

(2013) 05 P&H CK 0174

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No"s. 215 and 16 of 2013 and L.P.A. No. 73 of 2013 (O and M)

Modern Hind Senior Secondary School

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 172 PLR 61

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Arun Jain and Mr. Amit Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.

C.M. No. 216 of 2013

This is an application filed under Order 41 Rule 27 of the CPC for placing on record a copy of communication dated 26.4.2012 as Annexure P-5 as additional evidence. The same is taken on record subject to all just exceptions.

C.M. stands disposed of.

LPA No. 73 of 2013 (O&M)

1. This appeal has been filed under Clause X of the Letters Patent against the judgment dated 18.12.2012 passed by the learned Single Judge whereby the writ petition filed by the appellant was disposed of. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein are that the appellant filed a writ petition for issuance of Mandamus directing respondents No. 1 and 2 to grant temporary affiliation for three years in accordance with Section 19(2) of the Right of Children to Free and Compulsory Education Act, 2009 to fulfill the requisite norms and standards for getting permanent recognition at their own expenses within a period of three years from the date of

commencement of the Act. Further direction was sought to be issued to the respondents to allow the school to function and to take classes and to permit the students studying in the school to appear in the Board Examination. The Education Society was registered in the year 2002-03. On 13.3.2009, permission was granted to upgrade the school upto 12th class. In the year 2009, application for recognition with the requisite fee was sent by the School and a request was made to the District Education Officer to inspect the school to see that it had fulfilled the requisite norms for granting permanent recognition to the school for 10+2 level. In the year 2007, vires of Haryana School Education Rules, 2007 were challenged before this Court by way of CWP No. 5891 of 2007 and during the pendency of the said writ petition, this Court directed the Education Board to issue examination forms to the students. The said writ petition along with a bunch of writ petitions was admitted and the interim order was ordered to be continued. The appellant-school was running classes from 1st to 12th and the examinations to classes 8th, 10th and 12th were to be conducted by the Board. As the case for permanent recognition of the appellant-school was pending with the Commissioner and Director General, School Education, Haryana, the Education Board had not issued examination forms for the students studying in class 12th. It was pleaded that the Rules of 2007 were under consideration before this Court in CWP No. 5891 of 2007 and practically no rules were in force. However, as per Section 4 of the Haryana School Education Act, 1995 (in short "the Act"), the competent authority was duty bound to decide an application for recognition within a period of six months from the date of application. The appellant-school removed all the objections raised by respondent No. 2 but till date recognition has not been granted to it. Feeling aggrieved, the appellant-school filed CWP No. 10273 of 2010. Notice of motion was issued. Separate short replies on behalf of respondents 1, 2, 4 and respondent No. 3 were filed pleading that the Secretary of the Society submitted an application dated 26.5.2010 for grant of up-gradation of the School level as it was recognized upto 10th standard on 17.12.2010. It was further pleaded that the case of the school was examined and it was found that the school had land measuring 2 acres whereas as per the rules amended in the year 2007, minimum norm for land and building for a senior secondary school was 2.5 acres in Rural/Urban and 2 acres in the controlled area. As per the amended rules of 2009, it was 2 acres. Further, the school was not having NOC/CLU and as the school was covered under the scheme of existing category and, therefore, could not claim benefit of the relaxed land norms laid down in the Rules of 2009. The learned Single Judge vide impugned judgment dated 18.10.2012 disposed of the writ petition imposing cost of Rs. 6000/- per student admitted by the appellant school in those classes for which they did not have recognition or affiliation from the competent authority as required by the Statute. Half of the cost imposed was ordered to be deposited in the accounts of Legal Services Authority, Haryana and the remaining half was to be deposited in the Mediation and Conciliation Cell function in this Court. Hence, the present Letters Patent Appeal.

2. Learned counsel for the appellant submitted that u/s 4(2) of the Act, on submission of application for recognition, the State was required to pass an order within six months. The application in the present case was submitted in the year 2009 whereas the order granting recognition was passed on 26.4.2012. In such circumstances, the recognition would be deemed to be effective from the date of expiry of six months of the submission of the application as the same was not decided within prescribed period of six months from the date of filing of the application. It was further urged that the appellant was having 2 acres of land as required under the rules which were applicable to it. Under the circumstances it could not be said that the appellant was not having requisite land. It was also contended that the learned Single Judge without following the principle of consistency in some cases had imposed the costs of Rs. 5000/- per student who were admitted whereas in the case of the appellant, the same was Rs. 6000/- per student.

3. After giving our thoughtful consideration to the respective submissions of the learned counsel for the appellant, we do not find any merit in the appeal. Section 4(2) of the Act reads thus:-

4. Recognition of schools.-

(1) xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx

(2) Every application for recognition of a school shall be entertained and considered by appropriate authority and the decision thereon shall be communicated to the appellant with a period of six months from the date of receipt of the application and where recognition is not granted, the reasons for not granting recognition shall also be communicated to the applicant within the said period.

(3) to (8) xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx

4. A plain reading of sub-section (2) of Section 4 of the Act shows that the State is required to decide the applications submitted to it for grant of recognition to a school within six months from the date of receipt of such application. However, there is no negative covenant provided thereunder in case of delay in deciding the application on the basis of which any right accrues in favour of the appellant. In the present case, the appellant was not fulfilling the norms as prescribed by the respondents for grant of recognition for classes 11th and 12th under the Act on or before 31.3.2012. The order granting approval/recognition dated 26.4.2012 (which is produced as additional evidence) also specifically states that the same shall be effective from 1.4.2012. In such circumstances, the plea that it was to relate back to the date of expiry of six months from the date when the application was filed is legally untenable and is, thus, rejected.

5. Adverting to the next argument, nothing was shown that there was any infirmity in the objection of the respondents that the appellant was not having NOC/CLU. Further, the appellant could not claim benefit of the relaxed norms

regarding the requirement of land as laid down in the Rules of 2009 as it was covered under the scheme of existing category. Therefore, the contention of the appellant is without any force and cannot be accepted.

6. Lastly, the appellant-School had admitted the students for 11th and 12th classes without recognition. Learned Single Judge observed that the students who had been admitted without any fault on their part, could not be made to suffer for the illegal action of the school. It was further noticed that the school could not be permitted to escape responsibility for their action. Accordingly, he had imposed cost of Rs. 6000/- per student on the appellant, out of which Rs. 3000/- per student was to be deposited in the account of State Legal Services Authority, Haryana and remaining Rs. 3000/- per student was to be deposited in the Mediation and Conciliation Cell of this Court. Imposing of cost was within the discretion of the learned Single Judge and no hard and fast rule or parity could be claimed on that basis as there is no statutory provision which prescribes the quantum of penalty to be imposed in given circumstances. It could not be denied that there was violation as there was no recognition for classes 11th and 12th prior to 31.3.2012. Equally, there is no substance in this contention as well.

7. In view of the above, there is no merit in this appeal and the same is hereby dismissed. The appeal is also time barred. An application bearing C.M. No. 215 of 2013 for condonation of delay in filing the appeal has been filed. Since the appeal has been dismissed on merits, no separate order is being passed on the application for condonation of delay.