

tion has to be made that the second suit is not simplicitor a suit for permanent injunction but the primary relief is that of a declaration.

5. More so, it is well settled law that every passing moment may give a fresh cause of action to a party to institute a suit for permanent injunction and can by no means a legal hitch in its institution. The learned Court below primary on the grounds that the application has been moved belatedly had imposed the cost and the fact that the proposed amendment is nowhere helpful in deciding the suit in controversy quite oblivion that in a simplicitor suit for permanent injunction title is not to be gone into and it is only if a declaration is sought, can be looked into by the Courts. How the second suit is barred during the pendency of the first suit could not be deciphered either by the counsel for the two sides or the Court below in the impugned findings. The Supreme Court in its judgment titled as '*Sampath Kumar v. Ayyakannu*<sup>1</sup> (2002)7 SCC 559 had clearly held that where a alleged cause of action for the reliefs which are sought to be added have arisen during the pendency of the suit and the very merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment and, therefore, it was held that as follows:-

“12. On the averments made in the application, the same ought to have been allowed. If the facts alleged by plaintiff are not correct it is open for the defendant to take such pleas in the written statement and if the plaintiff fails in substantiating the factual averments and/or the defendant succeeds in substantiating the plea which he would obviously be permitted to raise in his pleading by way of consequential amendment then the suit shall be liable to be dismissed. The defendant is not prejudiced, more so when the amendment was sought for before the commencement of the trial.”

6. In light of the foregoing contentions, the impugned order is certainly legally infirm and needs to be set aside by way of acceptance of the present revision petition.

The present revision petition is allowed accordingly.

R.M.S.

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*Petition allowed.*

(2022-3)207 PLR 023

PUNJAB AND HARYANA HIGH COURT

*Before: Mr. Justice Fateh Deep Singh.*

APEEJAY SCHOOL – Appellant,

*Versus*

AYUSHMAN GARG and another – Respondents.

RSA Nos. 3374 of 2021 and 57 other appeals.

**(i) Haryana School Education Act, 1995 (12 of 1995) Section 22 - Specifically bar jurisdiction of Civil Court and which ensures that any authority which is especially empowered to deal under the Act and the Rules would be competent authority to act and no Civil Court shall have jurisdiction in respect of such matters in relation thereto and which has even been overlooked by the Courts below. [Para 15]**

**(ii) Haryana School Education Rules, 2003 – Claim of the defendant students is that there has been exorbitant and unprecedented increase in the charges levied by the School authorities - What the the Courts below have done is that the dispute has been treated more as a suit for recovery and like versa passed various judgments in all these matters – Learned first appel-**

late Court in spite of being fully aware of the provisions of the Act and the Rules has fallen into a grave error by drawing the analogy of a suit for recovery and adjudicated on the amount to be recovered and interest to be paid thereon rather than directing the parties to approach the Fee and Fund Regulatory Committee under the Act and the Rules, Rules 158 – Even otherwise, provisions of Section 22 of the Act specifically bar jurisdiction of Civil Court and which ensures that any authority which is especially empowered to deal under the Act and the Rules would be competent authority to act and no Civil Court shall have jurisdiction in respect of such matters in relation thereto and which has even been overlooked by the Courts below.

[Para 15]

**Cases referred to:-**

1. Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, *Kirodi (since deceased) through his L.R. v. Ram Parkash*.
  2. Civil Writ Petition bearing No.11223 of 2009, decided on 27.04.2011, *Haryana Progressive Schools Conference (Regd.) v. State of Haryana*.
  3. CWP No.20545 of 2009 decided on 09.04.2013, *Anti Corruption and Crime Investigation Cell v. State of Punjab*.
- Mr. H.L. Tiku and Mr. Sumeet Goel, Senior Advocates with Mr. Manav Bajaj, for the plaintiff/School. Mr. Balkar Singh, for the defendant/students.*

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**Fateh Deep Singh, J. –(15<sup>th</sup> March, 2022)** - Through this judgment shall stand disposed off the above detailed 58 regular second appeals (31 filed by Apeejay School and remaining 27 appeals by the students) as on account of consanguinity and interconnectivity of the matters can be easily disposed off together by a common judgment. The undisplaced factual scenario is that a dispute had arisen between the Apeejay School, Faridabad plaintiff in all the cases and the defendant students of the said school over fee structure.

2. The Apeejay School (in short, ‘the School’) is a private unaided recognized school being run under the name and style of Apeejay School, Faridabad imparting education to the general public and for which they charge their remuneration. It is during the academic year 2009-10 the School authorities had enhanced the fees and which ignited the present dispute with the students along with their parents on one hand and the School authorities on the other. Certain students because of the opposition did not pay the enhanced charges while certain others paid the amount in installments and that is how the School authorities have filed these suits for recovery of the amount along with interest @ 12 % per annum against the students.

3. For the sake of convenience, facts are being adduced from RSA No.3374 of 2019 filed by the School wherein before the trial Court the plaintiff School to justify fee enhancement examined Arvinder Singh Bhatti, Office Superintendent as PW-1 and Ms.Sadhna Rani, Accountant as PW-2 and proved documents Ex.P1/1 to Ex.P1/6 and Ex.P2/1 to Ex.P2/4. On the other hand, defendants examined Rahul Garg (father of a student) as DW-1 through his affidavit Ex.DW1/A and after proving documents Ex.D1 to Ex.D25 and Mark-1 to Mark-15 closed the evidence.

4. The Court of learned Civil Judge (Junior Division), Faridabad vide judgment and decree dated 22.10.2018 decreed the suit of the School and which was assailed by the unsuccessful students by way of appeal and the Court of learned

Additional District Judge, Faridabad vide impugned judgment and decree dated 27.03.2019 disposed off the appeal holding that the judgment and decree passed by the trial Court would be modified including the rate of interest and leaving the final outcome to the decision of the Fee and Fund Regulatory Committee (in short, 'the Committee') established under the Haryana School Education Act, 1995 and Haryana School Education Rules, 2003. It is against these findings the present regular second appeals have been filed.

5. In view of the recent pronouncement in '*Kirodi (since deceased) through his LR v. Ram Parkash & others*'<sup>1</sup> Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

6. Heard Mr. H.L. Tiku and Mr. Sumeet Goel, Senior Advocates assisted by Mr. Manav Bajaj, Advocate for the plaintiff/School; Mr. Balkar Singh, Advocate for the defendant/students and perused the records.

7. Appreciating the submissions of the two sides, the claim of the defendant students is that there has been exorbitant and unprecedented increase in the charges levied by the School authorities and who have stoutly denied the same taking the plea that it was commensurate with the price-index. The claim of unprecedented increase in fee structure and the subsidiary allowance by the School authorities especially by recognized unaided Schools has been subject matter of numerous litigations between the parties. In earlier Civil Writ Petition bearing No.11223 of 2009 titled '*Haryana Progressive Schools Conference (Regd.) v. State of Haryana & others*',<sup>2</sup> this Court in a Single Bench view dated 27.04.2011 observed as follows:-

“An application for review of Modern School's case was also filed which was declined by making reference to the principle as enunciated in *T.M.A.Pai Foundation and Islamic Academy cases* (supra) for fixing fee structure which were found to have been illustrated. It is noticed that these principles did not deal with determination of surplus and a portion of savings. It was noticed that as per certain directions issued, every school was required to prepare a balance sheet and profit and loss account. Such condition was found to be of a nature which did not sub-plant the rule in this regard. It was observed that if reasonable fee structure is the test, then transparency and accountability are equally important. That is what the aim of Section 16(3) and 21(3) of the Act and Section 17 thereof alongwith other rules. The net result of the above discussion, thus, is that the impugned order putting a cap on the fixing of increase in the tuition fees not more than 20% is beyond the scope of statute as well as in violation of the law laid down by the Hon'ble Supreme Court. I would hasten to add here, however, that if the Director of School Education finds that the petitioner institutions are in any manner resorting to profiteering and have increased the fee for the purpose of commercialization or are charging the capitation fee, then the Director would certainly be in a competent position to issue direction to interfere in the charging of fee to the extent that it leads to commercialization/profitting etc. There has been no challenge to the right of the respondents to require of the petitioner institutions to submit yearly returns giving out the details in form IV and that is well within the

right of the respondents to ensure transparency and accountability. Mere asking of these reports would be meaningless ritual if it is construed that the Director would lack in power to issue any direction to check the profiting commercialization or charging of capitation fee. Mere right to interfere in fixing of fee structure without any finding that the institutions are resorting to charging of capitation fee or are indulging in profiteering or commercialization of the education would be unreasonable restriction on the right of these institutions to engage themselves in this occupation.

The writ petitions are accordingly allowed. The impugned order (Annexure P-1) is set-aside. However, liberty is given to the respondent-Director School Education to reconsider the entire issue and pass an appropriate order/directions in accordance with law as noted above. In case the Director finds that the present institutions are indulging in any commercialization, profiting or charging of capitation fee, then he would have authority to check and prevent the same by passing an appropriate order. There shall, however, be no order as to costs.”

8. And which primarily was to oversee if there was any commercialization or profiteering by unaided institutions.

9. The order of Single Bench view of this Court was challenged by the State of Haryana in Letters Patent Appeal (LPA) bearing No.721 of 2012 titled ‘*The State of Haryana and another v. Haryana Progressive Schools’ Conference and others*’ wherein this Court passed the following order:-

“Learned counsel for the appellants, after some arguments, fairly states that in view of the liberty granted to the Director School Education to reconsider the entire issue and pass an appropriate order/direction in accordance with law as per the operative paragraph of the impugned order dated 27.4.2011, the appellants will do the needful keeping in mind the parameters laid down by the Division Bench of this Court in Civil Writ Petition No. 20545 of 2009 titled as *Anti-Corruption and Crime Investigation Cell v. State of Punjab and others*, decided on 9.4.2013. He thus, seeks disposal of the appeal in the aforesaid terms.

We accept the plea of the learned counsel for the appellants and dispose of the appeal in terms aforesaid.”

Similarly in another writ petition bearing CWP No.20545 of 2009 titled ‘*Anti Corruption and Crime Investigation Cell v. State of Punjab & others*’<sup>3</sup> a Division Bench of this Court passed the following order on 09.04.2013:-

“82. ... .. Till that is done and in order to sort out the issue as to whether the hike in fees by the schools is proper or not, we would like to follow the same path as done by the High Court of Delhi, namely, setting up a Committee with the task to go into the accounts of the Schools and find out the reasonableness of increase in fees by the schools. Accordingly, we appoint three committees, one each for the State of Punjab, State of Haryana and Union Territory, Chandigarh, with the following constitutional members:-

FOR STATE OF PUNJAB:-

i) Hon'ble Mr. Justice Ranjit Singh (Retd.): Chairperson

ii) One Chartered Accountant to be nominated by the Chairperson of the

Committee.

iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

FOR STATE OF HARYANA:-

i) Hon'ble Mrs. Justice Kiran Anand Lall (Retd.): Chairperson

ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.

iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

FOR UNION TERRITORY CHANDIGARH:-

i) Hon'ble Mr. Justice R.S.Mongia (Retd. Chief Justice): Chairperson

ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.

iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board, U.T. Chandigarh.

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Since the schools are submitting the accounts with the Boards, these accounts and records can be given by the Boards to the Committees. In addition all the schools shall also render full cooperation to the Committee(s) by submitting the Account and other necessary information demanded by the Committee(s). The scope of the work undertaken by the Committee(s) shall be restricted to the academic year 2012-13. Likewise, for the academic year 2013-14, though the schools shall have the right to fix their fees structure, they will have to justify the same by producing necessary material before the Committee(s). The Committee(s) shall be entitled to specifically look into the aspects as to how much fees increase was required by each individual school on the examination of records and accounts etc. of these schools and taking into consideration the funds available etc. at the disposal of the schools. While doing this exercise, it shall keep in mind the principles laid down by the Supreme Court in *Modern School case* (supra) as well as *Action Committee Unaided Pvt. Schools case* (supra) and other decision noted by us in this judgment. Needless to mention in case it is found that the fees hiked by the schools was more than warranted, the direction can be given to those schools to refund the same to the students.

All these writ petitions stand disposed of in terms of directions given hereinabove.”

10. The primary observations and guidelines laid down by the Courts were to the effect that though the schools have a right to fix the fee-structure but at the same time they will have to justify the same by leading supportive evidence and the Committee was empowered to ensure as to the extent by which there could be an increase in the fee structure.

11. The present parties admittedly are governed by the Haryana School Education Act, 1995 (in short, ‘the Act’) and Haryana School Education Rules, 2003 (in short, ‘the Rules’). The Act came into being with effect from 04.06.1999

while the Rules became operational from 30.04.2003. The primary object of these provisions was to administer and control the running of private unaided recognized schools, minority schools and matters relating thereto. Under Rule 158 of the Rules, it was mandatory that the fees and funds to be charged from the pupils shall be notified by every recognized school. These provisions read as follows:-

“158. *Notifying fees and funds* [Sections 24(2), 15, 16 and 17] - (1) The fees and funds to be charged from the pupils shall be notified by every recognized school.

(2) The manager of every recognised school shall submit the detail of minimum facilities being provided and the maximum fee charged in Form VI. He shall before the commencement of each academic session, file with the Department a full statement of the fees and all types of funds levied by such school during the ensuing academic session justifying it. 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. Such charges can only be levied after these have been displayed in its wamper.

(3) No other charges such as capitation fee shall be taken from the children/ parents.

(4) No school shall be allowed to charge admission fee, tuition fee, pupil's fund in advance before the commencement of the academic session. However a token registration fee can be charged.

(5) No admission fee, tuition fee except school leaving certificate (SLC) fee be charged from the pupil who apply for SLC within 15 days of start of new academic session.

(6) Admission fee shall only be charged from a student at the time of admission in class 1st, 6th, 9th and 11th or fresh entry in the school.

(7) The fees shall preferably be taken from the students through bank.”

12. Further under Rule 158A of the Rules, provision for Fee and Fund Regulatory Committee was brought about with effect from 28.10.2014 and which is reproduced as follows:-

“158A. *Fee and Fund Regulatory Committee*.- (1) There shall be a committee to be known as Fee and Fund Regulatory Committee at the Divisional Level under the Chairmanship of Divisional Commissioner, who shall be assisted by the following officer/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 due enquiry, that a private school has charged capitation fee or fee in excess of the fee as notified by the school, it would ensure redressal of the complaint so received within a period of sixty days from the receipt of the 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 the recognition/affiliation of the school and the Director shall pass the orders accordingly.

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

13. Furthermore, to bring about semblance of justice, provision of appeal by way of Rule 158B was made which provided a right of appeal to any aggrieved person, school, management and so on and so forth, and which was to be dealt-with by the Administrative Secretary of the State and which provision is reproduced herein below:-

“158B. *Appeal* – Any person or school management aggrieved by any direction or order passed under rule 158A, may file an appeal to the Administrative Secretary within a period of thirty days from the date of such order.”

14. During the course of arguments, learned counsel for the two sides fairly conceded that the Committee constituted under the orders of this Court passed in CWP No.20545 of 2009 stood automatically dissolved by virtue of incorporation of the Act and the Rules.

15. To the mind of this Court, it would not be appropriate for this Court to adjudicate these appeals when already statutory provisions have been put into place to deal with such eventualities. More so, what the Courts below have done is that the dispute has been treated more as a suit for recovery and like versa passed various judgments in all these matters. Even in the impugned findings before this Court, learned first appellate Court in spite of being fully aware of the provisions of the Act and the Rules has fallen into a grave error by drawing the analogy of a suit for recovery and adjudicated on the amount to be recovered and interest to be paid thereon rather than directing the parties to approach the Fee and Fund Regulatory Committee under the Act and the Rules. Thus, it would be in the fitness of things if all these impugned judgments and decrees are set aside and the parties to these appeals are relegated to avail of the remedy under the provisions of Rule 158 of the Rules, where they shall file a complaint/representation or the Committee can suo-motu enquire about the charges being levied by the School under Sub-rule (2) of Rule 158A of the Rules and which Committee is empowered to order accordingly. Even otherwise, provisions of Section 22 of the Act specifically bar jurisdiction of Civil Court and which ensures that any authority which is especially empowered to deal under the Act and the Rules would be competent authority to act and no Civil Court shall have jurisdiction in respect of such matters in relation thereto and which has even been overlooked by the Courts below.

16. In the light of the same, parties to these appeals are directed to approach the said Fee and Fund Regulatory Committee within shortest possible time and further directing the said Committee that on receipt of complaint regarding the parties to these appeals, the same shall be preferably disposed off within one month keeping in view that academic career of the students is involved. All these appeals stand disposed off accordingly.

R.M.S.

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*Appeal disposed of.*