

**2022 LiveLaw (SC) 518**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**A.M. KHANWILKAR; J., ABHAY S. OKA; J., J.B. PARDIWALA; J.**

**MAY 11, 2022**

**INDEPENDENT SCHOOLS' ASSOCIATION CHANDIGARH (REGD.) & ORS.**

*Versus*

**UNION OF INDIA & ORS.**

**Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016 - Government Order/Notification stipulation that unaided Educational Institution shall upload income, expenditure account and balance sheet on its website - Ultra vires- It is clearly outside the scope of the authority bestowed on the competent authority.**

**Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016 - Government Order/Notification stipulation that prohibits the unaided institutions from charging any kind of cost from the parents - Consistent with the legislative intent and mandate of the 2016 Act - The unaided institutions can charge only the disclosed fee structure amount from its students and no further.**

**Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016 - Government Order/Notification provision whereby penalty amount is enhanced in respect of unaided institutions - Unconstitutional and ultra vires - What should be the quantum of penalty amount or punishment, is a legislative policy. It must be left to the concerned legislature. It cannot be provided by way of an executive order.**

CIVIL APPEAL NO(S).3877/2022 (Arising out of SLP(C)NO(S).12955/2021) WITH CIVIL APPEAL NO(S).3878/2022 (Arising out of SLP(C)NO(S).18283/2021) (Arising out of impugned final judgment and order dated 28-05-2021 in CWP No. 7706/2020(O&M) passed by the High Court Of Punjab & Haryana At Chandigarh)

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**ORDER**

Leave granted.

These appeals take exception to the judgment and order dated 28.05.2021 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition Nos.7706/2020 (O&M) and 7761/2020(O&M) respectively.

The appellants had assailed the Notification dated 13.04.2018 issued by the appropriate authority in exercise of powers under Section 87 of Punjab Reorganisation Act, 1966, (for short, 'the 1966 Act'), by way of writ petition(s) under Article 226 of the Constitution of India.

The High Court has dismissed the said writ petition(s) opining that the appropriate authority was competent to issue such Government Order/Notification.

Before this Court, the limited challenge is to Clauses (a) and (b) of the proviso, which have been inserted in terms of the impugned Order/Notification by way of paragraph 6 thereof. Paragraph 6 of the impugned Order/Notification reads thus:

“6. In section 5, after this proviso shall be inserted, namely:-

“Provided further that every Unaided Educational Institution shall-

(a) upload income, expenditure account and balance sheet on its website;

(b) not charge any kind of cost from the parents;

(c) disclose complete fee structure at the beginning of the academic year in the Booklet issued, alongwith the admission form, by the schools and also be posted in its website;

(d) not raise the fee any time during the academic session.”

(emphasis supplied)

In addition, the appellants have questioned the validity of paragraph 8 of the impugned Order/Notification, which reads thus:

“8. In section 14:-

(a) in sub-section(1) for the words, “thirty thousand rupees”, “rupees fifty thousand” and “rupees one lac”, the words “sixty thousand rupees”, “one lakh rupees” and “two lakh rupees” shall respectively be substituted;

(b) in sub-section(2) for the words, “sixty thousand rupees”, “rupees one lac”, the words “one lakh twenty thousand rupees”, “two lakh rupees” and “four lakh rupees” shall respectively be substituted.”

We have heard learned counsel for the parties. The entire issue needs to be answered, keeping in mind the exposition of this Court in '**Lachmi Narain vs. Union of India**' reported in **1976 (2) SCC 953**.

The three-Judge Bench of this Court has had an occasion to deal with the provision similar to Section 87 of the 1966 Act. The expression '*restrictions or modifications*' occurring in Section 87<sup>1</sup> has been interpreted by this Court in following words:

“61. .... Such a wide construction must be eschewed lest the very validity of the section becomes vulnerable on account of the vice of excessive delegation. Moreover,

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<sup>1</sup> Section 87 in the Punjab Reorganisation Act, 1966:

87. Power to extend enactments to Chandigarh. The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to the Union territory of Chandigarh any enactment which is in force in a State at the date of the notification.

such a construction would be repugnant to the context and the content of the section, read as a whole, and the statutory limits and conditions attaching to the exercise of the power. We must, therefore, confine the scope of the words "restrictions and modifications" to alterations of such a character which keep the inbuilt policy, essence and substance of the enactment sought to be extended, intact, and introduce only such peripheral or insubstantial changes which are appropriate and necessary to adapt and adjust it to the local conditions of the Union Territory."

(emphasis supplied)

The challenge in the present appeals is required to be decided on the basis of the principles stated in this judgment.

The question is: whether clause (a) of the third proviso inserted in terms of paragraph 6 of the impugned Government Order/Notification dated 13.04.2018 can be regarded as peripheral or insubstantial change to the provisions of the Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016 (for short, 'the 2016 Act'), which have been extended vide impugned notification issued in exercise of powers under Section 87 of the 1966 Act?

Reverting to the stipulation specified in clause (a), we have no manner of doubt that the same cannot be considered as peripheral and insubstantial change. For, it is a substantive matter. We say so because the Principal Act (2016 Act), which is extended in terms of the impugned Government Order/Notification, makes no provision regarding disclosure of income, expenditure, account and balance sheet on website of the unaided schools, including as applicable in the State of Punjab. It would be a different matter if the Parliament or the State Legislature, as the case may be, were to incorporate such condition in the enactment such as the 2016 Act. Had it been so incorporated, it would then be open to the unaided institutions to question the validity of such a provision, which could be tested by the Constitutional Court on the basis of doctrine of fairness, arbitrariness and other grounds available under Part III of the Constitution of India or otherwise.

Suffice it to observe that the change introduced vide the impugned Government Order/Notification in terms of clause (a) in the third proviso inserted by way of paragraph 6 thereof, is not a peripheral or insubstantial change. Hence, it is clearly outside the scope of the authority bestowed on the competent authority in terms of Section 87 of the 1966 Act. That stipulation, therefore, needs to be struck down being *ultra vires*.

Reverting to clause (b), we find that the challenge to clause (b), is tenuous. In that, this stipulation merely prohibits the unaided institutions from charging any kind of cost from the parents. In our opinion, this is consistent with the legislative intent and mandate of the 2016 Act. In fact, it restates the inbuilt policy, essence and substance of the 2016 Act. Thus, it is in no way a substantial change as in the case of clause (a), referred to above. Be it noted that as per clause (c) of paragraph 6 of the impugned Government Order/Notification — validity whereof has not been challenged — the unaided institutions are obliged to disclose complete fee structure at the beginning of the academic year. The obligation of the unaided institutions in terms of clause (b) of the same paragraph is in

reference to the disclosure of fee structure as per clause (c). In other words, the unaided institutions can charge only the disclosed fee structure amount from its students and no further. This provision, therefore, is appropriate and necessary for better administration of the unaided institutions to which the 2016 Act gets extended in terms of the impugned Government Order/Notification.

Accordingly, challenge to clause (b) of the third proviso inserted by virtue of Government Order/Notification by way of paragraph 6, cannot be countenanced and is rejected.

That takes us to the challenge to paragraph 8 of the impugned Government Order/Notification, whereby the penalty amount is enhanced in respect of unaided institutions governed by the 2016 Act within the Union Territory in terms of impugned Government Order/Notification. Again, this is not a peripheral or insubstantial alteration or modification of Section 14. Inasmuch as, what should be the quantum of penalty amount or punishment, is a legislative policy. It must be left to the concerned legislature. It cannot be provided by way of an executive order, including in exercise of powers under Section 87 of the 1966 Act — being a substantial change to the regime predicated in Section 14 of the 2016 Act.

Accordingly, paragraph 8 of the impugned Government Order/Notification also cannot stand the test of judicial scrutiny. Hence, the same needs to be struck down being unconstitutional and *ultra vires*.

No other issue has been raised before us, including about the validity of the provisions of the 2016 Act. Concededly, it has already been recorded in the order passed on the earlier occasion that the appellants would be confining their argument to the limited aspects dealt with in this order.

We make it clear that we may not be understood to have expressed any opinion either way on the issues that may have to be dealt with by the High Court in the pending proceedings relating to the challenge to the provisions of the 2016 Act.

Lastly, we expunge the observations made against the writ petitioner in Writ Petition No.7761/2020 (filed before the High Court), in paragraph 34 of the impugned judgment.

Accordingly, the appeals are partly allowed in the above terms.

No orders as to the costs.

Pending application(s), if any, shall stand disposed of.