

AUTHORITATIVE ENGLISH TEXT

Act No. 14 of 1999.

THE HIMACHAL PRADESH PRIVATE EDUCATIONAL INSTITUTIONS (REGULATION) ACT, 1997

(AS ASSENTED TO BY THE PRESIDENT ON 4TH MAY, 1999)

AN

ACT

to provide for the regulation of private educational institutions in the State of Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-eighth Year of the Republic of India as follows:—

CHAPTER-I

PRELIMINARY

1. (1) This Act may be called the Himachal Pradesh Private Educational Institutions (Regulation) Act, 1997.

Short title, extent and commencement.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come into force on such date as the Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "academic year" means the year commencing on the first day of April;

(b) "competent authority" means any person, officer or other authority (including Himachal Pradesh Board of School Education) authorised by the Government, by notification, to perform the functions of the competent authority under this Act for such area or in relation to such class of private educational institutions, as may be specified in the notification;

(c) "Government" means the Government of Himachal Pradesh;

(d) "manager" in relation to a private educational institution means the person in whom the authority to manage and conduct the affairs of the private educational institution is vested;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "private educational institution" means an educational institution conducting courses of instruction leading to grant of Scheduled Certificate; and

(g) "Scheduled Certificate" means any certificate specified in the schedule.

CHAPTER-II

PERMISSION FOR ESTABLISHING OR RUNNING PRIVATE EDUCATIONAL INSTITUTIONS

Private educational institution to obtain permission.

3. Save as otherwise provided in this Act, on or after the date of the commencement of this Act,—

- (a) no private educational institution in existence on that date shall, after the expiry of six months from the said date, be run; and
- (b) no private educational institution shall be established,

without the permission of the competent authority and except in accordance with the terms and conditions specified in such permission.

Application for permission.

4. (1) The manager of every private educational institution in existence on the date of the commencement of this Act and every private educational institution proposed to be established on or after that date, shall make an application to the competent authority for permission to run such institution or to establish such institution, as the case may be.

(2) Every such application shall—

- (a) be in the prescribed form;
- (b) be accompanied by such fee as may be prescribed; and
- (c) contain the following particulars, namely:—
 - (i) the name of the private educational institution, and the name and address of the manager;
 - (ii) the certificate, for which such private educational institution prepares, trains or guides or proposes to prepare, train or guide its students or the certificate, which it grants or confers or proposes to grant or confer;
 - (iii) the amenities available or proposed to be made available to students;
 - (iv) the number of the teaching staff and their educational qualifications;
 - (v) the equipment, laboratory, library and other facilities for instructions;
 - (vi) the number of students in the private educational institution and the groups into which they are divided;
 - (vii) the scales of fees payable by the students;
 - (viii) the sources of income to ensure the financial stability of the private educational institutions;
 - (ix) the situation and the description of the buildings in which such private educational institution is being run or is proposed to be established; and
 - (x) Such other particulars as may be prescribed.

Grant of permission.

5. On receipt of an application under section 4, the competent authority may grant or refuse to grant the permission after taking into consideration, the particulars contained in such application:

Provided that the permission shall not be refused under this section unless the applicant has been given an opportunity of making his representation:

Provided further that in case of refusal of the permission, the applicant shall be entitled to refund of one-half of the amount of the fee accompanying the application.

6. (1) The competent authority may at any time, cancel the permission granted under section 5, if such permission has been obtained by fraud, misrepresentation or suppression of material particulars or where after obtaining the permission, the management of a private educational institution fails to rectify the defects pointed out on inspection under section 13 or fails to carry out the directions given under section 14 or contravenes, any of the provisions of this Act or any rule made thereunder or of any terms or conditions of the permission or of any direction issued by the competent authority under this Act.

Power to cancel permission.

(2) Before cancelling the permission under sub-section (1), the competent authority shall give the manager an opportunity of making his representation.

7. (1) (a) Whenever the management of any private educational institution is proposed to be transferred, the manager and the person to whom the management is proposed to be transferred may before such transfer, apply jointly to the competent authority for approval of the transfer.

Transfer of permission.

(b) On any transfer of the management of the private educational institution, without approval having been obtained for such transfer under clause (a), the transferee shall, if he desires to run it as such, within three months of the date of the transfer, apply to the competent authority for approval of the transfer.

(c) An application under clause (a) or (b) shall be in such form, contain such particulars and be accompanied by such fee not exceeding two hundred and fifty rupees as may be prescribed.

(2) The competent authority may, on receipt of the application and the fee under sub-section (1) and after making such inquiry as it thinks fit, approve the transfer subject to such conditions as it may impose or refuse such approval.

Provided that the approval shall not be refused under this section unless the applicant has been given an opportunity of making his representation.

8. (1) Where the Government is of the opinion that the establishment and maintenance of educational institutions for conducting courses of instruction leading to the grant of a certificate should be regulated by this Act, it may by notification in the Official Gazette add to the Schedule such certificate and thereupon the Schedule shall be deemed to have been amended accordingly.

Power to add to Schedule.

(2) Every notification issued under sub-section (1) shall be laid for not less than thirty days before the State Legislature as soon as possible after it is issued and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make, during the session in which it is so laid or the session immediately following. Any decision or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

Annual list of private educational institutions to be published. 9. The Government shall publish on or before the first day of April in each year in the Official Gazette, a list containing the names of all private educational institutions which have been granted permission under section 5 during the period ending with the thirty-first day of March immediately preceding and a list of private educational institutions in relation to which such permission has been cancelled during the period aforesaid.

CHAPTER-III

ACCOUNTS, AUDIT, INSPECTION AND RETURNS

Accounts 10. Every private educational institution shall keep accounts in such manner and containing such particulars as may be prescribed.

Annual audit of accounts. 11. (1) The accounts of every private educational institution shall be audited at the end of every academic year by a Chartered Accountant in practice within the meaning of the Chartered Accountants Act, 1949 (Central Act XXXVIII of 1949).

(2) The manager shall, within six months after the end of the Academic year, submit to the competent authority the report of such Chartered Accountant on the audit of the accounts under sub-section (1).

Closure of private educational institution. 12. (1) No private educational institution and no class in a private educational institution shall be closed without a notice in writing having been given to the competent authority and without satisfying the competent authority that adequate arrangements have been made either for the continuance of the instruction of the students of the private educational institution or the class, as the case may be, for the period of study for which the students have been admitted or for the refund of the fees paid by the students.

(2) The period of notice under sub-section (1) shall be such as may be prescribed and different periods of notice may be prescribed for different classes of private educational institutions.

(3) No notice under sub-section (1) shall be withdrawn without the consent of the competent authority.

Inspection. 13. (1) Any private educational institution may be inspected by the competent authority whenever it considers necessary.

(2) The competent authority may direct the manager to rectify the defects, if any, found during the course of the inspection, within such time as the competent authority may fix in this behalf.

Direction of the competent authority. 14. Without prejudice to the provisions of section 13, the competent authority may, from time to time, issue such directions regarding the management (including accommodation and infrastructural facilities) of a private educational institution as it may think fit and it shall be the duty of the manager of such private educational institution to carry out such directions within such time as may be fixed by the competent authority in this behalf.

15. Every private educational institution shall, within such time or within such extended time as may be fixed by the competent authority in this behalf, furnish to the competent authority such returns, statistics and other information as the competent authority may from time to time, require.

Private educational institutions to furnish returns etc. and information.

CHAPTER-IV

MISCELLANEOUS

16. (1) Any manager aggrieved by any decision of the competent authority under any of the provisions of this Act may, within two months from the date of the receipt of the decision by him, prefer an appeal against such decision to such authority as may be prescribed:

Appeals

Provided that the appellate authority may in its discretion, allow further time not exceeding one month for preferring any such appeal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of making his representation, dispose of the appeal as expeditiously as possible.

(3) The appellate authority may, pending the exercise of its powers under this section, pass such interlocutory orders as it may deem fit.

17. (1) If any person contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or any rule made thereunder, he shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Penalties

(2) If any person willfully obstructs any person, officer or authority from entering any private educational institution in the exercise of any power conferred on him or it by or under this Act, he shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to five thousand rupees or with both.

18. (1) If the person committing an offence under this Act is a company, the company as well as every person-in-charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that

the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

Cognizance of offences. 19. No Court shall take cognizance of any offence punishable under this Act, except on a report in writing of the facts constituting such offence made by an officer authorised by the Government in this behalf.

Jurisdiction of Criminal Courts. 20. No Court inferior to that of Judicial Magistrate of the First Class shall try any offence punishable under this Act.

Power to exempt. 21. Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification exempt any private educational institution or class of private educational institutions from all or any of the provisions of this Act or from any rule made under this Act.

Competent authority, etc., to be public servant. 22. Every authority and every officer duly authorised to discharge any duty imposed on it or him by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Civil Courts not to decide questions under this Act. 23. No Civil Court shall have jurisdiction to decide or deal with any question, which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in this Act.

Finality of orders passed under this Act. 24. (1) Any order passed or decision taken by any authority or officer in respect of matters to be determined for the purposes of this Act, shall, subject only to appeal, if any, provided under this Act, be final.
(2) No such order or decision shall be liable to be questioned in any Court of law.

Indemnity 25. (1) No suit or other proceeding shall lie against the Government for any act done or purporting to be done under this Act or any rule made thereunder.

(2) (a) No suit, prosecution or other proceeding shall lie against any authority or officer or servant of the Government for any act done or purporting to be done under this Act or any rule made thereunder without the previous sanction of the Government.

(b) No authority or officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of the duties or the discharge of the function imposed by or under this Act.

(3) No suit, prosecution or other proceeding shall be instituted against any authority or officer or servant of the Government for any act done or purporting to be done under this Act or any rule made thereunder after the date of the expiry of six months from the date of the act complained of.

26. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Act to override other enactment.

27. (1) The Government may make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters, namely :—

(a) the form in which and the fees on the payment of which an application referred to in sub-section (1) of section 4 shall be made and the particulars which such application shall contain;

(b) fixation of norms or students ratio regarding accommodation infrastructural facilities to be provided in the educational institution ;

(c) the manner in which accounts shall be kept under section 11 and the particulars which such accounts shall contain;

(d) the manner of conveying decisions of the competent authority to the manager ; and

(e) any other matter which has to be, or may be, prescribed.

(3) The power to make rules under this section shall be subject to the conditions of previous publication.

(4) Every rule made under this Act shall, as soon as possible after it is made or issued, be placed on the Table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session, the Legislative Assembly agrees in making any modification in any such rule, or the Legislative Assembly agrees that the rule, should not be made or issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity or anything previously done under that rule.

SCHEDULE

[See section 2 (g)]

Certificates leading to which the private educational institutions conduct courses of instructions:—

1. Plus Two Examination Certificate.
2. Matriculation Examination Certificate.
3. Middle Standard Examination Certificate.
4. Primary Standard Examination Certificate.

No. Shiksha-II-K(1) 1/94
Govt. of Himachal Pradesh
Education Department

From

Commissioner-cum-Secretary (Education) to
Govt. of Himachal Pradesh.

- 1) The Director of Education (Primary)
Himachal Pradesh, Shimla-171001.
- 2) The Director of Education (Sec.)
Himachal Pradesh, Shimla-171001.
- 3) All the Deputy Directors of Education
in Zones, HP.
- 4) Secretary, H.P. Board of School Education,
Dharamsala, District Kangra (HP)
- 5) All the District Education Officers
(Sec. & Primary) Himachal Pradesh.

Dated Shimla-171002, the 21 April, 1997.

Subject: RECOGNITION TO PRIVATELY MANAGED SCHOOLS.

Sir,

I am directed to refer to this office letter of even number dated the 15th July, 1996, on the above noted subject. The entire matter regarding the grant of recognition to the privately managed schools has been under review with the H.P. Govt. for some time.

2. The policy of recognition of schools and assisting some of these with grant-in-aid was evolved at a time when the number of educational institutions in the State was very small and it was necessary to assist and encourage private enterprise in this field especially in the rural areas.

3. Over the years, however, the H.P. Government has opened, over 8500 Primary Schools, 1006 Middle Schools, 925 High Schools and 251 Senior Secondary Schools. Thus, educational facilities are available at reasonable distances in most parts of the State. This is especially the case in urban areas of the State. In spite of this the H.P. Government continues to open or upgrade a significant number of educational institutions every year. The H.P. Govt. is, therefore, fulfilling the Constitutional mandate to provide adequate facilities for free elementary education to the children of the State.

4. In view of the above, the H.P. Govt. has decided to rescind with effect from 15.7.1996 Chapter IX of the H.P. Education Code relating to 'Rules of Recognition' relating to privately managed institutions. The management of any educational institution

approaching the Directorate of Primary Education/Directorate of Education, may in future be advised to apply for affiliation to the H.P. Board of School Education, if they so desire.

5. In addition Chapter II of the Education Code relating to 'Grant-in-aid Rules and Rules governing grants-in-aid to privately managed institutions in H.P.' is also rescinded with effect from 15-7-1996. Henceforth only the 144 privately managed educational institutions listed alongwith Hon'ble Supreme Court's decision in Special Leave Petition No.10986/96 titled State of H.P. Versus H.P. State Recognised and aided Schools which are eligible for grant in aid assistance in terms of the Supreme Court's judgement will be released grant-in-aid. Rules to regulate the release of grant in aid assistance to these institutions are seperately being notified shortly.

Yours faithfully,

[Signature]
Commissioner-cum-Secretary
(Education) to Govt. of H.P.

Endt. No. (as above)

Dated Shimla-171002, the 2/ April, 1997

Copy forwarded to:-

Section Officers Education 'A' & 'C' Sections in the
H.P. Secretariat, for information.

[Signature]
Deputy Secretary (Education) to
Govt. of Himachal Pradesh.