

CWP No. 19559 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 19559 of 2016

Date of Decision: February 23, 2017

Guru Dronacharya Educational Trust

...Petitioner

Versus

Central Board of Secondary Education & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Dinarpur, Advocate
for the petitioner.

Mr. Nitin Kant Setia, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (Oral):

Petitioner-Guru Dronacharya Educational Trust (hereinafter referred to as 'Trust') has approached this Court praying for issuance of a direction to the respondent-Central Board of Secondary Education (for brevity 'the Board') to consider the school upgraded from the academic session of 2015-16 instead of 2016-17.

2. The above prayer has been made on the ground that the petitioner-Trust had moved an application for upgradation of the school on 28.06.2014 to senior secondary school level which has not been processed and finalized within a period of six months. The school was affiliated upto the secondary school level only. Alongwith the above application dated 28.06.2014, another application was also preferred for extension of affiliation for further period of five years at the level of secondary school level. The applications were sent online. It is an admitted position that the

said applications were received by the respondent-Board.

3. In pursuance to the application for upgrading the school, a team was constituted for inspecting the school in February-March, 2015. The inspection was conducted on 26.08.2015 to ascertain the feasibility of the school in starting senior secondary school classes. The inspection report was received on 09.09.2015 and on consideration thereof, provisional affiliation to the senior secondary classes was accorded on 12/14.01.2016 (Annexure P-3).

4. The plea which has been raised by the petitioner-Trust is that in the light of the fact that the application has been moved way-back in the year 2014 and the school fulfilled the requisites for grant of affiliation upto the level of senior secondary school which is apparent from the inspection report dated 09.09.2015, the students who had passed the 10th class from school, were admitted in 11th class in July 2015 on the assumption that the sanction will be received prior in time till the end of the academic session. These admissions which were made in July, 2015 were primarily with a hope that there would be no impediment in grant of sanction and it is on the part of the respondent-Board that the delay has occurred for which the petitioner-Trust and its students should not be made to suffer. It has been asserted that the students who have been admitted in July 2015 are now required to appear in the examinations for the 12th class which is to commence in the second week of March, 2017 and if the permission is not granted by the respondent-Board by issuing roll numbers, the students would lose valuable one academic year for which they had actually studied.

In support of the fact that the students have regularly studied, reliance has

been laid on the inspection report dated 09.09.2015.

5. Reply has been filed by the respondent-Board where the factual assertions made by the petitioner-Trust with regard to the date of submission of application, the constitution of the inspection team, the inspection being conducted and the report having been received alongwith the provisional affiliation granted to the school vide communication dated 12/14.01.2016 have been admitted. What has been asserted is that as per the regulations, the petitioner-Trust could not have admitted the students in the school being run by it without prior affiliation with the respondent-Board. The extension which was granted by provisional affiliation on 15.01.2015 (Annexure P-1) was only limited to secondary classes for the period 01.04.2015 to 31.03.2020. It is further submitted that on the basis of the said sanction/provisional affiliation, admission to class 11 or 12 could not have been carried out by the petitioner-Trust. There is no provision which mandates or gives the authority to the Management of the Trust to admit the students without prior affiliation with the respondent-Board so far as the senior secondary school level is concerned. That apart, it has been asserted that there has not been any delay on the part of the respondent-Board as this is the period which is being utilized for the purpose of proper inspection and verification of the facts which have been stated in the application. It is contended that the action which has been taken by the petitioner-Trust in admitting the students cannot be said to be justified because of inaction on the part of the respondent-Board as it could not be presumed that the respondent-Board would accept the prayer which has been made by the petitioner-Trust for granting the affiliation upto the level

of senior secondary which was being sought through an application dated 28.06.2014. Prayer has, thus, been made for rejection of the writ petition.

6. Counsel for the parties have addressed this Court on the basis of the pleadings and on consideration of the same, this Court is of the considered view that the action of the petitioner-Trust cannot be justified in any manner as mere submission of an application for upgradation/grant of affiliation to the level of senior secondary would not confer any right upon the petitioner-Trust to admit the students unless the same is specifically granted by the respondent-Board.

7. Admittedly in the present case, the application which has been submitted by the petitioner dated 28.06.2014 was in process and was being considered by the respondent-Board. Some laxity/delay can be attributed to the respondent-Board but that would not confer any right on the petitioner to assert that it could have made admissions to class 11 without the sanction/affiliation/upgradation having been granted by the respondent-Board. There is no provision which has been brought to the notice of the Court which would hint or show or an inference can be drawn that if any delay having been committed by the respondent-Board in the processing of an application or in taking a decision thereon, the petitioner could *ipso facto* proceed on the assumption that the sanction would be deemed to have been granted. In the absence of such a clause in the provisions which govern the affiliation, the admissions which have been made by the petitioner-Trust cannot be said to be in accordance with law.

8. The provisional sanction which has been granted to the petitioner from the academic session 2016-17 vide letter dated

12/14.01.2016 (Annexure P-3) would show that this affiliation has been granted to the school for Senior Secondary School Certificate Examination for a period of three years w.e.f. 01.04.2016 to 31.03.2019 in the following subjects:-

“(a) Language Subjects: English Core & Elective and Hindi Core & Elective.

(b) Elective Subjects: Chemistry, Physics, Mathematics, Biology, Computer Science, Economics, Physical Education.”

9. This sanction/affiliation is subject to fulfillment of further conditions which have been mentioned in the said letter. Nothing has come on record which would indicate that the conditions which have been imposed by the respondent-Board while granting provisional sanction has not been fulfilled by the petitioner-Trust at least for the session 2016-17 as they could admit the students to class 11th w.e.f. 01.04.2016 onwards.

10. On 21.02.2016 when the case was taken up for hearing, counsel for the petitioner had produced a copy of the inspection report which has been submitted by the Inspection Committee dated 09.09.2015 which indicates that the inspection team had actually found 61 students studying in 11th class in the school being run by the petitioner-Trust. Learned counsel for the respondent-Board had sought time to verify the same for which the case was adjourned for today, he accepts this factual assertion of the counsel for the petitioner. This clearly indicates that as a matter of fact, the classes were being conducted for the students of class 11th for the session 2015-16 at the time of inspection on 26.08.2015.

11. In view of the peculiar facts and circumstances of the case and

keeping in view the interest of the students, so that they do not lose a valuable year in their studies, this Courts directs the respondent-Board to issue roll numbers to the students of the school being run by the petitioner-Trust and permit them to take the examinations in the subjects which have been specified in the communication dated 12-14.01.2016 (Annexure P-3) which is the provisional affiliation of the school being run by the petitioner-Trust for Senior Secondary School Certificate Examination. The said exercise be carried out by the respondent-Board within a period of three days after the completion of all the formalities which are required to be done at the level of the school being run by the petitioner-Trust. It has further been agreed between the parties that complete applications alongwith other documents/formalities would be submitted by the petitioner-Trust on or before 28.02.2017. If the examination forms cannot be submitted through online mode, the respondent-Board will accept the same in the form of hard-copies and the roll numbers will be issued to the students of the school being run by the petitioner-Trust on or before 03.03.2017.

12. It may be added here that there is a possibility that some of the subjects which the students of the school of the petitioner-Trust would have opted require practical examination to be conducted, for which the respondent-Board shall make special arrangements. The total cost and expenditures shall be borne by the petitioner-Trust as accepted by the representative of the Trust who is present in Court.

13. This order is being passed in the peculiar facts and circumstances of the case and for the only reason that the students do not

suffer because of the illegal act of the petitioner-Trust. It shall not be treated as a precedent.

14. At this stage, when the Court was about to issue further directions to the petitioner-Trust, it has been volunteered by the counsel for the petitioner-Trust, on instructions from the representative of the petitioner-Trust, that the fee and other charges including funds, if any, which have been taken from the students who were admitted in the session 2015-16 in class 11 shall be refunded to them within a period of one month from today. After refund of the above-mentioned fee and other charges including funds to the students, a compliance affidavit be filed by the General Secretary of the petitioner-Trust within a period of one week after expiry of above period of one month. In case the same is not refunded, it shall be open to the parents/guardian of the students to approach this Court by filing appropriate application in the case. Further, costs of `1,00,000/- is imposed upon the petitioner-Trust which shall be deposited by the petitioner with the High Court Legal-Aid Services Authority within three weeks from today. In case of non-deposit of the costs within the time stipulated, the case be listed for further orders.

15. The present writ petition stands disposed of in above terms.

16. Copy of this order be given *dasti* to the counsel for the parties under the signatures of Bench Secretary of this Court.

(AUGUSTINE GEORGE MASIH)
JUDGE

February 23, 2017

Harish

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No