

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15034 of 2018

Holy Cross International School, Lekha Nagar, Ashopur, Near DAV School, Cantt. Road, Patna (Bihar) 801503 Through its Manager Mayank Paritosh, son of Shri B.K. Thakur resident of 1-D, Sneh Plaza, Sardar Patel Path, North S.K. Puri, PS Srikrishnapuri, Boring Road, Patna- 800001

... .. Petitioner

Versus

1. Union of India through the Secretary Ministry of Human Resource Development, New Delhi.
2. State of Bihar through Secretary Deptt. of Human Resource Development, Patna.
3. Chairman, Central Board of Secondary Education, New Delhi.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Birendra Kumar Sinha, Senior Advocate Mr. Rajnandan Kumar, Advocate
For the Respondent State:	:	Smt. Shilpa Singh, GA-12
For the UoI	:	Mr. Sujeet Kumar Sinha, C.G.C.
For the CBSE	:	Mr. Vinay Krishna Tripathy, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 20-12-2018 This writ application has been filed seeking following reliefs :

“A]. For setting aside the Order no. CBSE/ AFFL./335029/ 2018/ 13727617 dated 16th April 2018 issued by the Assistant Secretary of the Board whereby it has been communicated that “In view of above facts, the Board has decided to withdraw the provisional affiliation granted to Holy Cross International School, Lekha Nagar Ashopur, Near DAV School, Cantt. Road, Patna (Bihar) 801503 for Secondary School Examination and Senior Certificate Examination with immediate effect. However, that keeping in view the academic career of the students who are at present studying in class IXth and XIIth are permitted to appear in Board’s Xth and XIIth examination to be held in the year of 2019 and 2020 subject to their eligibility and genuineness. Further the school will not allowed to open class IX and XI



w.e.f. the session 2019-20 i.e. 01/04/20-19”,

And

B]. Direct the State Authorities to withdraw their memo no. 10/877 (Annexure-P/11) whereby they have informed the school that they are withdrawing the no-objection certificate issued by them with immediate effect.”

It is noticed that before passing of the impugned order, the petitioner was asked to show cause through a show cause notice dated 31.01.2018, which is there at Annexure-5 of the writ application. From Annexure-5, it appears that based on the findings recorded by an enquiry team, constituted by the State Education Department, in respect of the school, certain deficiencies were found. The enquiry was conducted because of an incident of misbehaviour by the sweeper of the school with a female student studying in the school. It also appears that the petitioner had replied to the said show cause notice through letter dated 22.02.2018, which has been brought on record by way of Annexure-6 of the writ application.

There is no dispute over the fact that the petitioner had filed his reply to the show cause notice. On perusal of the reply to the show cause notice, I find that the petitioner had dealt with the points mentioned in the show-cause notice dated 31.01.2018. On perusal of the impugned order, however, I find that there is no discussion as to why the petitioner's reply to the



show cause notice was not acceptable to the Central Board of Secondary Education (CBSE).

The only consideration, which is there in the impugned order, reads thus: -

“WHEREAS, a Show Cause Notice was issued to the school vide letter No.CBSE/Aff./330529/2018/1350995 dated 31.01.2018 in this regard and the reply (dated 26.02.2018) of the Show Cause Notice received from the school was not found satisfactory.”

Counter affidavit has been filed on behalf of respondent CBSE. The facts as noticed above are not at all in dispute.

Mr. Birendra Kumar Sinha, learned Senior Counsel appearing on behalf of the petitioner, has contended that the impugned order is, on the face of it, cryptic and non-speaking and is fit to be set aside on that score alone.

Mr. Vinay Krishna Tripathi, learned counsel appearing on behalf of the CBSE has attempted to submit that the decision to withdraw the affiliation has been taken on consideration of the petitioner's show cause reply and in the background of the Affiliation Bye-laws and the enquiry report of the State Education Department. After the CBSE passed the impugned order of withdrawal of affiliation, the State Government has



cancelled the No Objection Certificate granted in favour of the school by Annexure-11, which is also impugned.

I find substance in submission made on behalf of the petitioner that the impugned order dated 16.04.2018 issued by the CBSE is non-speaking and cryptic. Such order has adverse civil consequences and, therefore, in the absence of reasons being assigned in the order itself, the same cannot be sustained being in breach of the principles of natural justice. The impugned order dated 16.04.2018, therefore, deserves to be set aside and is accordingly set aside.

Since the decision of the State Government to cancel the No Objection Certificate, dated 09.07.2018, is in the background of withdrawal of affiliation, the same also cannot be sustained and is accordingly set aside.

The CBSE shall be at liberty to take a decision afresh and pass appropriate order in accordance with law after considering the show cause reply of the petitioner on record.

A grievance has been made on behalf of the petitioner that certain documents, relevant for the purpose of filing show cause reply, were not supplied to the petitioner before decision to withdraw the affiliation was taken.

Learned counsel for the CBSE states that the



necessary documents, which were being demanded by the petitioner, have been brought on record with the counter affidavit by way of annexures. The petitioner shall be at liberty to file a supplementary show cause reply based on the additional materials, which are now available through the counter affidavit filed on behalf of the CBSE, within two weeks from today. The Court expects that the CBSE shall pass a fresh order in accordance with law by 28.02.2019.

This application is allowed with the observations and directions above.

No order as to cost.

(Chakradhari Sharan Singh, J)

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