed to look into the recommendations of Dr. S. Muthukumaran Committee which also submitted its recommendations to the Government to implement a common education system upto Xth standard.

20. The right to education is a Fundamental Right under Article 21-A inserted by the Eighty-sixth Amendment of the Constitution. Even before the said amendment, this Court has treated the right to education as a fundamental right. (Vide Mohini Jain v. State of Karnataka; Unni Krishnan, J.P. v. State of A.P. and T.M.A. Pai Foundation v. State of Karnataka).

21. There has been a campaign that right to education under Article 21-A of our Constitution be read in conformity with Articles 14 and 15 of the Constitution and there must be no discrimination in quality of education. Thus, a common syllabus and a common curriculum is required. The right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of its economic, social and cultural background. Arguments of the propagators of this movement draw support from the judgment of US Supreme Court in *Brown v. Board of Education*, overruling its earlier judgment in *Plessy v. Ferguson*, where it has been held that "separate education facilities are inherently unequal" and thus, violate the doctrine of equality.

22. The propagators of this campaign canvassed that uniform education system would achieve the code of common culture, removal of disparity, depletion of discriminatory values in human relations. It would enhance the virtues and improve the quality of human life, elevate the thoughts which advance our constitutional philosophy of equal society. In future, it may prove to be a basic preparation for the uniform civil code as it may help in diminishing opportunities to those who foment fanatic and fissiparous tendencies.

23. In *Rohit Singhal v. Jawahar N. Vidyalaya*, this Court expressed its great concern regarding education for children observing as under:- (SCC p. 691, para. 6)

6. Children are not only the future citizens but also the future of the earth. Elders in general, and parents and teachers in particular, owe a responsibility for taking care of the well being and welfare of children. The world shall be a better or worse place to live according to how we treat the children today. Education is an investment made by the nation in its children for harvesting a future crop of responsible adults productive of a well-functioning Society. However, children are vulnerable. They need to be valued, nurtured, caressed and protected.

(emphasis added)

24. In *State of Orissa v. Mamata Mohanty*, this Court emphasised the importance of education observing that education connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The Court further relied upon the earlier judgment in *Osmania University Teachers' Assn. v. State of A.P.*, wherein it has been held as under: (*Osmania University Teachers' Assn. Case*, SCC p. 685, para. 30)

30.Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.

The case at hand is to be proceeded with keeping this ethical backdrop in mind.

15. A perusal of the above would show that it has always been an endeavor since

the year 1951 onwards to have a common syllabus and common curriculum, so that there is no discrimination in quality of education. This would remove the disparity of a culture and discriminatory values in human relations advancing the constitutional philosophy of equal society which may culminate into uniform civil code. It is true that under Article 19(1)(g) only those restrictions, which would be justified, can be imposed and such restrictions should not be excessive which is beyond what is necessary to achieve the object of law under which they are sought to be imposed. It is also correct that power to apply a restriction on fundamental right is not a matter of absolute discretion and the limitation can be imposed upon a person in enjoyment and reaping the benefits of the said right which can be termed as reasonable which would fall within the ambit of permissible restriction on any fundamental right. But, in the present case, there is no absolute bar imposed as has been sought to be projected by the learned senior counsel.

16. At this stage, reference can be made to Section 17(1) of the unamended Punjab School Education Board Act, 1969, which reads as follows:-

17(1). Subject to the provisions of this Act, the Board shall exercise and perform the following powers and other functions, namely:-

(i) prescribe the syllabi, courses of the studies and text books for school education;

(ii) organize research for grading of textual vocabulary and arrange for regular revision of text books and other books;

(iii) hold examinations for school education, publish the results of such examinations and grant certificates to the persons, who have passed such examinations;

(iv) admit to the examinations, on the prescribed conditions, candidates, who have pursued the prescribed courses of instructions, whether in affiliated institutions or otherwise. However, any change in the prevalent conditions shall be made with the prior approval of the State Government;

(v) cause enquiries to be made through such agency and in such manner, as may be prescribed regarding the conditions prevailing in an institution before it is admitted to the privileges of the Board and require such agency to inspect affiliated institutions and submit a report to the Board as to how for the conditions and restrictions on which the institution was admitted to the privileges of the Board, are being complied with;

(vi) prescribe penalties for misconduct pertaining to examinees, examiners and other persons engaged in the conduct of examinations;

(vii) appoint examiners and supervisory staff and fix their remuneration;

(viii) lay down conditions and restrictions for admission off candidates to the examinations;

(ix) organize and provide lecturers, demonstrations, educational tours, exhibitions, seminars and symposia and take such other measures, as may be necessary to raise and promote the quality and standard of school teaching and education;

(x) submit annual audited accounts and balance sheets together with the report of the Board to the State Government not later than the 30th September of the next year and publish such accounts and balance sheets in the Official Gazette;

(xi) give grants to the State Council of Educational Research and Training for educational activities and research work;

(xii) institute and award scholarships, medals and prizes;

(xiii) fix, demand and receive such fees and other charges, as may be prescribed;

(xiv) hold any property and receive bequests, donations, endowments, trusts and transfer of any property of interest therein or right thereto;

(xv) prescribe measures for the intellectual, physical, moral and ethical promotion and for social welfare of students in affiliated institutions and the conditions of their residence and discipline;

(xvi) encourage sports and health-building activities;

(xvii) take measures for the welfare of teachers of affiliated institutions and employees of the Board; and

(xviii) do such other acts and things, as it may deem fit for the purpose of carrying out the provisions of this Act.

17. Section 2 of the Ordinance 2013 (under challenge) reads as follows:-

2. In the Punjab School Education Board Act, 1969, in section 17, after sub-section (1), the following sub-section shall be inserted, namely:-

(1-A) No other authority (by whatever name it may be called), except the Board, shall be competent to perform the functions, as mentioned in clause (iii) of sub-section (1) of section 17 of this Act:

Provided that an authority, approved and authorized by the Government of India to which institutions situated in the State of Punjab are affiliated, shall also be competent to perform the said functions.

18. A perusal of the above would show that there is no absolute bar with regard to the competence to perform the functions as has been mentioned in clause (iii) of Sub-section (1) of Section 17 of the 1969 Act as there is a proviso added thereto, according to which, if the approval and authorization is given by the Government of India to an authority to which institutions situated in the State of Punjab are affiliated, the said functions can also be performed by the said authority and would be competent to do so. Education being in the concurrent

list, State of Punjab is competent to legislate on the subject of education and the State, in exercise of such powers, has with an intention to regulate the quality of education proceeded to impose a reasonable restriction which is in consonance with Article 21-A of the Constitution which imposes a mandate upon the State to provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the State may, by law, determine. Right to education cannot be merely restricted to free and compulsory education alone to all children, but the quality of education would also be included within the said right with a further mandate of the Constitution under this Article which gives authority to the State to determine the manner for giving effect thereto by law. It has been admitted by the petitioner in the writ petition that as per the information supplied by the respondent-Board, it recognizes and grants equivalence only to those boards which fulfill the main criteria of it being formed/constituted by an Act and/or must be recognized and be a member of CBSE. It is further an admission on the part of the petitioner-Council that the condition for recognizing a Board as a member of CBSE stands prescribed and in pursuance thereto, petitioner-Council had approached the said entity which has rejected the application, vide letter dated 28.3.2013, which decision stands challenged in Civil Writ Petition No. 8353 of 2013, which is still pending. We thus, are refraining from commenting upon the submissions of the learned senior counsel for the petitioner with regard to seeking and claiming parity with CBSE and ICSE being a society similarly registered under the Societies Registration Act, 1860 except that CBSE and ICSE stand recognized and thus finds mention in the list posted on the website of the Union of India list of all recognized boards and this is so because they have been listed as bodies conducting public examination in the Delhi School Education Act, 1973 and therefore, have statutory backing and for this reason would stand on a different footing than the petitioner-Council.

We, therefore, do not find any merit in the challenge laid to the impugned Ordinance, 2013 and thus, dismiss the writ petition.