
(2013) 08 P&H CK 0861
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10273 of 2012

Pankaj Kaushik

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

National Commission for Minority Educational Institutions Act, 2004 — Section 2(g)
Right of Children to Free and Compulsory Education Act, 2009 — Section 12(1)(c),
18(3), 2(n)(iv)

Citation : (2013) 08 P&H CK 0861

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Sangeeta Dhanda, for the Appellant; Nitin Kaushal, AAG, Haryana, Mr. Harsh Aggarwal, Advocate for Respondent No. 2 and Ms. Mehak Bhadana, Advocate, for the Respondent

Judgement

Rakesh Kumar Jain, J.—The case set up by the petitioner is that respondent No. 3 is affiliated to Central Board of Secondary Education and is covered under the definition of School as per Section 2(n)(iv) of the Right of Children to Free and Compulsory Education Act, 2009 [for short "the Act"] and since the petitioner belongs to the Economic Weaker Section [for short "EWS"], therefore, as per Rule 134 of the Haryana School Education Rules, 2009 [for short "the Rules"], respondent No. 3 is not only obliged to declare the result of the ward of the petitioner of Class III, but also to promote him in Class IV without asking for a sum of Rs. 15,000/- towards fee/charges of Class III. It is submitted that petitioner is working as driver in the Civil Hospital Ballabgarh, Faridabad on D.C. rates. Respondent No. 3/School is in the neighbourhood and is within the radius of 2 Kms from the residence of the petitioner and being privately un-aided school is covered under the Act. After notice, respondent No. 3 has filed its reply, in which it is urged that the School is being run by "IDICULA TRUST SOCIETY" which is registered on 6.7.1971 and has been declared to be Minority Educational Institution by virtue of the certificate dated 27.7.2012 issued by the National

Commission for Minority Educational Institutions. The certificate reads thus:-

This is to certify that by the order dated 24th Day of July 2012 passed by the National Commission for minority Educational Institutions, New Delhi in case No. 809 of 2012 (St. John's School, Block A, Sector 7, Faridabad, Haryana Vs. Finance Commissioner & Principal Secretary, Education Department, Government of Haryana), St. John's school run by IDICULA Trust Society has been declared as a Minority Educational Institution covered u/s 2(g) of the National Commission for Minority Educational Institutions Act, 2004.

2. Learned counsel for respondent No. 3 has further argued that the School is Unaided Minority Institution and is not covered under the Act, as Section 2(n)(iv) of the Act covers an unaided school, not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority, but it does not cover the schools which are unaided minority institutions.

3. In this regard, he has relied upon a decision of the Supreme Court in the case of W.P. (C) 95 of 2010 titled as "Society for Un-aided Private Schools of Rajasthan Vs. Union of India and another" decided on 12.4.2012, in which the following conclusion has been arrived at by the Apex Court:-

Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

- (i) a school established, owned or controlled by the appropriate Government or a local authority;
- (ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) a school belonging to specified category; and
- (iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

However, the said 2009 Act and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, applying the R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), principle of severability, the said 2009 Act shall not apply to such schools.

This judgment will operate from today. In other words, this will apply from the academic year 2012-13. However, admissions given by unaided minority schools prior to the pronouncement of this judgment shall not be reopened.

After hearing learned counsel for the parties and perusing the record, I am of the considered opinion that though the Act is applicable to the unaided private schools as per Section 2(n)(iv) of the Act but in view of the decision of the Supreme Court, in the case of Society for Un-aided Private Schools of Rajasthan

(Supra), it would not apply to the Unaided Minority Institutions. Consequently, respondent No. 3, being an Unaided Private Minority Institution, is not covered by the Act and therefore, the prayer made by the petitioner cannot be allowed under the provisions of the Act. Hence, present writ petition is found to be without any merit and the same is hereby dismissed.