THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No. 21269 of 2013 (O&M)
Date of decision: January 15, 2015

A.V. Public School and others

...Petitioners

Versus

State of Haryana and others

...Respondents

2. CWP Nos. 21936, 21946, 22120, 22251, 22427, 22498, 22582, 21742, 22836, 22952, 22953, 24118, 22314 and 22702 of 2013

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

Present: Mr. D.S. Patwlia, Senior Advocate with
Mr. Bikramjit Singh Patwalia, Advocate,
for the petitioners in CWP Nos. 21936 and 22836 of 2013.

Mr. R.K. Malik, Senior Advocate with
Mr. Rimple Soni, Advocate,
for the petitioner in CWPNo. 22702 of 2014

Mr. Sandeep Singh Sangwan, Advocate,
for the petitioners in CWP No. 22251 of 2013.

Ms. Alka Sarin, Advocate,
for the petitioners in CWP Nos. 21946, 22498, 22952 and 22953 of 2013.

Mr. Sandeep Sharma, Advocate,
for the petitioner in CWP No. 22314 of 2013.

Mr. Ajay Kumar Sharma, Advocate,
for the petitioner in CWP No. 21742 of 2013.

Mr. Sanjiv Gupta, Advocate,
for the petitioners in CWP No. 21269 and 22582 of 2013.

Mr. Sonu Giri, Advocate,
for the petitioner in CWP No. 22314 of 2013.

Mr. Mohan Singh Chauhan, Advocate, for
Mr. RS Bains, Advocate,
for the petitioners in CWP No. 22120 and 44247 of 2013.

Mr. Keshav Gupta, Advocate, Assistant Advocate General,
Haryana.

K. KANNAN, J. (Oral)

1. All the petitioners in the above captioned writ petitions are the schools run in the State of Haryana. On coming into the force of the Right of Children to Free Compulsory Education Act 2009 (for short 'RTE'), a writ petition was said to have been filed in CWP No. 15225 of 2012 in public interest complaining that there were several schools run in the State without any recognition in the manner that was required both under the RTE and Haryana School Education Rules 2003 (with the subsequent amendments) and that they should be ordered to be closed. The State had given an undertaking in the court that they will take appropriate steps and in purported compliance of the directions given by the Division Bench, notices were issued by the Director General Primary Education, on 5.7.2013 to several schools, including all the petitioner-institutions to show cause why action shall not be taken against them who had neither obtained approval nor recognition and consequently having violated the Haryana School Education Rules, 2003 and the amendments of 2007 and 2009. The notices allowed for 15 days time to the managements of the respective schools to submit their respective explanations. On these notices, it appears several of the schools had responded and the petitioners would themselves admit that some of them did not. Subsequently, the impugned order dated 17.9.2013 was passed by the Director, Secondary Education to be caused to be informed through all the District Education Officers and District Elementary Education of the various districts, the closure of the schools, who are the

petitioners before this Court. The impugned order further directed that the students studying in these schools would be adjusted in the nearby government schools.

2. This Court by an interim direction dated 29.1.2014 took note of the submissions of the petitioners that the provisions of the RTE Act, 2009 prescribed steps to be taken by the schools to fulfill the norms and the conditions within a period of three years and taking further note that it was necessary that before any decision was taken to withdraw recognition, the deficiencies that may have existed in any of the schools were to be pointed out and if there were shortage of teachers and if there were any other defects in the buildings or other infrastructure, they have to be pointed, observed that stereotyped orders could not be passed directing closure. The Court recorded also the statement of the counsel for the State and directed it to give a composite affidavit taking into account the relevant provisions of the statute which governed the functioning of the schools and consider whether the issue of closure of schools could be re-examined in the context of the norms spelt out under the Act. On 16.12.2014, this Court had recorded the statement of the counsel for the State that it would furnish to the court whether there was any consideration for regularization of the schools run by the petitioners. It was also submitted on that date that the State would file an affidavit through the competent officer indicating the nature of consideration undertaken.

3. Before arguments got underway, the counsel for the State submits that there was no consideration for regularization of the schools and the affidavit offered to be given cannot also be given in view of the fact that the petitioners did not form a homogeneous class of schools in respect of

whom an comprehensive affidavit could be filed. Taking the statement that the direction was not capable of being complied with, for, the difficult experienced by the State, I called upon the Senior Counsel appearing on behalf of the petitioners to make submissions. I have heard the respective counsel and I am of the view that it makes no difference that all the schools do not fall in one single category as recognized schools or unrecognized schools, but the case could be decided on whether the impugned orders lack justification and that they cannot be supported by any logical reasoning, as contended on behalf of the petitioners.

4. The petitioners themselves admitted that after the notices were issued some of them had given replies and some of them had not; some of them applied for recognition under the RTE Act and some may not have. Whatever were the failings of the petitioners, there is a modicum of procedure that the State is bound to follow before the orders are passed directing closure of the schools. If only the State had undertaken any inspection and noticed on a case to case basis that norms had not been fulfilled or applications had not even been filed or replies had not been given, it would not be possible for the State to pass the order in the manner that it did. The State will not be prepared to come on record to say that all the schools did not conform to the norms nor it would say through the orders that there was any particular deficiency that entailed the withdrawal of recognition in the manner contemplated under the Act. An omnibus order that the replies submitted were not found in proper order only betrays a complete lack of application of mind. If the schools were required to be closed or recognition was required to be withdrawn, there bound to be for reasons laid down under the 2003 Rules or under the RTE Act. Rule 30 of

the 2003 Rules sets out the conditions for recognition and if any one of the petitioners has failed the test of what was required under the rules, that could have been the basis for the orders. The same way the RTE Act 2010 gives the circumstances when the recognition to a school could be withdrawn and any one of the grounds which are mentioned in Section 15 required recognition could have been cited as justifying ground for the order. If the State were to contend that the petitioners fall under various categories such as some of them who may have recognition under the Rules of 2003 or some of them who have not obtained recognition at all or some of them who were having no infrastructure and who have also not applied for recognition either under Rules of 2003 or RTE Act, 2009, the State ought to have invoked any of these provisions to discredit the schools that failed the test and made them as grounds for the impugned order. By passing an omnibus order of closure on the ground that the replies to show cause notices were not found to be in proper order, the State itself has made it possible for all the schools falling under various categories to challenge on a singular point that there had been no application of mind. Far from the petitioners being at fault for joining together even if they came under various categories, it is the State's nature of order that has made possible for the petitioners to come under one single umbrella to challenge the orders.

5. I considered for a while whether it should be necessary for me to segregate the cases of the petitioners under different categories and elicit from the State which norms they did not fulfill to suffer the impugned orders, but I do not think such an exercise is necessary only because it would ultimately result again in directing the State to pass appropriate orders on consideration of how the explanation given by the respective

petitioners were not found to be in order. That exercise any way has to be undertaken before they justify the order of closure. Even a point of whether a Pre-Primary School would also require to be recognized under the 2003 Rules, the learned Senior Counsel for the petitioners would state that no such recognition is necessary, while the State has a different contention to make. I will not go into it, for, even if there was a school which was not recognized and it had not obtained such recognition under the 2003 Rules and if it was already running before the RTE Act 2010 came into effect, the State itself has caused a notice/circular on 18.6.2013 that it has decided to grant extension of one year to take steps for recognition to the schools which did not fall in the ambit of RTE Rules 2011. The State itself had surely led even the petitioners who do not have a previous recognition to believe that their cases could be considered, if fresh applications could be filed and the standards were to be examined on the norms laid down under the 2011 Rules.

6. Under the circumstances, I am not taking up each individual case of the petitioners to see whether they conform to the norms or not. That ought to be an exercise which the State must have performed. That must again require a case to case examination, for, the grant of recognition is not a matter of an executive fiat depending on the will of the State. On the other hand, the recognition or its withdrawal must be anchored to relevant consideration of the fulfillment or otherwise of the norms which the Act and the rules lay down. It is trite law that an order has to be supported by the reasonings contained in the impugned order itself and cannot be buttressed by clever pleadings or arguments placed before the court that none of the petitioners would deserve a favourable consideration. Even a

school that has not applied for recognition or which has not complied with the norms must be informed of that particular reason for closure and or of the deficiencies that exist before they could be asked to close down. The impugned order is unsupportable in law and would required to be quashed and accordingly quashed.

7. The respondents shall examine such of those applicants amongst the petitioners who have made their online or any other form of registration for recognition and deal with the cases independently. If any one among the petitioners has not applied for recognition or if they did not fulfill the norms, the State shall pass specific order against each one of them giving the reasons why the recognition cannot be granted and why such institutions would require to be closed. If any one amongst the petitioners has not already applied for recognition or have not responded to the show cause notice, the petitioners will be at liberty to make good the defects and respond within two weeks from the date of the order for consideration by the State independently. I set no specific time limit to complete the process and I leave it to their wisdom to conclude expeditiously, having regard to the fact that education is a fundamental right and the State owes a duty to its citizens that the students are educated in institutions which are not mere shops or money spinner, but they are institutions which have all the necessary infrastructure which can improve the cause of education for its citizens.

January 15, 2015 **(K.KANNAN)**
prem **JUDGE**