

(2016) 09 P&H CK 0241

In the Punjab And Haryana At Chandigarh

Case No : CR Nos. 3553, 4092, 3665 & 5767 of 2016.

**St. John's School and Others - Petitioners @HASH Satpreet Singh Virdhi
(Minor) and Others**

Date of Decision : 24-09-2016

Acts Referred:

Haryana School Education Act, 1995 — Section 158(B), Section 22

Citation : (2016) 4 RSJ 405

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Mohak Bhadana, Advocate, for the Petitioner; Mr. Abhishek Goyal, Advocate, for the Respondent Nos. 1 to 5 in CR No. 3665 of 2016; Mr. Manoj Dhankhar, AAG, Haryana, for the Respondent No. 3 in CR No. 4092, 3553 of 2016; Mr. Manoj Dhankhar, AAG, Haryana

Final Decision : Disposed Off

Judgement

Amit Rawal, J. (Oral)—This order of mine shall dispose of aforementioned four revision petitions filed at the instance of School challenging the jurisdiction of Trial Court to entertain the suit at the instance of children for charging heavy fees.

2. Mr. Mohak Bhadana, learned counsel appearing on behalf of petitioners submits that Civil Court as per the provision of Section 22 of Haryana School Education Act, 1995 does not have the jurisdiction. Rules framed thereunder particularly Rules 158(A) and 158(B) prescribed a separate mechanism for redressal of the grievances and there is remedy of appeal, therefore, Civil Court does not have jurisdiction but even from the averments made in the plaint, it is evident that respondents have allegedly charged the excess fee, therefore, remedy, if any is with the competent authority as per the Rules aforementioned.

3. Mr. B.S. Viridi, learned counsel appearing on behalf of respondents-plaintiffs submits that jurisdiction of the Committee as per the language used in Rule 158 would only invoked when a private school has charged capitation fee or fee in excess of the fee whereas fee has not been paid, therefore, Civil Court as per

Section 9 of the Act would have jurisdiction. The application under Order 7, Rule 11 CPC has been filed on the basis of the averments made in the plaint and not in defence, rightly so, application has been dismissed.

4. I have heard learned counsel for the parties and appraised the paper book.

5. On perusal of Section 22 and provision of Chapter VI of the Act *ibid* extracted in the grounds of revision, which reads thus:-

"a) Chapter VI of the Act contains provisions in relation to the admission to schools and fees.

b) Section 16(3) mandates the Manager of every recognised school to file with the Director a full statement of the fee to be levied by such school during the ensuing academic session and no school shall charge fee in excess of the fee specified by its Manager in the said statement and such fee should commensurate with the facilities provided by such school.

c) Section 17(3) prescribes that "unaided school fund" must consist of fee, any charges which may be realised by the school for other specified purposes and any other contributions, endowments, gifts and the like. Further, subsection (4) states that income derived by un-aided schools by way of fees shall be utilised only for such educational purposes as may be prescribed and the charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for specific purpose for which they were realised or received. The unspecified gifts shall also be used for academic purpose.

d) Section 17(5) makes it obligatory for the Managing Committee of every recognised private school to annually file with the Director such duly audited financial and other returns and every such return shall be further audited by the prescribed authority.

e) The Act under Chapter VII also provides for "Inspection of schools" as per the provisions of Section 21 whereby the Director is empowered to arrange for special inspection of any school or any aspect of its working and issue directions in case any defect or deficiency is discovered.

f) Section 22 of the Act bars the jurisdiction of the Civil Court in respect of any matter in relation to which the Government or Director or any authority is empowered under the Act or exercise their powers.

g) Chapter VI of the Rules relates to "Fee and Funds in Unaided Schools". Rule 158(2) obligates the manager of such schools to submit details of minimum facilities being provided and the maximum fee charged in Form VI. And further the said Rule mandates that before the commencement of each academic session every such school shall file a full statement of fee and funds levied by it during ensuing academic session with the Department justifying it. Also, no such school shall charge any fee in excess of the fee/funds specified by the Manager in the said statement during the academic session. Each school shall submit proforma

duly filled in by 1st January of every year to the appropriate authority which shall publicly display these details. And sub-rule (3) explicitly bars charging of capitation fee by such schools.

h) It is most respectfully submitted that in compliance of the order dated 09.04.2013 of this Hon"ble Court in CWP 20545 of 2009 the Government of Haryana, School Education Department introduced Rules 158-A and 158-B vide notification No.8/27-2013 PS(2) dated 28.01.2014; the said Rules read as under:

158-A: Fee and Funds Regulatory Committee:-

(1) There shall be a committee to be known as Fee and Funds Regulatory Committee at the Divisional Level under the Chairmanship of Divisional Commissioner, who shall be assisted by the following officers/officials (i) District Education Officer/District Elementary Education Officer (ex-officio member) to be nominated by the chairman. (ii) A retired Accounts Officer/Chartered Accountant to be nominated by the Chairman on such terms and conditions, as may be approved by the Government.

(2) Where the committee on receipt of any complaint or otherwise is satisfied after de enquiry, that a private school has charged capitation fee or fee in excess of the fee as notified by the school, it would ensure the redressal of the complaint so received within a period of 60 days from the receipt of complaint and it may:-

(i) direct the concerned institution to refund the capitation fee or fee in excess of the fee as notified by the school, as the case may be;

(ii) recommend withdrawal of recognition/affiliation of the school to the Director who shall pass the order accordingly.

(3) Before taking any action or passing any other under sub-rule (2) above, the committee shall provide a reasonable opportunity of being heard to such institution.

158-B. Appeal ? any person or school management aggrieved by any direction or order passed under rule 158 A, may file an appeal to the Administrative Secretary within a period of 30 days from the date of such order."

6. Remedy for redressal of the alleged grievance is with the Committee and not with the Civil Court. In case any complaint is made, it has to be decided within 60 days, and thereafter remedy of appeal is also there.

7. In my view, Civil Court would not have jurisdiction. This aspect has totally been ignored by the Courts below.

8. Accordingly, application is allowed.

9. Plaint is ordered to be returned with liberty to the respondents plaintiffs to file the same by treating it as a complaint in the competent authority as constituted under the rules aforementioned.

10. Revision petitions stand disposed of.

11. The above said view of mine not to be construed as expression of opinion on merit of the case as only legal question has been determined.