

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7494 of 2003
Date of decision:28.2.2007

Shiv Sena (Hindustan) and another

... Petitioners.

v.

State of Punjab and another

... Respondents.

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN,CHIEF JUSTICE.

HON'BLE MR.JUSTICE RAJIVE BHALLA.

Present: Mr.K.L.Arora, Advocate, for the petitioners.

Mr. A.G.Masih, Sr. Deputy Advocate General Punjab,
for the State.

Mr. Harsh Aggarwal, Advocate, for CBSE.

Mr. Sumeet Mahajan, Sr. Advocate, with
Mr.Sham Lal Bhalla, Advocate, for respondent No.5

Mr. C.M.Munjal, Advocate, for respondent No.6.

Mr.Pawan Kumar, Advocate, for respondent No.8.

Mr.Akshay Bhan, Advocate, for respondent No.9.

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1. Whether the Reporters of Local News paper may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Vijender Jain, Chief Justice (Oral)

This judgment would dispose of three writ petitions bearing No.7494, 12218 of 2003 and 965 of 2004, as common questions of law and facts are involved in all these petitions. The facts are taken from CWP No.7494 of 2003.

This writ petition has been filed inter alia praying for summoning the complete records of the case from the respondents and to issue appropriate writ directing the State of Punjab to stream line the working of the institutions/schools and to ensure that the students of the age group of 3-4 years are admitted on the basis of merit and not on the basis of donation/capitation fee, which is Rs.50,000/- for each student. The other prayer is to direct the State of Punjab to provide free and compulsory education to the children of the age group of 3-14 years; another prayer of the petitioners is to direct the respondent-CBSE to stream line the working/admissions in these institutions and also further prayer is to direct the CBSE to disaffiliate these institutions for financial irregularities as mentioned in the petition; further prayer is to direct the State of Punjab to investigate into the working of these institutions.

All the respondents have denied taking any capitation fee from the wards of students, for granting admission in their schools. The CBSE in its counter affidavit has stated in para 4 to the following effect:

“4. That the C.B.S.E. Board has already framed affiliation Bye Laws and the Board is governed by these laws in the matter of affiliation of the Schools with itself. Rule 11 of Examination Bye Laws is reproduced as under which throw light on the fee structure of

the School.

“11. Fees

Fees charges should be commensurate with the facilities provided by the institution. Fees should normally be charged under the heads prescribed by the Department of Education of the State/U.T. For schools of different categories. No capitation fee or voluntary donations for gaining admission in the schools or for any other purpose should be charged/collected in the name of the school. In case of such mal practice, the Board may take drastic action leading to disaffiliation of the School.

2. In case a student leaves the school for such compulsion as transfer of parents or for health reason or in case of death of the student before completion of the session, pro-rata return of quarterly term/annual fees should be made.

3. The unaided schools should consult parents through parent's representatives before revising the fees. The fee should not be revised during the mid-session”.

Therefore, as per the aforesaid rule, the schools can charge fees commensurate to the facilities provided by the institute or the school, as the case may be. A school providing better facilities may charge a fee commensurate with the facilities.

The CBSE has also stated that the Board lays stress upon the well being and proper salaries to be paid by the management to the teachers

and the staff. The service conditions of the staff are also monitored by the CBSE for the purpose of affiliation and de-affiliation of the schools.

In para 7 of the counter-affidavit, the CBSE has taken a stand that the petitioners have not brought out any specific instance of capitation fee or donation being charged by the private respondents. No complaint has been received by the CBSE nor has any complaint been brought to their notice. It has also been stated that no complaint was received by the CBSE from the petitioners before filing the writ petition.

On the other hand, learned counsel appearing for the petitioners has relied upon press reports Annexure P8 & P9, to substantiate his argument that capitation fee was charged by the schools. It need not be over emphasised that in this country there are two sets of schools, one run by the State and the other by private trusts/management/societies or bodies. In a given case where certain facilities have been provided by the State in terms of grant of land at subsidized rate for development of further infrastructure, a provision for admission to weaker section of the students should be made. However, in institutions run by the private respondents, private trusts, private societies, generating their own funds for imparting education, no directions can be issued by this Court while exercising jurisdiction under Article 226 of the Constitution of India. We must not lose sight of the fact that in a vast country like ours, it is not the State alone but also other philanthropic educational institutions that provide education at various levels, to help in developing human resources. In the instant case, as no specific instance of demand or payment of capitation fee has been brought to the notice of this Court or to the CBSE, we would not like to interfere

while exercising our jurisdiction under Article 226 of the Constitution of India.

Dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

February 28, 2007
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