

*Before G.S. Singhvi & B. Rai, JJ.*

ASSOCIATION OF PRIVATE EDUCATIONAL INSTITUTIONS  
(REGD.) CHANDIGARH—*Petitioner*

*versus*

CHANDIGARH ADMINISTRATION, U.T. CHANDIGARH &  
OTHERS—*Respondents*

CWP No. 2529 of 1997

30th July, 1998

*Constitution of India, 1950—Arts. 14, 21, 41 and 45—Capital of Punjab (Development and Regulation) Act, 1952—Ss. 3 and 22—The allotment of land to the institutions (Schools etc.) on lease hold basis in the Union Territory Chandighr, Scheme, 1996, notified on 31st January, 1996—Paras 1, 4, 5, 14, 17 and 18—Right to education—Universal Declaration of Human Rights—Art. 26(1)—Allotment of land/sites for educational institutions—Scheme of allotment excluding unrecognised and unaided institutions from allotment—Consideration for allotment only to educational institutions/schools run by registered societies/trusts of non-proprietary character—Distinction between recognised/aided and unrecognised/unaffiliated/unaided institutions is reasonable and valid—Exclusion of one category is non-discriminatory—Though such institutions have fundamental right to establish schools but have no right to allotment of land at Government fixed prices—Nor have they right to aid, affiliation or recognition—No mandamus can be issued to Government to frame scheme for private coaching/training centres since there is no impediment in the way of such institutions from purchasing suitable sites at market price—Scheme of allotment upheld.*

*Held*, that right to education, understood in the context of Articles 45 and 41, means: (a) every child/ citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

(Para 3)

---

*Further held*, that the members of petitioner have not taken up the cause of imparting knowledge or training with a view to render selfless service to the society. Rather they charge substantial fee from every student (kid or young ones) who come to join their training and coaching centres and, therefore, there is no basis in the tall claim made by the members of the petitioner that they should be treated as partners of the State in its trust to achieve the goal of education for all. The members of petitioner are not seeking enforcement of their right to shelter but they want land for expanding their activities in order to earn more profits. There is no rhyme or reason to give an unwarranted expansion to the concept of life so as to entitle the members of the petitioner association to be allotted land at specified rates. The plea of Shri Sibal which is based on Article 51-A also merits rejection for these very reasons.

(Para 24)

*Further held*, that we also do not find any substance in the argument of Shri Sibal that the provisions of 1952 Act in so far they come in conflict with the fundamental right of the members of the petitioner to establish coaching and training institutions, be declared *ultra vires* to the Constitution.

(Para 25)

*Further held*, that the provisions contained in the Act of 1952 do not in any manner encroach upon the fundamental rights of the members of the petitioner-association to establish training and coaching institutions/centres. The regulatory measures envisaged by the Act of 1952 do not prevent the institution, to whom the petitioner is representing, from purchasing land and erecting building in accordance with the relevant rules and regulations. Thus, the Act cannot be declared unconstitutional.

(Para 29)

*Further held*, that the distinction made in the impugned scheme between the government institutions, government affiliated and aided institutions on the one hand and unrecognised/unaffiliated institutions on the other hand is quite rationale and justified. As mentioned above, the members of the petitioner cannot claim parity with the Government schools and the Government aided/recognised schools. This distinction must have weighed with the respondents while framing the scheme. The respondents are presumed to be aware of the existence of unrecognised and

unaffiliated institutions engaged in the running of training and coaching centres with profit as one of their motives and this must be the reason for defining the expression "educational institution" so as to include only schools run by duly constituted registered societies/trusts having non-proprietary character. There is no infirmity in the policy formulated by the respondents. The exclusion of unrecognised and unaided institutions whose functions cannot be regulated or controlled by any public authority, is in large public interest. Else they will fleece students by charging hefty fee as in the prevalent practice. Therefore, we do not find any good ground to declare the scheme as discriminatory.

(Para 31)

H.L. Sibal, Sr. Advocate with Salil Sagar, Advocate, *for the Petitioner.*

Ashok Aggarwal, Sr. Advocate with Mrs. Lisa Gill, Advocate, *for the Respondents.*

### JUDGMENT

*G.S. Singhvi, J.*

(1) No human being can achieve fullness in life without education. No society can progress and prosper without making provision for educating its members. No nation can march forward unless its children and young ones are educated. The importance of education is being emphasized since time immemorial. In the 'Neethishatakem' by Bhartruhari (First Century B.C.), it has been said:

*"Education is the special  
manifestation of man;  
Education secures material pleasure,  
happiness and fame;  
Education is the teacher of the  
teacher;  
Education is God incarnate;  
Education secures honour at the hands  
of the State, not money.  
A man without education is equal to  
animal."*

(2) Father of the nation Mahatma Gandhi and the great philosophers, thinkers and educationists like our Presidents late

---

Dr. S. Radhakrishnan and late Dr. Zakir Hussain gave clarion call for educating Indian masses. This is also one of the basic ingredients of the Directive Principles of State Policy enshrined in Part IV of the Constitution.

(3) The learned members of the Constituent Assembly, who devoted over two years in the framing of the Constitution, made an in depth study on the issue of State's obligation to provide education and incorporated various provisions in the chapters relating to fundamental rights and the directive principles of State policy. Articles 41, 45 and 46 show the importance attached to the education by the founding fathers. Articles 29 and 30 also speak of education. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means : (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

(4) The international community has also recognised the importance of education and, therefore, provision has been made for this purpose in the Universal Declaration of Human Rights. Article 26(1) thereof reads thus:

*"Everyone has the right to education. Technical and professional and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."*

(5) In the World of Science and the Rule of Law by John Ziman 1986 Edition at page 49 it is stated:

“The principal global treaty which covers this right is the ICESCR, whose Art. 13 recognized the general right to education enunciated by the UDHR, but then goes on to add the following more specific provisions:

- (2) The States Parties to the present Covenant recognise that, with a view to achieving the full realization of this right:
  - (a) Primary education shall be compulsory and available free to all;
  - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
  - (c) Higher education shall be made equally accessible to all, on the progressive introduction of free education;
  - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
  - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

The status of this Article is a useful reminder of the problems inherent in any attempt to create a ‘social’ right of this kind for individuals against their states.”

(6) We have prefaced the judgment of this petition by highlighting the importance of education because one of the points urged by Shri H.L. Sibal, Senior Advocate with his usual tenacity coupled with emotional appeal for Court’s intervention is that the training and coaching institutions which are partners of the State in the discharge of its constitutional obligation to provide education

---

must not be discriminated in the matter of allotment of land for construction of buildings.

(7) The main question raised in this petition is whether the Court can issue a direction to the Administration of Union Territory, Chandigarh to frame a scheme and allot land to the private unrecognised training and coaching centres and institutions. The petitioner is an association of private educational institutions operating in Chandigarh. It has prayed for quashing the notifications dated 31st January, 1986 and 30th July, 1996 as well as the advertisement Annexure-P.5 issued by the respondents for allotment of land to the educational institutions (schools) on lease hold basis. The petitioner has also prayed for issuance of a direction to the respondents to frame fresh scheme and allot plots of smaller sizes to the private educational institutions of Chandigarh.

(8) The issue relating to allotment of land to the educational institutions for construction of their buildings has been receiving the attention of the Administration of Union Territory, Chandigarh from time to time and in last 4 decades a number of educational institutions, government as well as non-governmental, have been allotted plots of land at fixed price. In 1991 and 1993 a number of registered societies engaged in the field of education filed writ petitions in the High Court for directing the Administration to allot land to them for construction of buildings, C.W.P. No. 4785 of 1991, *Milap Bal Mandir Model School Association (Regd.) v. Chandigarh Administrations and others* and six other petitions were disposed of by this Court on 27th September, 1994 and directions were given for framing of a scheme for allotment of land to the educational institutions. Relevant extracts of that order which read as under:—

“During the hearing of these petitions, it was not disputed before us that there is no set or declared policy/guideline according to which the land is allotted by the Chandigarh Administration to various educational institutions/societies. As and when an application or a number of applications are received a decision is taken thereon depending on the facts and circumstances of each case. This has given rise to the grievance projected by the various petitioners that their claim had been ignored arbitrarily.

During the course of hearing and after obtaining instructions from the quarters concerned. Mr. Ashok Aggarwal, Senior Advocate, learned counsel for the respondents,

stated that he had received letter No. 13902/G-III dated 26th July, 1994, from the Estate Officer, Union Territory of Chandigarh forwarding therewith Memo No. 2476-UTFI(5)-94/9076 dated 12th July, 1994, to the effect that the Chandigarh Administration had decided to finalise the criteria/guidelines for the allotment of land for school buildings to societies *de novo*. It has further been decided by the Administration that the claim of the petitioner-societies will be considered along with other applicants in terms of the criteria/guidelines being formulated. Mr. Aggarwal made statement to this effect. In view of the above-referred statement, we dispose of these writ petitions with the following observations/directions:

- (i) The Chandigarh Administration shall finalise the criteria/guidelines/policy with regard to allotment of land to various educational institutions/societies intending to construct schools at Chandigarh as soon as possible, preferably within a period of six months from today.
- (ii) Amongst other relevant factors, the Chandigarh Administration shall keep in view the date on which the various applicants approached the Administration for allotment of land, and in doing so give the applicants the priority they deserve on the basis of the date of applications. We may not be taken to mean that the rule of 'first come first served' shall be adopted.
- (iii) It should be made clear that in the criteria standing of the organisation/institution on its own merits may justify preferential treatment in the matter of allotment of land on an overall consideration of the facts and circumstances and merit of the applicant.
- (iv) The respondent-Administration shall keep in view the statement made by learned counsel appearing on its behalf in CWP No. 3478 of 1990, dated 31st May, 1990 (Annexure-P.7), in CWP No. 5260 of 1993), the relevant portion of which reads as under :—

“Mr. Jain has produced before us a draft in the name of Estate Officer, Chandigarh Administration, for Rs. 2 lacs as directed,—  
*vide* our last order.

---

Mr. Ashok Bhan appearing for the respondents states that allotment made in favour of respondent No. 3 in, Sector 21-A, has been cancelled. He further states that claim of the petitioner for the allotment of plot will be considered in accordance with rules in case the petitioner files a fresh application along with the demand draft as referred to above within a period of 15 days from today.

If the application is filed, the Administration would process and finalise it within three months from the date of filing of the application. It is further undertaken on behalf of the respondents that the seniority of the petitioner in the matter of this allotment would not be ignored in any manner and rather he would be given priority. This completely satisfied the learned counsel for the petitioner.

The petition is disposed of as infructuous.”

- (v) Mr. O. P. Goyal, Senior Advocate, learned counsel for the petitioner in CWP No. 5260 of 1993, placed on record some of the relevant factors which deserve to be considered for inclusion in the criteria to be formulated. A copy of the same has been delivered to Mr. Ashok Aggarwal, learned counsel for the Chandigarh Administration. The same shall be taken into consideration while finalising the aforesaid policy.
- (vi) The order of rejection conveyed,—*vide* Estate Officer's Letter Annexure-P. 13, dated 3rd August, 1992, in CWP No. 5260 of 1993, is hereby set aside. The application of the petitioner in the said CWP shall be considered on merits according to the policy being framed by the administration.
- (vii) The policy framed, as stated above, shall be given due publicity. In particular, each of the petitioners in these writ petitions shall be informed by sending a copy of the criteria/policy adopted by the Administration.
- (viii) The applications made by the petitioners in these writ petitions as also other applications which may



have been received in the interregnum period up to the date of finalising and those received thereafter shall be dealt with in accordance with the guidelines/policy to be formulated.

- (ix) It will be open to the petitioners to challenge the action of the Administration taken in pursuance of the aforesaid policy in accordance with law notwithstanding the disposal of these writ petitions. Till the aforesaid policy is finalised and implemented, no further allotment shall be made to any educational institution except with the prior approval of this Court.”

(9) In compliance of the order of the Court's and in exercise of the powers vested in him under Sections 3 and 22 of the Capital of Punjab (Development and Regulation) Act, 1952, and the rules framed thereunder, the Administrator of Union Territory, Chandigarh, framed the scheme known as “The allotment of land to the institutions (Schools etc.) on lease hold basis in the Union Territory, Chandigarh, Scheme 1996” (hereinafter referred to as ‘the Scheme’). The same has been notified in the gazette, dated 31st January, 1996. First three paragraphs clauses (ii), (iv), (vii), (ix), (x), (xi) of para 1, and paragraphs 4, 5, 14, 17 and 18 of the Scheme are :—

“Whereas there a number of Educational Institutions (Schools) managed by societies or otherwise, scattered at different places in the various sectors of the Union Territory of Chandigarh :—

And whereas most of the Educational Institutions (Schools) are running in the premises not meant for the purpose, in violation of the provisions of the Capital of Punjab (Development and Regulations) Act, 1952, and the rules made thereunder, and thereby affecting the planned character of the City :

And whereas in view of the afore-mentioned purpose, it is necessary, in the public interest, to lay down a scheme to regulate the allotment of sites to the Educational Institutions (Schools):

Now, therefore, in exercise of the powers conferred by Section 3 and Section 22 of the Capital of Punjab

(Development and Regulations) Act, 1952, and the Rules made thereunder the Administrator, Union Territory, Chandigarh, is pleased to make the following scheme for the allotment of land to the Educational Institutions (Schools) on the leasehold basis in the Union Territory of Chandigarh, namely:—

1. This Scheme may be called “The allotment of land to Educational Institutions (Schools), etc. on leasehold basis in Chandigarh, Scheme, 1996.”

(ii) “Category of site”, shall mean site for pre-primary, primary, high/secondary school, as the case may be.

xx      xx      xx      xx      xx

(iv) “Educational Institution (School)” means a pre-primary, primary, high/secondary school run by a duly constituted registered society/Trust which would be on non-proprietary character, that is, its constitution be such that it does not vest control in a single individual or members of a family.

xx    xx    xx    xx    xx

(vii) “Managing Committee” means the Managing Committee of the Institution (School)/Society/Trust which shall be managing the affairs of the Institution (School).

xx      xx      xx      xx      xx

(ix) “Reputed Institution (School)” means an Educational Institution (School) which has made significant contribution in the field of education, has excelled in educational and related activities, and has eminent personalities interested in education associated with its management and running.

(x) “Society” means a society registered under the Societies Registration Act, 1860.

(xi) "Trust" means a Trust registered under the Indian Trust Act, 1926.

4. **Eligibility for allotment**—Unless otherwise provided under this scheme, an Educational Institution (School)/Society/Trust shall be eligible for allotment of land subject to the following:—

(i) The Educational Institution (School)/Society/Trust is having at least one year of experience in running a recognised/affiliated Educational Institution (School) on the date of notice inviting applications.

(ii) The Educational Institution/Society/Trust has enough funds at the time of applying to pay at least 25% of the advertised cost of the land and 25% of the estimated cost of the building to be erected thereupon and shall give sufficient proof for the same.

5. **Reservation of sites**:—There shall be reservation of sites under each category of sites advertised in the manner detailed below:—

(i) In case one site is advertised under a particular category, it will be reserved for eligible applicants already running Educational Institutions (Schools) in premises not meant for the purpose in the U.T., Chandigarh.

(ii) In case two sites are advertised under a particular category, both will be reserved for eligible applicants mentioned at (i) above.

(iii) In case three sites are advertised in a particular category, two sites will be reserved for eligible applicants from U.T. of Chandigarh mentioned at (i) above and one site will be reserved for Reputed Institutions (Schools) located anywhere in the country.

- 
- (iv) In case the number of advertised sites in a particular category exceeds three, the reservation would be made in accordance with the principles laid down in clauses (i) to (iii).
  - (v) Out of the advertised sites, the specific sites to be put under the reserved categories as in clauses (i) to (iii) above shall be determined through draw of lots.

xx    xx    xx    xx    xx

14. The Institution (School)/Society/Trust running Educational Institution (School) in Chandigarh Administration, in case of allotment of site, shall be required to stop running of the Institution (School) from the existing premises within a period of 30 days from the start of Educational Institution in the new building.

xx    xx    xx    xx    xx

17. Notwithstanding anything to the contrary, the allotment of sites under this scheme shall be subject to the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the Chandigarh Lease-hold of Sites and Building Rules, 1973 and further such instructions/order/amendments made thereunder from time to time.

18. The Educational Societies/Institutions (Schools)/Trusts shall be required to :—

- (i) To have 25% nominees of the Chandigarh Administration and the total number of members of Management Committee shall not be more than 16.
- (ii) To reserve 15% or more seats as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to economically weaker Sections of the

Society and the fee charged from those students shall be nominal preferably the same as is charged from the students of a Government Institutions.

- (iii) Follow instructions/guidelines directions issued by the Chandigarh Administration from time to time regarding fee structure, reservations and admission procedure etc.
- (iv) Appoint qualified teaching/other Ministerial staff and pay them the salaries as is required to be paid in an aided school in the Union Territory, Chandigarh."

(10) *Vide* notification dated 30th July, 1996, the respondent-Chandigarh Administration notified the price of the land to be allotted to the educational institutions and to others. Later on, notice Annexure-P. 5 was issued by the Estate Officer inviting applications for allotment of 8 school sites in different sectors of Chandigarh.

(11) Sai Niketan Social Welfare Society (Regd.), Jesus and Mary School Society, Sanawar Montessori Educational Society (Regd.) and St. Joseph's Educational and Charitable Trust challenged the Scheme, the notification dated 30th July, 1996 and the notice Annexure-P. 5 by filing Civil Writ Petition Nos. 2296, 3644, 4292 and 10374 of 1997. The issues raised in these petitions were :—

- (i) Whether the Scheme of 1996 is contrary to the order passed by the High Court on 27th September, 1994 in Civil Writ Petition No. 4785 of 1991 ?
- (ii) Whether treating of schools of various categories at par is arbitrary and discriminatory ?
- (iii) Whether reservation of sites for outside schools is arbitrary ?
- (iv) Whether the fixation of price is unreasonable and unconstitutional; and
- (v) Whether a *mandamus* should be issued to the respondents to earmark more sites for the schools ?

---

(12) By a detailed order dated 8th August, 1997, a Division Bench upheld the 1996 Scheme, the reservation of sites for outside schools and the fixation of price. The Court also held that the decision of the Administration to put pre-primary, primary, high/secondary schools is neither arbitrary nor discriminatory. On the issue of increasing the number of sites earmarked for the schools, the Court observed that the matter should receive the attention of the Administration.

(13) The record of this case shows that while issuing notice of motion on 21st February, 1997, the Court had directed that the same be heard along with C.W.P. No. 2296 of 1997. However, this case could not be heard along with other petitions because the petitioner filed application for amendment of the writ petition, which was accepted on 21st July, 1997 and thereafter hearing of the case was adjourned. That apart, learned counsel appearing for the petitioner in Civil Writ Petition No. 2296 of 1997 and other connected petitions did not bring it to the notice of the Court that this petition is also to be heard along with other petitions.

(14) Shri H. L. Sibal, Senior Advocate appearing for the petitioner took us through the averments made in the writ petition and the written statement and urged the following points in support of the prayer made by the petitioner :—

- (i) The definition of “Educational Institution” contained in para 1(iv) of the Scheme is *ultra vires* to Article 14 of the Constitution because it is too narrow and under-inclusive.
- (ii) The right of the members of the petitioner to establish and run educational institution is an integral part of their right to life guaranteed by Article 21 of the Constitution read with the Directive Principles of State Policy and the provisions of the Capital of Punjab (Development and Regulations) Act, 1952 in so far they come in conflict with the fundamental rights and Directive Principles of the State Policy should be declared *ultra vires* to the provisions of the Constitution.
- (iii) The Scheme is arbitrary and unreasonable because it does not take into account the increase in the population of Chandigarh and the proportionate increase in the number of students who seek admission in various courses, academic as well as professional.

(15) Shri Sibal addressed elaborate arguments in support of the writ petition. He submitted that the right to education has been recognised as a part of right to life guaranteed under Article 21 of the Constitution and, therefore, the Court should give extended meaning to the term education and it should not be confined to school education or college education. He submitted that the institutions engaged in imparting training and coaching at different levels should be treated at par with schools and colleges in the matter of providing facilities by the State. Learned counsel submitted that the government must encourage private educational coaching and training institutions because the State cannot, due to its financial conditions and other handicaps, make provision for imparting education to all. Shri Sibal lamented that in spite of serious resource crunch on all fronts and its inability to provide funds for education, the State has failed to provide amenities to the private educational organisations who want to become its active partners in the discharge of State's pious duty under the Constitution. Learned counsel pleaded for the support of State to private institutions by making liberal provisions for allotment of land so that they can manage and run the institutions without hassles of litigation by landlords. He argued that the right guaranteed to the members of petitioner association to establish and run coaching and training institutions must be regarded as a fundamental right guaranteed under Article 21 of the Constitution and the State should be directed to discharge its corresponding duty to frame scheme for allotment of land so that the right guaranteed under Article 21 of the Constitution can become meaningful and real. Shri Sibal pointed out that on the one hand the respondents have initiated action for ejection of coaching and training institutions from residential premises in the light of the judgment of the Supreme Court in *Babu Singh Bains etc. v. Union of India and others* (1) but no effort has been made to rehabilitate them by providing land for construction of buildings etc. He submitted that the fundamental right of the members of the petitioner to establish educational and coaching institutions which cater to the needs of thousands of students must not be made subservient to the provisions of 1952 Act and the rules/regulations framed thereunder and if at all there is conflict between the two, provisions of 1952 Act must be given overriding effect *qua* the provisions of 1952 Act and the rules framed thereunder. He relied

---

(1) J.T. 1996 (9) S.C. 371

on *Unni Krishanan J.P. and others v. State of Andhra Pradesh and others* (2) ; *Minerva Mills Ltd. and others v. Union of India and others* (3), and *Physical Research Laboratory v. K.G. Sharma* (4). Shri Sibal also submitted that the judgment of this Court in *Sai Niketan Social Welfare Society's case* (supra) does not deal with the issue raised in this petition and, therefore, the respondents cannot seek dismissal of the writ petition on the basis of that decision.

(16) Shri Ashok Aggarwal assisted by Mrs. Lisa Gill strongly relied on the order dated 8th August, 1997 and urged that the Court need not go into those very issues raised in this petition over and again. Shri Aggarwal placed information regarding the number of government schools in Chandigarh, the number of teachers working in such schools and the number of students enrolled. The details furnished by him are reproduced below :—

“1. Total Number of Government Schools in Chandigarh (Pre Nursery to Plus Two)	:	103
No. of Government Senior Secondary Schools	:	29
Government High Schools	:	37
Government Middle Schools	:	13
Government Primary Schools	:	24
2. No. of teachers working in these Schools	:	3353
3. No. of students enrolled in these Schools	:	81,881
4. No. of seats available in these Schools	:	1,41,249
5. No. of vacancies as on 30th April, 1998	:	59,368”

(17) Learned counsel justified the distinction made between recognised and/or aided institutions and unrecognised, unaffiliated and unaided institutions. According to him the distinction is based on a valid and rationale criteria. Shri Aggarwal pointed out that the coaching and training institutions to whom the petitioner claims

(2) A.I.R. 1993 S.C. 2178

(3) A.I.R. 1980 S.C. 1789

(4) J.T. 1997 (4) S.C. 527



to represent are being run on commercial principles. They charge hefty fee from the students and make huge profits. He submitted that these institutions can appropriately be termed as business shops who do not have the motto of serving the society. He seriously disputed the statement made by Shri Sibal that the members of the petitioner are engaged in discharging a sovereign duty function of the State and argued that the activities of these institutions are akin to trade and commerce. Learned counsel invited our attention to the fee structure of the government schools and those of the private educational institutions as incorporated in the judgment of this Court in *Sai Niketan Social Welfare Society's* case (supra) and asserted that the fee and other charges being levied by the members of the petitioner are far more than the governmental institutions and even those private institutions who had filed other petitions. Shri Aggarwal submitted that the Scheme has been framed keeping in view the scarce availability of land in Chandigarh and the members of the petitioner are free to run their training centres/institutions by hiring commercial premises which are available in large measures in the Union Territory of Chandigarh.

(18) The question whether right to education is an integral part of the right to life has received attention of the Courts from time to time. In *Miss Mohini Jain v. State of Karnataka and others* (5), a two judges Bench declared that the right to education flows directly from right to life and the State is under obligation to provide education to all. This wider meaning given to the provisions contained in Articles 41, 45 and 46 did not find full approval of the Constitution Bench in *Unni Krishnan J.P. v. State of Andhra Pradesh* (supra). While rejecting the argument that the right to life embodied in Article 21 does not take within its fold the right to receive education, the Constitution Bench held that right to education is implicit in the right to life but further held that it is not an absolute right and its contents and parameters have to be determined in the light of various constitutional provisions. Some of the conclusions recorded in that judgment are:—

- “1. The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right of free education until he completes

---

the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.

2. The obligations created by Articles 41, 45 and 46 of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding, recognising and/or granting affiliation to private educational institutions. Where aid is not granted to private educational institutions and merely recognition or affiliation is granted it may not be insisted that the private education institution shall charge only that fee as is charged for similar courses in governmental institutions. The private educational institutions have to and are entitled to charge a higher fee, not exceeding the ceiling fixed in that behalf. The admission of students and the charging of fee in these private educational institutions shall be governed by the scheme evolved herein set out in Part-III of this judgment.
3. A citizen of this country may have a right to establish an educational institution but no citizen, person or institution has a right much less a fundamental right, to affiliation or recognition, or to grant-in-aid from the State. The recognition and/or affiliation shall be given by the State subject only to the conditions set out in, and only in accordance with the scheme contained in Part-III of this Judgment. No Government/University or authority shall be competent to grant recognition or affiliation except in accordance with the said scheme. The said scheme shall constitute a condition of such recognition or affiliation to such other conditions and terms which such Government, University or other authority may choose to impose.

Those receiving aid shall, however, be subject to all such terms and conditions, as the aid giving authority may impose in the interest of general public."

(19) In that decision, the Apex Court also dealt with the role played by the private educational institutions and observed:—

"The hard reality that emerges is that private educational institutions are a necessity in the present day context.

It is not possible to do without them because the Government are in no position to meet the demand—particularly in the sector of medical and technical education which calls for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions—including minority educational institutions—too have a role to play.”

(20) Their Lordships of the Supreme Court also dealt with the question whether the right to establish an educational institution is a fundamental right. After making reference to some precedents, the Apex Court held that the activity involving establishment of an educational institution can neither be a trade or business nor it can be a profession within the meaning of Article 19(1)(g) and while observing that they would presume that a person or batch of persons have a right to establish an educational institution, their Lordships of the Supreme Court held:—

“We must, however, make it clear, and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation. In *St. Xaviers College v. State of Gujarat* (1975) 1 SCR 173: (AIR 1974 SC 1389) it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C.J., stated that this has been “the consistent view of this court.” They also recognised that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. *In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State—much less have they the right to say that the students trained by*

---

*the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality."*

(21) In the light of the above, it is to be decided whether the members of the petitioner-Association have fundamental right to establish the institutions for the purposes enumerated in para 1 of the writ petition and whether such right include the right to seek allotment of land for construction of buildings. An ancillary question that will need determination by the Court is whether "the Scheme" framed by the respondents is *ultra vires* to Article 14 of the Constitution.

(22) The averments made in the writ petition show that the members of the petitioner association are engaged in the following activities:—

- (i) Preparatory Classes for admission into Pre-Nursery and Nursery classes.
- (ii) Pre-Primary, Primary and High School.
- (iii) Preparing female private students for appearing in the various education Board, CBSE and B.A. and M.A. examinations held by Panjab University.
- (iv) Preparing candidates for various competitive examinations e.g. UPSC/IAS/HCS/PCS/NDA/CDS/PMT, CET etc.
- (v) Imparting coaching to drop outs and failed students of schools and colleges.
- (vi) Imparting instructions to the wards of working couples."

(23) It is, thus, clear that, by and large, they are running coaching and training institutions which prepare the kids for admission into various classes and also train the students for various competitive examinations. It is not their case that they are imparting free training and coaching to the children below 14 years and those belonging to the weaker sections of society like Scheduled Castes, Backward Classes, Physically Handicapped etc. as is being done by the government run institutions as well as affiliated,

recognised and aided institutions. Rather, it is an admitted position that the training and coaching institutions run by the members of petitioner association charge substantial fee from the kids and students. The fact that as many as 59,000 seats of students are lying vacant in various government and recognised institutions of Chandigarh is sufficient to negate the petitioner's assertion that its members are catering the need of the society by providing facilities to the students who are unable to secure admission in educational institutions. Their claim of partnership with the State in the discharge of its pious constitutional duty of imparting education also merits rejection because the State has made provision for free education for children upto the age of 14 years and to those belonging to weaker sections whereas the members of the petitioner are running training and coaching institutions for earning profits. We have not mentioned all this with a view to undermine the status and value of the training and coaching being imparted by the unaided and unrecognised institutions, who are members of the petitioner association but to emphasize the fact that they cannot claim parity with government schools or government aided and recognised institutions.

(24) No doubt, the members of petitioner association have the freedom to establish, organise and manage training and coaching institutions/centres. They can do so by hiring or purchasing premises, land and/or buildings at the places of their choice. However, they cannot claim that they have any legal or fundamental right to the allotment of land and the Court should issue a mandamus directing the respondents to make provisions for allotment of land to them by framing appropriate scheme under 1952 Act. The argument of Shri Sibal that the extended meaning given to the concept of life embodied in Article 21 of the Constitution should be further enlarged so as to include the right of educational institutions to be allotted land by the government because they share the government's burden of fulfilling the constitutional goals set out in part-IV and they discharge fundamental duties enumerated in part-IVA (Article 51-A) is, in our opinion, without substance. As already mentioned above, the members of petitioner have not taken up the cause of imparting knowledge or training with a view to render selfless service to the society. Rather, they charge substantial fee from every student (kid or young ones) who come to join their training and coaching centres and, therefore, there is no basis in the tall claim made by the members of the petitioner that they should be treated as partners of the State in

---

its tryst to achieve the goal of education for all. Hence, we do not find any reason or justification to accept the submission of Shri Sibal that the members of petitioner have fundamental right to be allotted land by the government for construction of building. If the right to establish an educational institution does not even include the right to receive recognition and affiliation by the government and universities, as held in *Unni Krishnan J.P.'s case* (supra). It is impossible to uphold their claim for allotment of land. The members of petitioner are not seeking enforcement of their right to shelter but they want land for expanding their activities in order to earn more profits. In our considered opinion, there is no rhyme or reason to give an unwarranted expansion to the concept of life so as to entitle the members of the petitioner association to be allotted land at specified rates. The plea of Shri Sibal which is based on Article 51-A also merits rejection for these very reasons.

(25) We also do not find any substance in the argument of Shri Sibal that the provisions of 1952 Act, in so far they come in conflict with the fundamental right of the members of the petitioner to establish coaching and training institutions, be declared ultra vires to the Constitution.

(26) In this context, it is important to notice the background in which the Act of 1952 was enacted. The idea of having a new capital for the State of East Punjab was conceived by the Prime Minister of India, late Pt. Jawahar Lal Nehru, and it was concretised by Monsieur Le Carbusier. The need for creating capital city at the earliest is stated in the objects and reasons which led to the enactment of the Capital of Punjab (Development and Regulation) Act, 1952 (President's Act No. 5 of 1952). The brief objects and reasons thereof read as under :—

“The construction of the new Capital of the Punjab at Chandigarh is in progress. It is considered necessary to vest the State Government with legal authority to regulate the sale of building sites and to ensure that the purchasers construct buildings in accordance with by-laws and generally observe the conditions of sale. It is necessary also to provide for the maintenance of the amenities provided in the Capital before a properly constituted local body takes over the administration of the City. The Capital of Punjab (Development and Regulation) Act, 1953, seeks to carry out the above objects.”

(27) On December 19, 1952, the President's Act was repealed and its provisions were re-enacted with some modification in the present Capital of Punjab (Regulation and Development) Act, 1952. The concern of the legislature for the planned development and regulation of the new capital of the city is again manifest from the following objects and reasons of the supplementary legislation in the shape of the Punjab New Capital (Periphery) Control Act, 1952:—

“The Punjab Government are constructing a New Capital named “Chandigarh”. The Master Plan providing for the future extension of the Capital will extend over a much greater area than the area acquired so far, for the construction of the first phase of the Capital. To ensure healthy and planned development of the new city it is necessary to prevent growth of slums and ramshakle construction on the land lying on the periphery of the new City. To achieve this object it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present.”

(28) It is, thus, clear that the legislature wanted to regulate plan development of the new capital City, as is evident from the Preamble of the 1952 Act, which is in the following terms:—

“An act to make certain provisions in respect of the development and regulation of the Capital of Punjab.”

(29) In our opinion, the provision contained in the Act of 1952 do not in any manner encroach upon the fundamental rights of the members of the petitioner association to establish training and coaching institutions/centres. The regulatory measures envisaged by the Act of 1952 do not prevent the institution, to whom the petitioner is representing, from purchasing land and erecting building in accordance with the relevant rules and regulations. Thus, in our opinion, the Act cannot be declared unconstitutional.

(30) The argument of the learned counsel that the respondents should be directed to frame a separate scheme for private coaching/training centres deserves to be negated because Section 3 read with Section 22 of 1952 Act does not cast any such obligation on the respondents. Moreover, there is no impediment in the way of members of the petitioner-Association purchasing

---

suitable sites in the city. They can erect buildings after seeking approval of their plans from the competent authority.

(31) The distinction made in the impugned scheme between the government institutions, government affiliated and aided institutions on the one hand and unrecognised/unaffiliated institutions on the other hand is quite rationale and justified. As mentioned above, the members of the petitioner cannot claim parity with the government schools and the government aided/recognised schools. This distinction must have weighed with the respondents while framing the scheme. The respondents are presumed to be aware of the existence of unrecognised and unaffiliated institutions engaged in the running of training and coaching centres with profit as one of their motives and this must be the reason for defining the expression "educational institution" so as to include only schools run by duly constituted registered societies/trusts having non-proprietary character. In our opinion, there is no infirmity in the policy formulated by the respondents. The exclusion of unrecognised and unaided institutions, whose functions cannot be regulated or controlled by any public authority, is in larger public interest. Else they will fleece students by charging hefty fee as is the prevalent practice. Therefore, we do not find any good ground to declare the scheme as discriminatory.

(32) No other point has been argued.

(33) For the reasons mentioned above, the writ petition is dismissed.

---

*R.N.R.*