

Neutral Citation No. - 2025:AHC:113417-DB

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 571 of 2025

Appellant :- St. K C Memorial English School

Respondent :- Union of India and 5 others

Counsel for Appellant :- Pramod Jain, Sr. Advocate, Chhaya Gupta,
Sujeet Kumar

Counsel for Respondent :- A.S.G.I., Alok Tiwari

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Pramod Jain, learned Senior Advocate assisted by Ms. Chhaya Gupta, learned counsel for the appellant, Shri Alok Tiwari, learned counsel for all the respondents and perused the material available on record.

2. The present special appeal is directed against the order dated 26.05.2025, whereby the learned Single Judge has rejected the stay application filed by the petitioner-appellant in Writ C No. 16999 of 2025 (St. K.C. Memorial English School vs. Union of India and 5 others).

BRIEF FACTS

3. The appellant-institution was accorded provisional affiliation with the Central Board of Secondary Education (C.B.S.E.) w.e.f. 01.04.2017 to 31.03.2020 for Secondary level. It was further upgraded to Senior Secondary Level w.e.f. 01.04.2019

to 31.03.2022. A surprise inspection of the institution was conducted by the inspection committee on 19.12.2024. Certain shortcomings were noted by the committee and, based upon the same, the appellant was issued a show cause notice dated 08.01.2025 alleging violation of various bye-laws of Affiliation Bye-Laws, 2018 (in short the 'Bye-Laws'). The appellant was called upon to submit response to the show cause notice explaining as to why penalty(ies) as envisaged in Clause 12.1 and 12.2 of the Bye-Laws may not be imposed on the institution.

4. The appellant responded to the show cause notice by sending reply dated 05.02.2025. Thereafter, an e-mail communication was issued by the Board to the institution on 19.02.2025 referring to certain shortcomings having come to the notice of the Board.

5. Thereafter, by an order dated 24.02.2025, the Board withdrew the affiliation granted to the institution with immediate effect. It was further ordered that the students in class X and XII would be permitted to appear from the same school for Session 2024-25, however, those students, who were pursuing in class IX and XI, would be shifted to nearby C.B.S.E. affiliated schools for Session 2025-26. It was further ordered that the institution would not take any new admissions or promote the students of lower classes to classes IX and XI by natural progression. The order dated 24.02.2025 further indicates that the school could seek restoration of affiliation upto Secondary level after lapse of one academic year, i.e., from 2026-27 after ameliorating the deficiencies pointed out with regard to running upto Secondary level and may seek

restoration of affiliation up to Senior Secondary level after two academic years of restoration upto Secondary Level.

6. Aggrieved of the order dated 24.02.2025, the appellant represented to the Board by filing review/appeal/representation dated 03.03.2025, however, the same was rejected by the Board by an order dated 29.03.2025.

7. Challenging the orders dated 24.02.2025 and 29.03.2025, the appellant filed Writ C No. 16999 of 2025 and pressed for grant of interim relief. The learned Single Judge, by order dated 26.05.2025, has rejected the stay application mainly on the ground that granting an interim relief at this stage would amount to allowing the writ petition itself, which cannot be done.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Shri Pramod Jain, learned Senior Advocate, has vehemently argued that the appellant had a strong *prima facie* case, balance of convenience would lay in its favour and, in case interim relief is not granted, institution as well as large number of students studying therein, would suffer irreparable loss and injury and, therefore, the learned Single Judge was not justified in refusing to grant interim relief. It is further urged that the very basis of the orders impugned in the writ petition was the show cause notice dated 08.01.2025 which, in itself, was *per se* illegal and, therefore, the proceedings held on that basis were void.

9. Elaborating his submissions, Shri Jain submits that the show cause notice did not clarify or specify as to which penalty the

institution would suffer, in case its response to the show cause notice was not found satisfactory. Referring to the Bye-Laws, it is contended that Chapter 12 thereof describes 26 penalties; out of which 10 are covered by Clause 12.1 and 16 are covered by Clause 12.2, however, surprisingly, the show cause notice had proposed to impose penalties envisaged under Clause 12.1 and 12.2 without clearly specifying one or the other penalty out of 26.

10. Further submission has been made that the orders impugned were passed in violation of principles of natural justice, inasmuch as, after the appellant responded to the notice by submitting its reply dated 05.02.2025, no date for personal hearing was fixed and straightway the order dated 24.02.2025 was passed directing withdrawal of affiliation. It is further urged that when the appellant represented to the Board by filing review/appeal/representation in terms of Clause 13.10 of the Bye-Laws and specifically prayed for grant of opportunity to present its case before the Board, the review/appeal/representation was rejected on 29.03.2025 without providing any opportunity of hearing and by mis-applying the judgement of Delhi High Court dated 16.07.2024 passed in **LPA 568/2024 & C.M. Nos. 38388-38389/2024 (Central Board of Secondary Education vs. Mount Columbus School and others)** on the aspect of violation of principles of natural justice. Submission is that the said judgement was not perused by the Board in its entirety, inasmuch as the action impugned in that matter also was set at naught by Delhi High Court on account of violation of principles of natural justice.

11. It is further contended that, after all the documents

desired by the Board were submitted/uploaded along with response dated 05.02.2025, the deficiencies, if any, stood washed away which fact, according to Shri Jain, stands established from the document appended at page no. 142 of the paper book, which is a copy of an e-mail communication sent by the Board to the institution. It is also contended that discrepancy regarding number of students enrolled as per the Board and entered into register stood removed after submission of documents and the only shortcomings, if any, were pointed out as regards salary statements of teachers for the month of December, 2024, duty orders of teachers in evaluation work for the last three years and qualification records of all PGT's/TGT's/PRT's having not been attached to the reply. Submission is that before the appellant could furnish the desired information and documents, the order dated 24.02.2025 came to be passed in haste after five days, directing withdrawal of affiliation and, hence, action impugned is too harsh and arbitrary.

12. In support of his submissions, Shri Jain has mainly placed reliance upon the judgment of Hon'ble Supreme Court in **UMC Technologies Private Limited vs. Food Corporation of India and another, 2021 (2) SCC 551**, especially paragraph 31 thereof and submission has been made that a show cause notice without expressing the mind of the authority as to what specific penalty is proposed to be imposed upon the noticee, is bad in law and consequential action based upon such a vague notice cannot be sustained.

13. It has further been brought on record of this appeal by means of supplementary affidavit and shown to the Court that,

pursuant to the orders impugned, 311 and 214 students for class X and XII (Session 2025-26) have been transferred by the respondents to other institutions at Varanasi by an order dated 27.05.2025.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. Per contra, Shri Alok Tiwari, learned counsel for the respondents, has argued that the inspection committee specifically described serious discrepancy in the show cause notice regarding total number of registered students as per List of Candidates (LoC)/ registration data and students enrolled in the attendance register, for classes IX, X, XI and XII. Submission is that there was no cogent explanation offered as against the said discrepancy, either in the reply to the show cause notice or even thereafter by way of appeal/review/representation and, once it is established that the institution utterly violated the conditions of affiliation, particularly those sponsoring non-attending candidates, the respondents were justified in directing withdrawal of affiliation. It is further submitted that the explanation offered by the institution to the effect that on the particular date of inspection, the students had gone for preparatory leave, is wholly unacceptable, inasmuch as on the given date, students might be absent from the institution, but the same, in itself, cannot be a ground for not making entries of the names of all the students in the attendance register and, therefore, once the respondents, after noticing various serious discrepancies, including the one as highlighted above, took a conscious decision for directing withdrawal of affiliation, no error can be found in the impugned action.

15. As regards alleged sufferance of the students as argued by Shri Jain, submission has been made by Shri Tiwari that once the students have been transferred to other institutions, their academic curriculum would not be disturbed and, in the totality of circumstances, learned Single Judge was justified in refusing to grant interim relief, inasmuch as, had the interim relief been granted, the same would have permitted the institution to go ahead with the courses as if affiliation continues, in which event, interim relief would tantamount to allowing the writ petition itself, which is not permissible.

DISCUSSION

16. We have considered the submissions made before us and have gone through the material on record.

17. It is not in dispute that, pursuant to the show cause notice dated 08.01.2025, the institution submitted its reply dated 05.02.2025 alongwith which certain documents were produced/uploaded. Though it is not reflected from the reply dated 05.02.2025 that any opportunity of personal hearing was sought by the institution, document appended at page no. 142 of the paper book, *prima facie*, indicates that, after receipt of response dated 05.02.2025 and the documents produced/uploaded alongwith the same, the Board did not agitate requirement of furnishing data/explanation qua disparity/discrepancy regarding number of students enrolled and registered. It *prima facie* appears that the only requirement pressed by the Board was in relation to salary statements, duty orders and qualification records, as noted above

and the order withdrawing affiliation was passed just after five days of sending e-mail communication dated 19.02.2025 by the Board. When the appellant agitated its grievance before the Board in terms of Clause 13.10 by submitting appeal/representation/review, a specific prayer, being prayer no. 2, was made before the Board to grant a personal hearing to the institution to present its case.

18. The Board, after placing reliance on paragraph 6 of the judgement of Delhi High Court in **Mount Columbus School** (supra), observed that principle of natural justice, in all circumstances, does not mean a personal hearing and then, rejected the appeal/representation on the ground of irregularities noted in the order dated 29.03.2025.

19. When we peruse the order of the learned Single Judge, we find that the contentions advanced on behalf of the petitioner-appellant were noted therein. Thereafter, the learned Single Judge, after recording that respondent's counsel had sought an adjournment, proceeded to observe that since the recess of the Court would be there for the entire duration of month of June, 2025, granting an interim order at that stage would amount to allowing the writ petition, which cannot be done. It was further observed by the learned Single Judge that as far as issue regarding non-affording opportunity of hearing by the Board is concerned, the same would be required to be considered.

20. We are of the view that claim for and grant of an interim relief depends on the facts and circumstances of a particular case. It varies from case to case and there are situations where grant of

interim relief may amount to granting final relief itself. However, such a proposition cannot be uniformly applied to all cases. When any action is challenged by filing writ petition on grounds available to the petitioner concerned and if it is shown to the Court that the impugned action is not justified and, in case the same is allowed to remain alive during the pendency of writ petition, it would entail serious civil consequences, the Courts should not be hesitant in granting interim reliefs subject to their satisfaction regarding existence of basic ingredients qua grant of interim relief.

21. This Court may gainfully refer the judgment of Hon'ble Supreme Court in **Benedict Denis Kinny vs. Tulip Brian Miranda and others, 2021 (12) SCC 780**, in paragraph 48 whereof, it has been held that interim directions can be issued by the High Court under Article 226, which could help for aiding the Court in granting main relief sought in the writ petition. Further, in **Deoraj vs. State of Maharashtra and others, 2004 (4) SCC 697**, the Hon'ble Supreme Court discussed the situations where granting an interim relief would tantamount to granting final relief itself and also converse situations where withholding of an interim relief would tantamount to dismissal of main petition itself. In paragraph 12 of the judgment, it was held as under: -

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. **In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie**

case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. **Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship.** The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.”

(emphasis by us)

22. Though various submissions have been made by learned counsel for both sides on merits of their respective cases, however, we do not deem it appropriate to record any finding thereon, inasmuch as the instant appeal arises from the stage when only stay application has been rejected by the learned Single Judge inviting response from the respondents. Till today, as informed to us, no counter affidavit has been filed in writ proceedings. Therefore, it would not be proper for this Court to deal with the controversy involved in the entire writ petition itself on merits. However, once we find that various contentions advanced on behalf of the petitioner-appellant were noted by the learned Single Judge and the same have been reiterated before us with some elaboration, we find that basic ingredients necessary for grant of interim relief do exist in the present case and denial to grant interim relief for the reasons stated in the order impugned before us, does not appear to be justified.

CONCLUSION

23. Following the judgments of Hon'ble Supreme Court in **Benedict Denis Kinny** (supra) and **Deoraj** (supra) and in the facts of the case, we find that since *prima facie* case and balance of convenience lay in favour of the appellant-institution and, in the event of non-grant of interim relief, the institution as well as students would suffer irreparably, refusal to grant interim relief only on the pretext that the same would amount to granting final relief, does not appear to be justified. In the facts of the case, interim relief in favour of the petitioner-appellant would be an aid to the final relief claimed in the writ petition and, hence, the same should have been granted by the learned Single Judge after analyzing existence of three basic ingredients, as discussed above.

24. Consequently, the present special appeal stands **allowed**.

25. The order impugned dated 26.05.2025 passed by the learned Single Judge in Writ C No. 16999 of 2025 is hereby **set aside**.

26. It is provided that, during the pendency of the writ petition, effect and operation of orders dated 24.02.2025 and 29.03.2025 (impugned in the writ petition) as well as order dated 27.05.2025 directing transfer of 311 and 214 students (Annexure SA-1 to the supplementary affidavit) shall remain **stayed**. Consequences to follow.

27. The parties shall exchange their affidavits in writ proceedings positively within a period of one month from today.

28. The writ petition shall be listed before the appropriate Court in **last week of August, 2025** for final hearing.

29. The parties shall be at liberty to make a mention before the learned Single Judge for urgent hearing of the case.

30. We make it clear that the discussion made in our order is to be understood only with reference to the case for grant of interim relief which would always be subject to final outcome of the writ petition after exchange of affidavits and after conducting hearing of the matter by the writ Court.

Order Date :- 14.7.2025
Sazia

(Kshitij Shailendra, J) (Arun Bhansali, CJ)