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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 220/2018 & C.Ms.No.15855/2018 & 15857/2018.

PARENTS STUDENTS WELFARE

ASSOCIATION

..... Appellant

Through: Mr.S.S.Dahiya, Adv.

Versus

THE DIRECTORATE OF EDUCATION & ORS Respondents

Through: Mr.Gautam Narayan, ASC with
Ms.Mahamaya Chatterjee, Adv. for R-1.

Mr.Amit Bansal, Adv. with Ms.Seema Dolo,
Adv. for R-2/CBSE.

Mr.Tanmaya Mehta, Adv. with Mr.Anurag
Sahay, Mr.Raghav Wadhwa, Adv. for R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

20.11.2018

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Seeking exception to an order passed by the learned Writ Court on 21.02.2018 in W.P.(C) No.10052/2017 titled *Parents Students Welfare Assn. vs. Director of Education & Anr.* and also another petition, W.P.(C) No.7414/2017 titled *Assn. of School Vendors and Ors. vs. Central Board of Secondary Education & Ors.*, this appeal has been filed limited to the extent of challenge made in the matter of disposal of W.P.(C) No.10052/2017, i.e. the petition filed by the Parents Students Welfare Association, the appellant herein.

2. As the issues involved in both the writ petitions were inter-related to each other, even though the prayers were diametrically opposite, both the writ petitions were disposed of by the common order. The Association of School Vendors were aggrieved by the Circular dated 19.04.2017 issued by the Central Board of Secondary Education ('CBSE' for short) whereby schools affiliated to the Board were prohibited from selling books both

NCERT and non-NCERT, stationery items and school uniforms from shops within the school premises.

3. It was the case of the Association of School Vendors that total prohibition in selling of the items is unsustainable in law and their representation in this regard dated 26.05.2017 having been rejected in an illegal manner vide order dated 04.07.2017, the writ petition was filed by the Association of School Vendors. The present appellant claiming to be an association of parents challenged the circular dated 24/25.08.2017 issued by the CBSE primarily on the ground that the said circular permits commercial activity in the school premises for selling books, stationary items and school uniforms through vendors. It is stated that this circular is in contravention of the circular dated 19.04.2017 but also violates the CBSE Affiliation Bye-Laws more particularly Bye-law 14B and 19.1(ii) & (iii) which prohibits any type of commercial activity or business activity in the school campus.

4. The learned Writ Court examined the issue in detail, considered various judgments of the Supreme Court and by a judgment running to more than 50 paragraphs, came to the conclusion that CBSE cannot prohibit or restrict selling of non-NCERT books and uniform from the tuck shops within the school campus and directed for reconsideration of the matter. In pursuance thereto, by counter affidavit filed by the CBSE, we are informed that a circular has been issued now on 21.06.2018 being circular no. 08/2018 wherein, in the light of the aforesaid judgment of the Supreme Court, the schools are now permitted to open tuck shops, namely, small outlets inside the school premises to facilitate the children, whereby both NCERT and non-NCERT books, stationery and uniform items for sale in the schools would be permitted. A condition is also stipulated in the circular that neither the students nor the parents would be coerced to purchase from these shops of the school. The parents and the teachers

would have option either to purchase the books or other items from these tuck shops or from other specified vendors. That apart, it has been clearly stipulated in the circular that no activity can be carried out in the school premises which is not at all connected with education or activities of the school. It is further stipulated that the prescribed text books and other items shall be displayed by the school in the website and it would only be permissible for sale of these items. Taking note of the aforesaid, we are informed by the Association of School Vendors who are petitioners in W.P.(C) No.7414/2017 that the order of the learned Writ Court has not been complied with. However, an objection is made by the appellant herein, namely, the Parents Teachers Association that this amounts to commercial activity in the school premises and the same is not permissible and, therefore, even this should be stopped.

5. We have considered the aforesaid submission, scrutinized it in the backdrop of the detailed findings recorded by the learned Writ Court. The learned Writ Court, after detailed evaluation, has recorded a finding that with regard to the sale of text books and certain items required by the children, small tuck shops can be established but neither the students nor the teachers should be compelled to purchase from these shops and only educational items like prescribed text books, stationery items and school uniforms should be sold. The aforesaid being reasonable and in accordance with the requirement of law, we see no reason to make any further indulgence into the matter. The contention of the appellants before us that this amounts to commercial activity and the same is not permissible, in our considered view, cannot be accepted. For facilitating the parents and the students in the matter of purchasing certain text books, stationery items and school uniform, small outlets are provided in the school and when there is no compulsion on anybody to purchase from these shops itself, there cannot be any unreasonableness or arbitrariness in

the matter warranting interference by this Court. Contention of the Parents Association that this amounts to commercial activity within the school premises and is not permissible is not correct. It has been rightly rejected by the learned Writ Court.

6. We see no reason to make any indulgence into the matter at the instance of the appellants now in this appeal. However, we may indicate that during the course of hearing, Sh. Gautam Narayan, learned ASC appearing for respondent No.1, Directorate of Education, GNCTD made a grievance that the act of CBSE in interfering with the functioning of the schools in the manner done is contrary to certain provisions of the Delhi School Education Act and Rules, 1973 and, therefore, the School Education Department of NCT of Delhi tries to make certain grievance in the matter. The NCT having not challenged these actions in the writ petitions, at their instance in these appeals we cannot make any indulgence into the matter on the ground that it violates the statutory rule of the Education Department. If the Education Department feels that any of their rules are being violated, it is for them to proceed in the matter in accordance with law. However, at their instance, indulgence into the matter in this appeal is not called for.

7. With the aforesaid finding, no case is made out for any interference. The appeal stands dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

NOVEMBER 20, 2018

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