

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11467 of 2016

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Scholars Abode through the Principal Dr. (Mrs) B. Priyam, Mahangupur, P.O. Chiraura, P.S Janipur, District- Patna.

.... Petitioner/s

Versus

1. The Union of India through Secretary, Union Ministry of Human Resources Development, Government of India, New Delhi.
2. Central Board of Seondary Education (CBSE) through the Chairman,'Shiksha Kendra' 2 Community Centre, Preet Vihar, Vikas Marg, Delhi.
3. Secretary, Central Board of Seondary Education (CBSE) 'Shiksha Kendra' 2 Community Centre, Preet Vihar, Vikas Marg, Delhi.
4. Assistant Secretary, Central Board of Seondary Education (CBSE) 'Shiksha Kendra' 2 Community Centre, Preet Vihar, Vikas Marg, Delhi.
5. Director Affiliation, Central Board of Seondary Education (CBSE) 'Shiksha Kendra' 2 Community Centre, Preet Vihar, Vikas Marg, Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Uday Singh
Mr. Sudhir Kumar Singh
For the Union of India : Mr. Ram Anurag Singh, CGC
For the C.B.S.E. : Mr. Vinay Krishna Tripathy

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 24-03-2017

The order dated 27.10.2015 (Annexure-4) passed by the Central Board of Secondary Education, New Delhi (In short “C.B.S.E.”) issued under the signature of its Secretary, has been put to challenge in the present writ application. By the said order, the C.B.S.E. has withdrawn the provisional affiliation granted to “Scholars Abode School”. The impugned order has been passed in the light of a representation made by the school to the CBSE in the communication dated 27.1.2015, which has been brought on record by



way of Annexure-3 to the present application.

2. During the pendency of the application, the Assistant Secretary (AFFL) of the C.B.S.E. through a communication dated 29.7.2016, addressed to the Manager of the School has conveyed the decision of the C.B.S.E. to disaffiliate the school permanently, for continuous violations of Affiliation norms and Board's instructions. The said communication dated 29.7.2016 has also been challenged by an amendment in the writ petition.

3. I have heard the learned counsel appearing on behalf of the petitioner and the learned counsel representing the C.B.S.E.

4. From the pleadings on record it appears that the said school was earlier granted provisional affiliation by the C.B.S.E., which was subsequently withdrawn by an order dated 14.8.2013 , (Annexure-A/1 of the counter-affidavit filed by the C.B.S.E.) It was directed in the said order, *inter alia*, that the school was not allowed to open class IX and XI w.e.f. the session 2014-15, i.e., 1.4.2014.

5. On a request having been made by the School for restoration of provisional affiliation, the C.B.S.E. conducted a subsequent inspection through Inspection Committee dated 19.4.2014 and conveyed the inspection report to the C.B.S.E. in that regard. The decision of the Board for restoration of provisional affiliation for a period of three years, w.e.f. 1.4.2015 to 31.3.2018, was with



restriction on number of sections (4) from IX to XII each, with 40 students per section, in the subjects in which the school was previously affiliated by the C.B.S.E. The restoration of provisional affiliation was made subject to certain conditions detailed in the order, which are being extracted from Annexure-2 and are being reproduced herein :

1. School will pay salary to its staff at least at par with corresponding category of employees working in State Govt. schools through ECS transfer.
2. School is required to furnish Audit report in respect of its account for the last 03 years.
3. Probation period in respect of school teaching staff should be of 01 year in normal course.
4. School is required to furnish EPF challan in respect of school staff.
5. School will maintain invariably attendance (sic) in respect of all Senior Classes and will ensure regular attendance of all enrolled students throughout the academic session.
6. Any request for increase in number of sections will be considered subject to proportionate increase in number of sections in lower.
6. It appears that through letter dated 27.1.2015, the Principal of the School informed the C.B.S.E. that the school was



complying with the conditions imposed under the said letter dated 30.10.2014. However, the Principal mentioned in the said letter that the number of enrolments in the junior classes had increased and there were 6 sections of class VIII (comprising 40 students) each at that time. The C.B.S.E., through the said letter, was only requested to look into that aspect of the matter. The relevant portion of the said communication dated 27.1.2015 is being extracted and reproduced herein:

“At last we would like to bring to your attention honorifically that the no. of enrolment in our junior classes have increased and there are 6 sections of class VIII (comprising 40 students) each at present. Hence, we request you to kindly have your merciful glance at our school, so that we can accomplish the mission of educating our society with utmost effort. (Enclosure attached)”

7. Reacting to the said communication, the C.B.S.E. by the order dated 27.10.2015 (Annexure-4) has conveyed withdrawal of the provisional affiliation so granted to the school on the ground that the school was having more sections than allowed.

8. As has been noticed above, by a subsequent order dated 29.07.2016, the C.B.S.E. has conveyed its decision to disaffiliate the school permanently on the ground that the school had made request for registering candidates, for the session 2015-16, in number more than that permitted.



9. Learned counsel appearing on behalf of the petitioner has submitted that the Board ought to have given the school an adequate opportunity of hearing before taking such decision. Referring to Rule 17(3) of the Central Board of Secondary Education Affiliation bye-laws, he has submitted that it was obligatory on the part of the C.B.S.E. to have given the school an opportunity of hearing, for removal of deficiency, if any. At same breath, he has contended that the C.B.S.E. passed the impugned order misconstruing the representation made by the Principal through the communication dated, 27.1.2015. In the said communication, the C.B.S.E. was simply apprised of the fact that there were 6 sections of Class-VIII. The said communication did not mention that there were such number of sections of class-IX, which could not be permitted in terms of the conditions as contained in the order dated, 30.10.2014.

10. Referring to the impugned communication dated 29.7.2016, learned counsel for the petitioner has submitted that if any admission was made in the session 2014-15, the same was done before the provisional affiliation was restored by the order dated 30.10.2014. Subsequent to 30.10.2014, the school did not violate any condition as imposed in the said letter. There cannot be thus any case for breach of the terms and conditions imposed through the letter dated 30.10.2014, whereby provisional affiliation of the school was



restored.

11. Learned counsel appearing on behalf of the C.B.S.E., on the other hand, while opposing the prayer made on behalf of the petitioner, has submitted that due opportunity of hearing was given to the school way back in 2013 through the letter dated 2.5.2013 and a process for disaffiliation of the school was initiated by the said letter. However, after conducting inspection of the school, the C.B.S.E. decided to restore withdrawal of provisional affiliation. He has also submitted that when the Board passed subsequent order that the school was continuously violating the terms of conditions, the C.B.S.E. finally decided to issue the impugned orders dated , 27.10.2015 and 29.7.2016.

12. On perusal of the materials on record and submission advanced on behalf of the petitioner, one thing is apparent that the C.B.S.E. has not been able to point out breach of any of the conditions incorporated in the letter dated 30.10.2014, by which provisional affiliation of the school was restored. The communication made through letter dated, 27.1.2014 by the Principal of the school is merely a communication in respect of compliance of the conditions so incorporated in the letter dated, 30.10.2014 with respect to number of sections. The said letter merely says that number of enrolment in junior classes had increased and there were six sections of class VIII.



As has already been noticed above, restriction with respect to number of sections was for Class IX to XII only. In that view of the matter, I find substance in the submissions made on behalf of the petitioner that the order dated, 27.10.2015, withdrawing restoration order has been passed on misconstruction of the order dated 30.10.2014 and the communication dated 27.1.2015. The said order dated 27.10.2015 cannot, therefore, be sustained.

13. So far as the final order dated 29.7.2016 is concerned, evidently, no notice at any point of time was given to the school, so as to explain their stand. The decision of the C.B.S.E. for disaffiliation of the school permanently is in apparent breach of principles of natural justice. The reason, which has been assigned in the said communication dated 29.7.2016 was never made available to the school to explain. The impugned order dated 29.7.2016 is also not sustainable, therefore, the impugned communication dated 27.10.2015 and communication dated 29.7.2016 (Annexure-11) are accordingly set aside. This application is allowed.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06-04-2017
Transmission Date	

