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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on- 03.05.2018
Date of Decision - 07.05.2018

+ W.P.(C) 4631/2018 & C.M. Nos.17870-17871/2018

KALKA PUBLIC SCHOOL AND ANR.

..... Petitioners

Through: Mr.Parag Tripathi, Sr. Adv. with Mr.Kamal
Gupta, Ms.Tripti Gupta & Ms.Ayushi
Dhingra, Advs.

versus

HONBLE L.G. OF DELHI AND ANR.

..... Respondents

Through: Mr.Ramesh Singh, Standing Counsel
Mr.Gautam Narayan, ASC & Mr.Chirayu
Jain & Ms.Mahamaya Chatterjee, Advs. for
GNCTD.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

C.M. No.17871/2018

Exemption allowed, subject to just exceptions.

The application stands disposed of.

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1. The Petitioner No. 1/School, which is a private unaided school recognized by the Respondent No. 2/Directorate of Education, and the Petitioner No. 2, which is a duly elected Parent Teachers' Association of the Petitioner No. 1, have preferred the present petition seeking inter alia a

direction to the Respondent No.1/Hon'ble Lt. Governor of GNCTD to afford them an opportunity of showing cause against the Respondents' proposed action of taking over the management of the Petitioner No. 1 under Section 20 of the Delhi School Education Act, 1973 (hereinafter referred to as the "DSE Act"), by giving them a personal hearing in compliance with the principles of natural justice.

2. When the petition was taken up for preliminary hearing on 02.05.2018, learned counsel for the Respondents had taken time to obtain instructions. Today, learned counsel for the Respondents submits that he does not wish to file any counter affidavit and wishes to oppose the petition on the basis of pleadings already on record. Therefore, the petition has been taken up for hearing on the consent of the parties.

3. The facts as emerge from the record that are relevant for determining the present petition are that the Respondents issued a show cause notice dated 29.08.2017 to the Petitioner No. 1, proposing to take over its entire management under Section 20 of the DSE Act on the ground of various alleged non-compliances/violations mentioned therein on the part of Petitioner No. 1. In response to the Respondents' aforesaid show cause notice, apart from making repeated oral requests for a personal hearing, the Petitioner No. 1 submitted a detailed reply dated 24.11.2017, as also additional replies/clarifications dated 19.01.2018, 12.02.2018, 17.02.2018, 21.03.2018 and 28.04.2018 respectively. However, the Respondents till date have neither responded to the Petitioner No. 1's replies, nor granted it any personal hearing to explain the alleged violations or non-compliances mentioned in the show cause noticed dated 29.08.2017. Hence, the Petitioners, apprehending that the Respondents will take over the management of the Petitioner No. 1 by passing

an order under Section 20 of the DSE Act without giving a personal hearing to the Petitioner No. 1, have preferred the present petition seeking inter alia a direction to the Respondents to comply with the principles of natural justice and grant a personal hearing to the Petitioner No. 1 to explain the alleged violations/non-compliances mentioned in the show cause notice.

4. In support of the petition, Mr. Parag Tripathi, learned Senior Counsel for the Petitioners, contends that an order passed under Section 20(1) of the DSE Act affects the substantive rights of the concerned School and its students. Therefore, by placing reliance on the decisions of the Hon'ble Supreme Court in the cases of *Manohar v. State of Maharashtra and Anr.* [(2012) 13 SCC 14], *Ashwin S. Mehta and Anr. v. Union of India and Ors.* [(2012) 1 SCC 83] and *Kesar Enterprises Limited v. State of Uttar Pradesh and Ors.* [(2011) 13 SCC 733], he contends that before passing of an order under Section 20(1), the concerned school's manager/managing committee is entitled to a personal hearing in compliance with the principles of natural justice to show cause against the proposed action under the said provision. Mr. Tripathi also draws my attention to order dated 26.04.2016 of this Court in the case of *Maxfort School v. Directorate of Education and Anr.* [W.P. (C) No. 3477/2016] and order dated 27.04.2016 of this Court in the case of *Maxfort School, Rohini v. Lt. Governor Delhi and Anr.* [W.P. (C) No. 3459/2016], wherein under similar circumstances, the Respondents had given the petitioners in those cases a personal hearing during the proceedings under Section 20 of the DSE Act. In view of the Respondents' prior conduct in the aforementioned cases before this Court, Mr. Tripathi contends that they are now estopped from depriving the Petitioner No. 1 of an opportunity of being

personally heard. He submits that the Respondents, being statutory authorities, cannot be allowed to treat two similar situated schools differently.

5. On the other hand, Mr. Ramesh Singh, learned counsel for the Respondents, at the outset contends that the present writ petition is premature and not maintainable at this stage, since a final order is yet to be passed by the Respondents. He submits that once an appropriate order is passed under Section 20(1) of the DSE Act, the Petitioner will have an adequate opportunity to prefer an appeal in the form of a review before the Administrator under Section 20(4) of the Act, at which stage the matter would be re-examined by the Administrator.

6. Mr. Singh further contends that when the applicable statutory provision only provides for an opportunity of showing cause, there is no reason as to why an opportunity of being granted a personal hearing should be read into the same. His contention, thus, is that an opportunity of showing cause under Section 20(1) of the DSE Act only contemplates a reasonable opportunity to explain one's stand and not a right to a personal hearing, which the Respondents may or may not grant to the concerned school in their own discretion. Taking his plea further, Mr. Singh contends that the right to a personal hearing is not a sine qua non of the principles of natural justice and, therefore, cannot be demanded as a matter of right by the Petitioners. In support of his aforesaid contentions, Mr. Singh relies on the decisions of this Court in the cases of *Preet Public Secondary School and Ors. v. The Administrator of NCT of Delhi (Lt. Governor of Delhi) and Ors.* [59 (1995) DLT 482 (DB)] and *Managing Committee Vidya Bhawan Girls Sr. Sec. School v. Director of Education and Anr.* [198 (2013) DLT 355 (DB)], as also the decisions of the Hon'ble Supreme Court in the cases of

Carborundum Universal Ltd. v. Central Board of Direct Taxes [1989 Supp (2) SCC 462], *Union of India and Anr. v. Jesus Sales Corporation* [(1996) 4 SCC 69], and *Madhya Pradesh Industries Ltd. v. Union of India and Ors.* [(1966) 1 SCR 466].

7. Since Mr. Singh has heavily relied upon the decision of the Hon'ble Supreme Court in the case of *Carborundum Universal (supra)*, the relevant paragraphs thereof are reproduced hereinbelow for the sake of ready reference:-

"1. These two applications under Article 136 of the Constitution are directed against two separate orders made by the Central Board of Direct Taxes and communicated on 2-3-1987, declining to waive the demand of interest made by the Income Tax Officer, Central Circle XVI, Madras, under Section 220(2) of the Income Tax Act, 1961 (hereinafter "Act") in exercise of powers under Section 220(2-A) of the Act. The claim related to Assessment Years 1979-80 and 1982-83.

3. Notice was issued in the special leave petitions confined to the question as to whether the petitioner was entitled to a hearing before the Board declined to exercise its power.

6. There is no procedural statutory requirement of a hearing for the disposal of an application under Section 220(2-A) of the Act. The legal position is that where a statutory provision does not exclude natural justice the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised. We have already noticed that the power of the Board which was invoked was discretionary. It was to be exercised on the basis of the recommendation of the Commissioner and the material provided by the assessee. Personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof. Keeping the nature of the power invoked for exercise, the fact that the petitioner had an opportunity to represent its case in writing and the further fact that the Board had taken into consideration the report of the

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Commissioner in the background that it is not the allegation of the petitioner that the Commissioner's recommendations were different, we do not think in the facts of the case it can be held that the petitioner was entitled to a right of being personally heard before its petition under Section 220(2-A) of the Act was disposed of as aforesaid. The petitioner has claimed that he was entitled to a notice of the Commissioner's report and an opportunity to canvass that the contents thereof, to the extent they went against it, were incorrect. We do not think there is scope to contend that the assessee is entitled to such a procedural safeguard. Our conclusion is, however, confined to the facts of the case and as and when the question arises in a different situation, the matter may be open to examination."

8. Having heard the learned counsels for the parties at length and having considered their rival contentions, I find that the issue before the Court is fairly narrow. The question before this Court is whether, in the circumstances of the instant case, the Petitioner No. 1 is entitled to a personal hearing to show cause against the Respondents' proposed action to take over its management under Section 20 of the DSE Act. In other words, do the facts of the present case warrant that the Petitioner No. 1 be given a personal hearing before the Respondents consider passing an order under Section 20(1) of the DSE Act, even though there is no such mandatory requirement of personal hearing in the statute?

9. Before dealing with the rival contentions of the parties, it will be useful to refer to Section 20 of the DSE Act, which reads as under:-

"20. Taking over the management of schools.—

(1) Whenever the Administrator is satisfied that the managing committee or manager of any school, whether recognised or not, has neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education to take over the management of such school, he may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against

the proposed action, take over the management of such school for a limited period not exceeding three years:

Provided that where the management of a school has been taken over for a period of three years or less, the Administrator may, if he is of opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the said limited period, he may, from time to time, issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so, however, that the total period for which such management is taken over shall not, in any case, exceed five years.

(4) Where the management of any school has been taken over under sub-section (1), the managing committee or manager of such school may, within three months from the date of taking over, appeal to the Administrator, who may after considering the representation made by the managing committee or the manager, pass such orders, including an order for the restoration of the management or for the reduction of the period during which the management of such school shall remain vested in the Administrator, as he may deem fit."

10. As is evident from a bare perusal of Section 20(1) of the DSE Act, an Administrator may take over the management of a school only after giving the management committee or manager of such school a reasonable opportunity of showing cause against the proposed action. While there can be no doubt that the provision necessarily contemplates adherence to the principles of natural justice, the question is whether the expression "reasonable opportunity of showing cause" occurring in the said provision necessarily contemplates granting a personal hearing to the management committee/manager of the concerned school.

11. At this stage it may be appropriate to refer to the decision of this Court in the case of ***Preet Public School (supra)***, on which heavy reliance has been placed by Mr. Singh in support of his contention, that this Court has

categorically held that there is no requirement of giving a personal hearing while passing an order in terms of Section 20 of the DSE Act. The relevant paragraphs 2 and 24 of the decision of this Court in **Preet Public School** (*supra*) read as under:-

"2. During course of detailed arguments nothing much has been said as to how this section is unconstitutional. We, however, feel provisions of Section 20 go with the scheme of the Act which provides for better organisation and development of school education in the Union Territory of Delhi and for other matters connected therewith or incidental thereto under Section 3 of the Act, Lt. Governor may regulate education in all the schools in Delhi in accordance with the provisions of the Act and the Rules made thereunder. If the school fails to be run in accordance with the provisions of the Act and the Rules, then the management of the school has to be taken over in the interest of school education, the students and the teachers. We find Section 20 is a salutary provision. It does not provide for taking over the management of the school for all times to come. Initially the management of the school can be taken over for a limited period not exceeding three years. It could be less than three years. In case the Administrator (Lt. Governor) is of the opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the period of three years or less, as the case may be, he may from time to time issue directions for continuance of such management under him for such period not exceeding one year at a time, total period for such management not exceeding five years in any case. Even after the management of the school has been taken over, the Administrator can still review his decision on a representation made to him as provided under Sub-section (4) of Section 20. The management of the school can be taken over only after giving the managing committee or the manager of the School a reasonable opportunity of showing cause against the proposed action. No straight jacket formula can be laid as to what would be 'reasonable opportunity' which can apply in every case where a school is proposed to be taken over. As to what would be the reasonable opportunity of showing cause against the proposed action, would depend upon the facts of each case. It, however, does not contemplate holding of proceedings like a Civil Court. It contemplates that notice be informed of the allegations; what case he has to meet; what **prima facie** finding, if any, has been arrived at by the authority for the proposed action; and what notice has to say in

answer thereto before a final order is made, or actions taken. The expression "reasonable opportunity of showing cause" does not invariably include the right of oral hearing. Moreover, there is a difference between the expressions "reasonable opportunity of being heard" and "reasonable opportunity of showing cause". It is the latter expression which is used in Sub-section (1) of Section 20. Even right of cross-examination cannot always be said to part of right of natural justice in case of oral hearing. If after the expiry of initial period for which management is taken over, the Administrator (Lt. Governor) still thinks it necessary that management should be in his hand, he has to record reasons and issue directions for continuance of the management, but within overall period of five years. As noted above, the right to take over the management of the school for a certain period is in consonance with the objects of the Act and the Rules. If the management and the manager step out of line and neglect to perform their duties imposed upon them under the Act and the Rules at the cost of school education, there would appear to be no other provision under which school education can be put back on its rails. There are in built safeguards under Section 20 and the management of the school cannot be taken for all times to come. We, therefore, repel the argument that Section 20 is in any way unconstitutional.

24. Before us a great deal of arguments have been addressed that rules of natural justice had been violated to the prejudice of the petitioners. This is on two grounds, namely, (1) that relevant documents on the basis of which action has been taken have not been furnished to the petitioners, and (2) that petitioners had not been given any personal hearing. Both these arguments have no basis. We have not been pointed out to a single document which is either not with the petitioners or in know of them...We have been unable to comprehend as to how the petitioners had been handicapped in giving their reply to the show cause notice before the impugned order under Section 20 of the Act was passed."

12. I may also refer to paragraph 14 of the decision of this Court in the case of **Managing Committee Vidya Bhawan (supra)**, which reads as under:-

"14. [F]or the purpose of violation of principles of natural justice, it is to be noticed that after the inspection was carried on and in case of deficiency or defect was noticed, an opportunity is contemplated to the school as the Director will give opportunity to the Manager to

rectify deficiency or defect under subSection (3) of Section 24 of the Act. In this context, we refer that a show cause notice dated 23.7.2010 was issued to the school earlier with regard to certain irregularities and on the said date, there was no inspection as the inspection was carried on only on 26.7.2010. Nevertheless, deficiency/defect noted in the inspection was communicated to the school on 31.7.2010. The school also replied to the said show cause notice dated 07.8.2010. The school had an opportunity to explain the irregularities/malpractices. The report was made available to the administrator and the same has been referred to by him in the impugned order dated 07.9.2012 wherein the administrator had applied his mind to the earlier show cause notice dated 23.7.2010 and the reply of the school dated 07.8.2010. The administrator has also referred to the subsequent reply of school dated 07.10.2010 as well. As against an opportunity provided under Section 24 of the Act, we do not find any opportunity is contemplated under Section 20 of the Act. Of course, the provision of sub-Section (1) of Section 20 of the Act requires the administrator to satisfy himself that the Managing Committee or the Manager or school has failed to perform any of the duties imposed on it by or under this Act or any rule made thereunder and such satisfaction should be supported by materials. On the date when the first show cause notice dated 23.7.2010 was issued, there were irregularities as could be seen from the very show cause notice itself. Relevant materials were available before the Administrator as to the various irregularities referred to in the said show cause notice, which were vital and serious. To this extent, there is no controversy. In fact, the petitioner school had the opportunity to send a reply dated 07.8.2010. Hence, the petitioner school cannot have any grievance as to non-compliance of principles of natural justice."

13. Thus, what emerges from the aforesaid two judgements is that this Court had repelled the challenge to an order passed under Section 20(1) of the DSE Act, when such an order was impugned merely because it was passed without giving any opportunity of personal hearing to the concerned schools. This Court had opined that, since the section did not mandate an opportunity of personal hearing, an order under Section 20(1) cannot be assailed merely on account of non-grant of personal hearing. This Court had, thereafter,

examined the factual situations in the aforementioned cases and come to a conclusion that there was, in fact, no violation of the principles of natural justice, as an adequate opportunity had been provided to the concerned schools to present their case before the authorities. It may be noted that in both the aforesaid decisions, an order under Section 20(1) of the DSE Act had already been passed and it was this order which had been challenged before the Court. It is only in these circumstances that this Court, while reiterating the well settled legal position that the principles of natural justice cannot be laid down in a straitjacket formula, had observed that the expression “reasonable opportunity of showing cause” does not invariably include the right of oral hearing and, therefore, declined to interfere with the orders passed under Section 20(1). However, in the instant case, it has been categorically stated by the Respondents at the Bar that such an order is yet to be passed. The issue, therefore, for my consideration would be whether at this stage, when I find that the show cause notice dated 29.08.2017 and the Petitioner No. 1's replies thereto relate basically to accounting discrepancies, can the Petitioner No. 1's request for an opportunity of personal hearing be said to be wholly whimsical or beyond the scope of Section 20(1)?

14. There can be no doubt about the settled legal position that the absence of a personal hearing may not ipso facto be fatal to a final decision passed in the circumstances of any given case. However, it is equally well settled that there can be no straitjacket formula or test to determine what the observance of the principles of natural justice would entail in any given situation. Reliance may be placed on a decision of the Hon'ble Supreme Court in the case of **Manohar (supra)**, the relevant paragraphs of which read as under:-

“17. [H]earing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not

expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the courts have even made compliance with the principle of rule of natural justice obligatory in the class of administrative matters as well.

18. In A.K. Kraipak v. Union of India [(1969) 2 SCC 262] the Court held as under: (SCC pp. 271-73, paras 17 & 20)

“17. ... It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding. ...

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a Judge in his own case (nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala [AIR 1969 SC 198] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a

great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”

25. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.”

15. In this regard, it may also be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of ***Union of India and Anr. v. Jesus Sales Corporation*** [(1996) 4 SCC 69], on which reliance has been placed by the learned counsel for the Respondents. The relevant paragraph 5 of the decision of the Supreme Court in ***Jesus Sales (supra)*** reads as under:-

"5. It need not be pointed out that under different situations and conditions the requirement of compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on

any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded."

16. In view of the observations of the Hon'ble Supreme Court in the case of *Manohar (supra)* and *Jesus Sales (supra)*, while there can be no doubt that an order passed under Section 20(1) of the DSE Act must necessarily comply with the principles of natural justice, what constitutes due adherence to the principles of natural justice, being circumstantially subjective, will necessarily require an examination of the facts of the case at hand. In the facts of the present case, what matters is that the Petitioner No. 1 has to be given a reasonable opportunity to explain the allegations levelled against it in the show cause noticed issued by the Respondents. The question, however, is whether a personal hearing is necessary to afford such an opportunity to the Petitioner No. 1.

17. At this stage, Mr. Singh, by placing reliance on the record, contends that the Administrator has, in his discretion, decided not to grant a personal hearing to the Petitioner No. 1 and, therefore, this Court should not interfere with the exercise of this discretion at this stage, since the Petitioner No. 1 will have an adequate opportunity to challenge the final order under Section 20(4) of the DSE Act. However, on a perusal of the original record, I find that the

Director of Education had in his notes opined that there was no need to give a personal hearing to the Petitioner No. 1. On the other hand, the Chief Secretary independently opined in his own notes that there was no harm in affording an opportunity of personal hearing to the Petitioner No. 1. What I find a little disturbing is that the Administrator has merely endorsed his signatures in respect of the Director of Education's notes, without indicating why he was adopting the Director of Education's view instead of the contrary opinion given by the Chief Secretary. I, thus, find no merit in Mr. Singh's contention that the Administrator, having already exercised his discretion not to grant a personal hearing to the Petitioner No. 1, this Court should not interfere with the said discretion at this stage.

18. I also do not find any merit in the contention of the learned counsel for the Respondents that the present petition is premature or not maintainable at this stage. In my considered view, if the Petitioners were directed to wait for the passing of an order under Section 20(1) of the DSE Act, the relief sought in the present petition would become meaningless as there would be no question of providing an opportunity of personal hearing to the Petitioner No. 1 to explain its position to enable the Respondents to come to a fair and just decision, after the order is already passed. In fact, the Petitioners have invoked the writ jurisdiction of this Court at a pre-decisional stage not only because its substantive rights are at stake, but also because the nature of the relief sought by it can only be granted at such a stage, since an order passed under Section 20(1) of the DSE Act cannot be impugned merely on the ground that no personal hearing was granted to the Petitioner No. 1. Thus, it is for this reason that I find that the present petition is maintainable at this stage while the proceedings under Section 20(1) of the DSE Act are still ongoing.

19. In determining whether a personal hearing is necessary in the facts of the present case, this Court must examine not only the nature of allegations levelled against the Petitioner No. 1 but also the stage at which the Petitioners have approached this Court. In the facts of the present case, where a final decision is yet to be taken by the Respondents, I find that the Petitioner No. 1's request for a personal hearing cannot be said to be whimsical since a very vital decision pertaining to its rights is at stake.

20. In my considered opinion, in the present case, where the violations/non-compliances alleged in the show cause notice pertain primarily to accounting discrepancies, the non-grant of such an opportunity of personal hearing would amount to a violation of the principles of natural justice. This is because, accounting procedures, by their very nature are very complex and may not be adequately or comprehensibly explained via written representations. In view of the nature of allegations made against the Petitioner No. 1 and considering its repeated requests to the Respondents for a personal hearing, so as to adequately explicate its stance on the allegations made in the show cause notice, I find that the Respondents ought to grant it a personal hearing before passing an order under Section 20(1) of the DSE Act.

21. There is yet another reason why I am of the view that the Petitioners deserve to be given an opportunity of personal hearing at this stage. It is an admitted case of the parties that the issue has been engaging the attention of the Respondents for more than the last eight months and, therefore, there is no such grave urgency in the matter that should compel the Respondents to decline the Petitioner No. 1's request for a personal hearing.

22. Before concluding I may also refer to the decision of the Hon'ble Supreme Court in the case of *Uptron India Ltd. v. Shammi Bhan and Anr.*

[(1998) 6 SCC 538], on which reliance has been placed by Mr. Singh to contend that the Respondents are not bound to grant an opportunity of personal hearing to the Petitioner No. 1, merely because they had granted such an opportunity to similarly placed schools before. The relevant paragraph 23 of the Supreme Court's decision in the case of *Uptron (supra)* reads as under:-

"23. Even otherwise, a wrong concession on a question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent."

However, in view of my aforesaid conclusion that it is the facts of the instant case that warrant that a personal hearing be granted to the Petitioner No. 1, and not the Respondents' prior conduct in other similar instances before this Court, I do not deem it necessary to deal with Mr. Singh's reliance on *Uptron (supra)*.

23. For the aforementioned reasons, the writ petition is allowed with no order as to costs. The Respondents are directed to give a personal hearing to the Petitioner No. 1 to explain the alleged violations in the show cause notice dated 29.08.2017 before passing an order under Section 20(1) of the DSE Act.

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24. In view of the petition having been allowed, this application does not survive for adjudication and is dismissed as such.

(REKHA PALLI)
JUDGE

MAY 07, 2018/ss