

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 3.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.220 of 2016

The Central Board of Secondary Education
Shiksha Kendra,
rep. By its Asst. Secretary (AFF)
No.2, Community Centre
Preet Vihar, New Delhi 110 301 ...Appellant/ Respondent

versus

St.Charles School
Yercaud Taluk, Salem District,
Tamil Nadu 636 001.
rep. By its Provincial Superior Sr.Virgy
D/o Mariasalath ... Respondent / Petitioner

Writ Appeal filed against the order of this Court in
W.P.No.26813 of 2015 dated 30.10.2015.

To issue a writ of certiorarified mandamus to call for the
records relating to the impugned proceedings issued by
respondent in No.CBSE./ Aff./MS-00462-1314/ 917535 dated
13.8.2015 and to quash the same and consequently directing the
respondent Board to grant recognition for Middle Class Syllabus
by granting affiliation to the petitioner school under the
provisions of Affiliation By-laws of Central Board of Secondary
Education within a time frame to be fixed by this Court.

For appellant : Mr.G.Nagarajan

For Respondents : Mr.G.Sankaran

JUDGMENT

(made by HULUVADI G.RAMESH, J.)

This appeal has been filed by the Central Board of Secondary
Education (hereinafter referred to as the "Board") against the
order of the learned Single Judge dated 30.10.2015 in
W.P.No.26813 of 2015.

2. The respondent school filed the Writ Petition against the
appellant herein seeking for issuance of a Writ of
Certiorarified Mandamus to call for the records relating to the
impugned proceedings issued by the Board dated 13.8.2015 and to

quash the same and consequently direct the Board to grant recognition for middle class syllabus, by granting affiliation to the school, under the provisions of the affiliation bye-laws of the Board.

3. It appears that originally the respondent school was running State Board syllabus for standards from I to V, for which there was recognition. Thereafter, it appears that it moved the Central Government seeking permission for running classes from VI to VIII through CBSE curriculum. As per the circular issued by the Board dated 8.7.2013, for commencement of classes under CBSE syllabus, a school seeking provisional affiliation with the Board must have formal prior recognition of the State/Union Territory Government and also produce evidence to this effect, and the applicant school must have intimated the Education Department of the State about the application made to CBSE for seeking affiliation with the Board. In case the Board receives any objection during the process of application of the school, the Board may ask the concerned school to produce no objection certificate from the State Government, or otherwise, it would be assumed that the State government has no objection. However, prior to amendment, the position was, the school seeking provisional affiliation with the Board must have formal prior recognition of the State/U.T. Government. Its application either should be forwarded by the State Government or there should be no objection certificate to the effect that State Government has no objection to the affiliation of the school with the Board. No objection certificate once issued to any school will be considered at par even if it prescribes a specific period of stage unless it is withdrawn.

4. Referring to Rule 19, the respondent school moved the appellant Board stating that "middle class syllabus" means syllabus approved by the Board for classes up to VIII on the pattern of syllabus/guidelines for the classes given by NCERT. Taking advantage of that definition, the respondent school contended before the learned single Judge that whatever permission they have got from the State Government by way of no objection certificate would be applicable not only to I to V standard but it could also be extended to standards VI to VIII. Even then, the respondent school made a formal application. Since the State Government has not raised any objection, as per the amendment made to the bye-laws, it would be assumed that the State Government has no objection. Taking advantage of interpretation of this amended provision, the respondent school contended that the school should be granted affiliation for standards VI to VIII.

5. At this juncture, the learned counsel appearing for appellant/Board submitted that the respondent school has produced recognition certificate for standards I to V only and as per the amended affiliation bye-law, prior recognition of the State Government is necessary for Standards VI to VIII also. The learned counsel further contended that affiliation is sought for St. Charles School whereas recognition certificate was issued under the name "St. Charles Nursery and Primary School" and

therefore, there is difference in name of the institution also. The learned counsel therefore justified the impugned order and prayed that the order of the learned Single Judge should be set aside.

6. After hearing both sides, we are of the view that definition of "Middle class syllabus" as provided under Section 2(19) could be extended up to standard VIII. At the same time, we accept the argument of the learned counsel for the appellant Board that there is no power for automatic switch over, when there is no recognition for classes VI to VIII in State Board Syllabus. The respondent school has made application in the year 2011-12. We do agree with the submission made on behalf of the learned counsel for the respondent school that at this point of time, what was required was only formal application for commencing classes from VI to VIII. But the interpretation made by the learned Single Judge in the usual course under the presumption that once recognition is given by the State Government, it applies up to VIII standard as a matter of fact is not correct. The respondent school has produced recognition certificate for standards I to V only, and as rightly pointed out by the learned counsel for the appellant, as per the amended affiliation bye-law, prior recognition of the State Government is necessary for Standards VI to VIII also.

7. We are also of the view that the petitioner has to get proper prior recognition from the Board for running classes from VI to VIII. The application is made even during the year 2011, which is prior to amendment. The provisions then was that the School has to get no objection certificate from the State government. Only the amended provision provides that in case no objection is received during the period of process of application, it would be deemed that the State Government has no objection for granting affiliation. So far as the commencement of classes for Standard VI to VIII is concerned, we are of the view that necessarily, permission has to be obtained at least for the academic year from 2016-17 from the Board, apart from filing a formal application before the State Government. The situation is saved by amended provision of Rule 3.3 of bye-law, which provides for formal application to be made and in case of any objection, the State Government would indicate the same to the Board and the Board would take note of the same.

8. We accept the argument of the learned counsel for the appellant that there is a difference in the nomenclature of the school. While affiliation was sought for St.Charles School, recognition certificate was issued under the name "St.Charles Nursery and Primary School". The learned Single Judge has not taken note of the same while quashing the order passed by the Board. It is brought to our notice that inspection has been made by the Inspection Committee and the Committee has submitted its report. It is further submitted that the respondent school has complied with the shortcomings pointed out by the appellant Board. In such circumstances, we leave it to the Board to take a decision in the matter to save the situation and if compliance made is satisfactory, grant affiliation to the respondent school to run classes from VI to VIII, at the earliest.

9. With the above observation, the appeal is partly allowed. The order of the learned single Judge is modified. The Board is directed to take a decision within two months from the date of receipt of a copy of this judgment. There is no order as to costs. Consequently, C.M.P.Nos.3322 and 6379 of 2016 are closed.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

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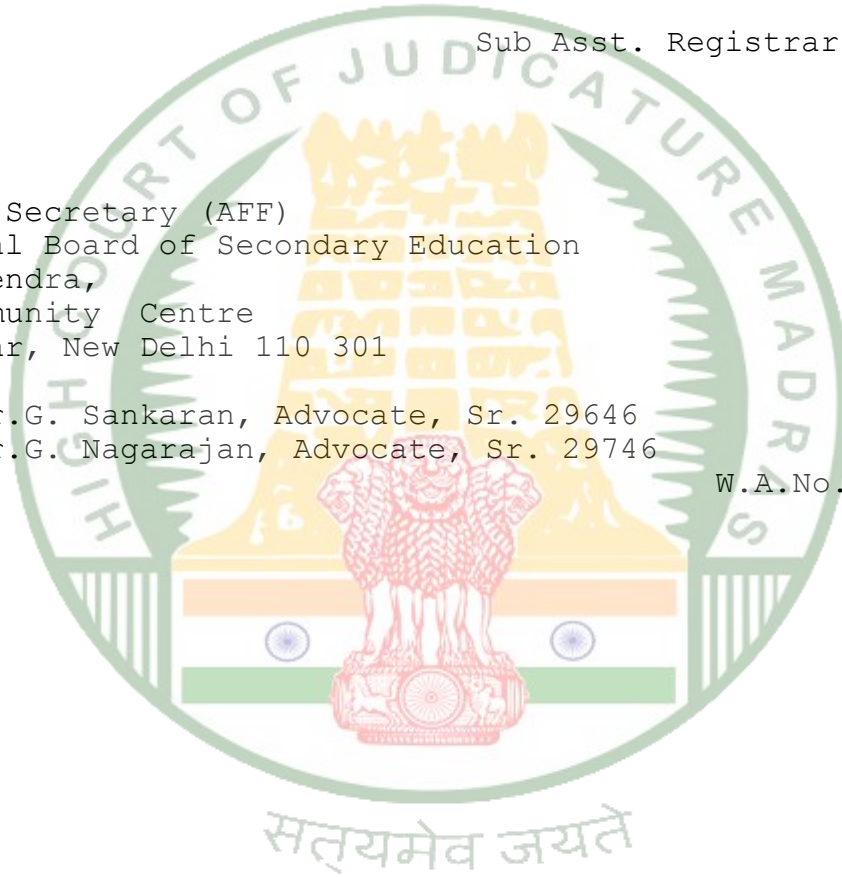
To

The Asst. Secretary (AFF)
The Central Board of Secondary Education
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1 cc to Mr.G. Sankaran, Advocate, Sr. 29646
1 cc to Mr.G. Nagarajan, Advocate, Sr. 29746

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