

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision : 03.10.2017

1) 213-5

CWP No.3712 of 2017 (O&M)

Knight's International Public School, Village Mullowal
Tehsil Dhuri, District Sangrur

..... Petitioner

Versus

Central Board of Secondary Education and others

..... Respondents

2) 213-6

CWP No.3724 of 2017 (O&M)

Knight's International Public School, Village Mullowal
Tehsil Dhuri, District Sangrur

..... Petitioner

Versus

Central Board of Secondary Education and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Anil Kumar Garg, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate and
Mr. Aseem Aggarwal, Advocate
for the respondents-CBSE.

Mr. S.S.Salar, Advocate
for respondents No.4 to 14 (CWP No.3712 of 2017).

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned two writ petitions.

These two petitions have been filed by the petitioner-School

permit certain students to sit in class 10th and 12th examinations.

On 07.03.2017 the following order was passed :-

“At the request of learned counsel for the respondents, adjourned to 06.04.2017.

In the meantime, the C.B.S.E is directed to issue roll number(s) to the petitioner for its student studying in Class-10th and 12th to appear in the forthcoming examination on 9.03.2017. It is made clear that this arrangement is totally provisional and would depend upon the final outcome of the writ petition and the C.B.S.E shall not declare the result of the students, who would appear under the orders passed by this Court. It is needless to mention that the C.B.S.E shall also take practicals of the student of the petitioner for class-10th and 12th. The Board may also verify the documents of students of the petitioner-institute, while in touch with the Department of Education of the State Government.

Copy of this order be supplied to the counsel for both the parties under the signatures of Bench Secretary of this Court for compliance.

Photocopy of this order be placed on the filed of connected case.”

Thereafter, the CBSE had filed its reply pointing out that as per Regulation 7.3 and 7.5 of the Examination bye-laws classes 9th & 10th and 11th and 12th are actually integrated courses and consequently no school is allowed to make admission in class 10th & 12th directly. What many schools (including the petitioner) do is that students who have failed in classes 9th and 11th approach them and they are given admission in classes 10th & 12th respectively so that they do not lose a year and for this they charge a hefty amount and it is only when the perusal of the record of students by the Board from the previous school reveals this that they are barred from taking

the classes 10th & 12th examination.

Thereafter, on 13.06.2017 another learned Judge passed the following order :-

“In these writ petitions, though the date of final hearing has been kept for today, the vacation roster being extremely heavy, it is not possible to hear them in detail.

However, learned counsel for the petitioner(s) submit that the results of the students be in the meanwhile declared, for Class 10 and 12 as the case may be, so as to enable them to obtain admission in different institutions for further studies.

Mr. Aggarwal, learned counsel for the respondent-Board, however submits that in some of these cases, some of the certificates on the basis of which the petitioners have appeared in the Class 10 and 12 examinations, have been verified by the Board to be fake/forged documents.

Without making any final comment on the contention raised, it is considered appropriate at this stage to direct the Board that in cases where the documents have been verified to be forged/fake, the result shall be withheld, but in other cases the results of the students concerned shall be declared, at the risk of the students, and any such declaration of result will be subject to the final outcome of these petitions.

Any admissions taken by the students on the basis of such declaration of result will also be, naturally, subject to the outcome of these petitions.....”

Thereafter, on 04.07.2017, the following order was passed :-

CWP No.2548 of 2017 & connected matters

Counsel for the petitioners press that results of Classes X and XII of the CBSE were declared almost one month ago, and pray that the CBSE be directed to declare the results of the students of the petitioner-Schools because otherwise these writ petitions would be rendered infructuous and those students who have passed would not be able to seek admission in the

next class.

Counsel for the CBSE, on the other hand, has argued that classes IX & X and XI & XII actually constitute one integrated course and that is why as per the bye-laws relating to the examination, the Board has directed that admissions directly to classes X and XII would not be allowed, though there are certain exceptions like transfer, shifting of family etc. As per him, the petitioners are actually teaching shops masquerading as schools who have no respect for the law and that is why they have made willy-nilly admissions in breach of the bye-laws and rather in some cases forged documents have been placed on record and, therefore, there is no occasion to grant interim relief which would, in effect, result in these writ petitions being allowed.

As regards the question of interim relief, I deem it appropriate to direct the petitioners to initially deposit a sum ₹ 10,000/- per student of classes X and XII whose cases were under dispute, by way of demand draft in favour of the Registrar General of this Court so that in case it is found that admissions have been made in breach of the bye-laws, this amount can be paid as costs (subject to final orders). Let necessary deposit be made before the next date of hearing after giving notice to the Board so that it can verify that the payment is as per the number of students. The petitioners are directed to show to the Court how they satisfied themselves that admissions could be made in classes X and XII in derogation of the normal law. They are further directed to inform the total amount of fees including admission fee/tuition fee and all other sundry miscellaneous charges, which they have obtained from the students during the course of the year. Counsel for the CBSE is directed to place on record a tabulated statement mentioning the forged documents and the cases so that the suspect documents can be accessed without too much difficulty during hearing of the matter.

Adjourned to 17.7.2017. Meanwhile, the respondent-Board is directed to provisionally declare the result of the students who have taken the examination under the interim orders of this Court.

Copy of this order be given dasti to counsel for the parties under the signatures of the Bench Secretary. Photocopy of this order be placed on the connected matters.”

Thereafter, on 17.07.2017 the following order was passed :-

“The order dated 4.7.2017 has not been implemented except by three petitioners-schools who have deposited the fees. As regards schools who were respondents in the cases, it is made clear that all the schools whether petitioners or respondents would have to make the deposit in terms of the order dated 4.7.2017, since that order was passed only because all the schools had given admissions in class 10th and 12th contrary to the Rules. The decision for depositing Rs. 10,000/- was in the nature of a condition, consequently whether the schools are petitioners or respondents they are bound to pay the same.

Mr. Harsh Aggarwal, Advocate for respondent-CBSE, on being asked, stated that CBSE has not declared the result and have three problems. His first problem is that as regards some students who were allowed to give the exam under the interim order of this Court even examination fee was not paid. As per him, apart from examination fee even late fee is payable. The second issue raised by Mr. Aggarwal, Advocate is that cases have come to light where students have connived with the schools and have furnished fake documents. There are also cases where the schools have not sent any record and those students have also taken the examination under the interim orders of this Court.

On the other hand, counsel for the petitioners-schools say that in many cases the delay occurred because of inaction by the CBSE. At this stage, in my opinion it would be in the

interest of justice if examination fee is deposited for those students who have not deposited the same. As regards the late fee the same may not be deposited at this stage and this issue would be decided when the main case is decided.

Learned counsel for those schools who have not been able to make deposit, pray for one more opportunity to make the said deposit in the interim order dated 4.7.2017. Be deposited before the next date of hearing.

In the circumstances, the interim order is modified to the extent that the CBSE would provisionally declare the result of those students about whom there is no allegation of fake documents and whose certificate etc. have been received from the schools and also in respect of whom the deposit of Rs. 10,000/- has been made.

None of the schools have also filed any material to show to the Court how they satisfied that admission in Class 10th or 12th in derogation of the normal law. The schools have also not informed total amount of tuition fee, admission fee and all other sundry miscellaneous charges which were obtained by the school from the students during the course of the year. The CBSE has also not placed any statement mentioning the forged documents and the case/s. One week time is given to all the parties to furnish documents with advance copy for the counsel opposite so that rejoinder can be filed before the next date of hearing.....”

Thereafter, on 17.08.2017, the following order was passed :-

Main cases

Mr. Harsh Aggarwal, Advocate for the respondent-CBSE states that in all the cases where the money was deposited and the Board was able to determine that it was not a case of fake student, the results have been declared. Counsel for the petitioners state that in some cases the verification has not been done by the Board Mr. Aggarwal assures the Court that

in all the cases where payments have been made necessary verification will be done by the Board within one week and he will file an affidavit giving the details of those students (alongwith schools) (writ petition wise) where the Board has decided that the students are fake. Counsel for the petitioners point out that even where the results have been declared the Detailed Mark Certificates have not been issued. Some of the counsel for the petitioners pray that because of the huge amounts involved they were not able to arrange the money and pray for one more last opportunity to deposit the amount of Rs. 10,000/- per student, as per the order dated 4.7.2017. Mr. Aggarwal states that though there is no justification in giving one more opportunity for this purpose yet since it is a situation where the future of the students is involved he would not oppose the prayer but it should be made clear that no further opportunity will be granted to make this deposit.

Keeping in view the entire circumstances, I deem it appropriate to grant one more opportunity of one week from today to the learned counsel for the petitioners to deposit the amount as per order dated 4.7.2017 and it is made clear that thereafter, no further opportunity will be allowed to make any deposit. Mr. Aggarwal has further pointed out that as per the order dated 4.7.2017 and subsequent orders also all the petitioners were directed to show to the Court how they satisfied themselves that admission could be made in classes 10th and 12th in derogation of the normal law and they were further directed to inform to the Court the total amount of admission fee, tuition fee and all other sundry miscellaneous charges which they had obtained by the school from the students during the course of the year but those necessary details have not been filed by the petitioners and even till date these details are not forthcoming in many cases. He has further prayed that till such time as the petitioners do not give these details, there should be no direction to hand over the Detailed

Marks Certificate because otherwise the petitioners would not give these details to the Court. Counsel for the petitioners have vehemently argued that the Detailed Marks Certificate of the students should be released to them without any condition because it is a case of students.

In my opinion, this is not a complete answer. Once the petitioners have been on notice since 4.7.2017 that they have to furnish the certain information they cannot refuse to furnish the information and try to act as if the entire fault for spoiling the career of the students lies on the Court or CBSE. The Court has no hesitation and would rather want to declare the results of all the students but it would not appropriate to do so if the petitioners do not implement the conditions of the order dated 4.7.2017, since none of them has challenged the same. Mr. Aggarwal pointed out that even for this aspect last opportunity had been granted. No doubt last opportunity was granted to the petitioners to give this information but the Court does not wish to penalize the students without giving one more opportunity to the petitioners schools to provide the information as mentioned in the order dated 4.7.2017 and the subsequent orders.

Keeping in view the urgency of the matter, the case is adjourned to 25.8.2017 to enable the petitioners to file necessary information with an advance copy to Mr. Aggarwal. This Court does not appreciate these crocodile tears being shed by the petitioners-schools about the fate of the students and hope and expects that if they are really keen that the result of the students be declared then they would fulfill the conditions in the order dated 4.7.2017 and subsequent orders. They would keep in mind that now entire onus of the future of the students lies on them and not on the Court or the CBSE.”

Thereafter, on 30.08.2017, the following order was passed :-

**“C.M No.11929 of 2017 in
CWP No.3724 of 2017**

Notice of C.M. On the asking of the Court, Mr. Harsh Aggarwal, Advocate accepts notice and seeks time to file reply.

CWP Nos.5262, 5131, 5607 of 2017

Counsel for the CBSE points out that no deposit was made by the concerned school. Counsel for the petitioner in CWP No.5607 of 2017 states that the bank draft has been wrongly sent to CBSE. He further states that he would get that draft cancelled and would get a fresh draft prepared in terms of the previous order. Counsel for the CBSE states, on instructions, that till today no draft has been received in the office of the CBSE and as and when the same is received he would return it to the concerned school.

As regards, CWP No.2548 of 2017, counsel for the CBSE has pointed out that though 100 students were there in the school yet payment was made only qua 98 students. Counsel for the petitioner states that the remaining two students had left the school and consequently the petitioner has no objection if their result is not declared.

Counsel for the petitioners state that in all the cases where payments have been made, result of all candidates has been declared except those who were found to be fake students and those whose preceding classes' result was not verified. In this connection, counsel for the CBSE has filed a supplementary affidavit of Ms. Sweta Arora, Assistant Secretary of the Regional Office of the CBSE Panchkula and undertakes to supply a copy thereof to all the counsel for the petitioners.

Counsel for the petitioners have argued that at-least as far as those candidates are concerned whose result has been declared, their Detailed Mark Sheets (DMCs) should also be released.

Mr. Harsh Aggarwal and Mr. NK Setia, Advocate state that even though result of certain students has been declared yet the fact is that all these students were admitted in contravention to Regulations 7.3 and 7.5 and, therefore, it would not be appropriate to release their DMCs at this stage. They have further pointed out that even in the year 2016, similarly situated schools had come to the Court and by an interim order, their students were allowed to take the exam and thereafter result was also declared and DMCs were released but after the release of the DMCs, those schools completely lost interest in the litigation and now the position is that the CBSE is trying to chase them. However, it is to be remembered that the Regulations envisage a bar to the schools to admit certain kind of students and there is no bar to the students to apply for admissions. Moreover, once the result is declared, DMC is merely an attendant corollary. The Principal and the Chairman of the governing body of each of the schools are directed to give an undertaking to the effect that they would not make any admission in class X and XII outside the purview of Regulations 7.3 and 7.5 with effect from today. In the circumstances, it is directed that DMCs of all the students whose result has been declared under the interim order of this Court be also released forthwith after receipt of copies of the undertakings filed in this Court. DMCs of the petitioners in CWP Nos.3768, 3944, 4781 5131, 5134 5265, 5379 of 2017 be released without the undertaking, in case their result has been declared.

Adjourned to 3.10.2017. Photocopy of this order be placed on the connected matters.”

However, even till today the petitioner-School has not filed the necessary undertaking. It is, therefore, clear that the petitioner-School is adamant that it would make admissions even in coming years in violation of

Learned counsel for the private respondents in CWP No.3712 of 2017 states that this has put these respondents in a very precarious position. As per him these respondents have not submitted any fake documents and now because of the illegal attitude of the petitioner-School they are in the danger of losing a year.

Mr. Harsh Aggarwal, Advocate has very fairly accepted that as regards these respondents their documents have not been found to be fake but apart from them there are six students whose documents have been found to be fake.

In my opinion, it would be appropriate if the Detailed Marks Certificates of these students are issued. The CBSE is directed to do the needful.

Mr. Harsh Aggarwal, Advocate states that these kind of schools should not be allowed to perpetuate this menace. In my opinion, this argument hardly lies in the mouth of Mr. Harsh Aggarwal because the CBSE is fully competent to take action as per law against such institutions by dis-affiliating the school.

Another direction which was issued was to file an affidavit to place on record the material which they have to show that they had satisfied themselves that the students fulfill the exceptions carved out in Regulations 7.3 and 7.5. In pursuant thereto affidavit of the Principal has been filed that they had given admissions in classes 10th & 12th because the embassies of some countries refused visas to students who had passed their 10th and 12th from the Punjab School Education Board. No detail has been mentioned as to which embassy had ever refused any visa to any person who may have

affidavit is rejected.

In view of this and the adamant refusal of the petitioner-School to file an undertaking that it would not take recourse to illegal admissions even in the coming years I deem it appropriate to dismiss these petitions subject to the directions given above. The amount deposited by the petitioner-School would be remitted to the CBSE.

Both the petitions stand dismissed.

Since the main case has been decided, the pending Civil Misc. Applications, if any, also stands disposed of.

03.10.2017
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No