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

Date of decision: 6th December, 2018

+ W.P.(C) 10569/2015

OPTIMUM INTERNATIONAL SCHOOL Petitioner

Through: Mr. Sanjay Sherawat, Mr. Divyank Rana
& Mr. Ashok Kumar, Advocates

versus

CENTRAL BOARD OF SECONDARY EDUCATION

..... Respondent

Through: Mr. Amit Bansal & Ms. Seema Dolo,
Advocates for CBSE
Mr. Roshan Lal Goel & Ms. Dev Jyoti
Dehria, Advocate for UOI

+ W.P.(C) 1868/2017

BHARAT PUBLIC SCHOOL Petitioner

Through: Mr. Vipin Jai, Advocate

versus

CHAIRMAN CENTRAL BOARD OF

SECONDARY EDUCATION AND ORS

.... Respondents

Through: Mr. P.S. Singh, Advocate for UOI
Mr. Tanveer Alam, Advocate for DOE
Mr. Sumit Aggarwal & Mr. Mukesh
Sachdeva, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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J U D G M E N T (O R A L)

1. These two writ petitions involve similar issues and are accordingly being decided by this common judgment.

2. Both the petitioners are aggrieved by the rejection of their requests for affiliation by Respondent No. 1 – the Central Board of Secondary Education (CBSE). In both cases, the request has been rejected on the ground of non-fulfilment, by the concerned school, of the provisions of Bye-law III of the Affiliation Bye-Laws of the CBSE. For the purpose of these writ petitions, it would only be required to extract clause 3 (i), (ii)(a) and (ii)(b) of the Bye-Laws, as under:

“3. Any educational institution in India or outside India which fulfils the following essential conditions (without which the case cannot be processed) can apply to the Board for affiliation:

(i) The School seeking Provisional Affiliation with the Board must have formal prior recognition of the State/U. T. Govt. Its application either should be forwarded by the States Govt. or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the CBSE. ‘No Objection Certificate’ once issued to any school will be considered at par even if it prescribes a specific period or stage unless it is withdrawn. Condition of submitting a No Objection Certificate will not be applicable to categories 3.1 (i) to (iv).

(ii) (a) The School/Society/Trust /Company registered under section 25 of the Companies Act, 1956 or the Congregation or other Religious Body controlling the Society/Trust/Company registered u/s 25 of the Companies Act, 1956 managing the school must have about two acres (or as otherwise permitted measurement) of land and a building constructed on a part of land and proper playgrounds on the remaining land.

Provided that the school may be graded as Category A+, Category A & Category B School as per the following criteria:

Category A + School - Permanently affiliated school

Category A School - Provisionally affiliated school with land of atleast 2 acres or of such measurement as has been permitted under Rule 3(ii) (b),(c), (d) & (e) below.

Category B School - Provisionally affiliated school with following criterion:

- a) recognized by the Education Department or whose application has been forwarded by it.
- b) does not possess land as per Category 'A' but has not less than 1.5 acre of land also satisfies the following:
 - 250 sq. mtr. of area + 1 sq.mtr. for every student on the rolls (for a middle school).
 - 500 sq.mtr. of area +1 sq.mtr. for every student on the rolls (for a Secondary school).
 - 750 sq.mtr. of area +1 sq.mtr. for every student on the rolls (for a Senior Secondary school).
- c) pays salaries as per State Govt./U.T. scales of pay
- d) satisfies all the other conditions of Affiliation Bye-Laws
- (b) \$ In cities with a population exceeding 15 lacs, the land should not be less than one acre with adequate building & arrangement with other institution/organization for imparting Physical &

Health Education and for conducting games, to the satisfaction of the Board.

In case of lease, it will be accepted if, it is for at least 30 years. Provided further that in case of any portion, which is leased out below 30 years, such case may be. In case of lease, it will be accepted if considered provided that land has been allotted by the Govt. or Govt. Agencies and it is as per the Law of the land. In all such cases school should have at least one acre of land by ownership or by lease for 30 years and in all case the total land area should not be less than about 2 acres.”

3. Inasmuch as the issue in controversy revolves around a narrow compass, it is not necessary to set out in detail the facts recited in the writ petitions. Nevertheless, for ease of reference, and for the sake of convenience, reference, hereinafter, would be to the record of W.P.(C) 10569/2015. The impugned letter dated 4th September, 2015 issued by the CBSE, whereby the request of the petitioner, for affiliation of its college to secondary level stands rejected, reads thus:

“Sub: Request for Provisional Affiliation upto Secondary level - reg.

Sir/Madam,

With reference to your application No. SL-01669-1415 registered on the subject cited above and subsequent correspondence in the matter, I am directed to inform you that on perusal of the documents received along-with the compliance report dated 12/06/2015 the following deficiencies have been observed:

In this connection, I am directed to inform you that after perusal of the documents submitted with aforesaid letter, it has been observed that the school is not in possession of 1.5 acres of land on single compact land/plot to fulfil the minimum land requirements i.e. 1.5 acres as per Affiliation Bye-laws of the Board.

Since, fulfilment of above conditions are mandatory in nature, your application under reference registered for the session 2014-15, after due consideration, has been Rejected.

The school is advised to remove the above deficiencies and apply afresh online through <http://cbseaff.nic.in/> to consider its application for the future academic session as the Board is not a position to consider your request at the late stage for the current academic session.

It is further informed that school should not start classes under CBSE pattern (IX/X) without grant of affiliation by the Board otherwise the Board will not be responsible for any consequences arising out of it.”

4. Clearly, the only ground on which the petitioner’s request for affiliation has been rejected is that the School is not in possession of 1.5 acres of land on a single compact land/plot to fulfill the minimum land requirement of i.e. 1.5 acres as stipulated in the Affiliation Bye-Laws. The assertion of the petitioner, as ventilated in Court, by Mr. Sanjay Sherawat, learned counsel for the petitioner is that the Affiliation Bye-Laws do not contain any such stipulation, of the school, seeking affiliation, having necessarily to be in possession of 1.5 acres of land on a *single compact land/plot*. It may be noted, in this regard, that the

affiliation in both these writ petitions is provisional affiliation; in fact, Mr. Amit Bansal, learned counsel appearing for the CBSE submits that the CBSE has done away with the provision of permanent affiliation, and that all affiliation is now provisional. As such, the provision which would apply is Bye-law 3(ii)(a)(b), which, read in conjunction with clause (ii)(a) of the said Bye-law, requires the school to have not less than 1.5 acres of land and a building constructed on a part of land and proper play grounds on the remaining land.

5. Mr. Sherawat, learned counsel for the petitioner points out that there is no stipulation, in any of the clauses or sub-clauses of Bye-law 3, requiring the stipulated area of 1.5 acres of land to be *in the form of a single plot of land*. In the case of the school represented by him, the school possesses two plots of land, one admeasuring 1 acre and the other admeasuring 0.5 acres, 900 meters apart. His submission is that, so long as the two plots, put together, measure 1.5 acres, the mandate of Bye-law 3(ii)(a)(b) stands fulfilled.

6. Mr. Sherawat makes the following submissions, to support his case:

- (i) It is only w.e.f. 18th October, 2018 that the CBSE has introduced, in its Affiliation Bye-Laws, a specific requirement in clause 3.1.1 which reads thus:

“3.1.1 The land on which the school is located should necessarily be a contiguous single plot of land. If there are more than two survey numbers etc. all the

survey numbers/plots should be adjacent/touching each other and shall make a single plot of land on the whole.”

- (ii) As such, it would not be permissible to read, into the Affiliation Bye-Laws as they existed prior to 2018, a requirement for the entire 1.5 acres of land having to be on a single contiguous plot.
- (iii) The online application form, submitted by the school while seeking affiliation, contained a specific query as to whether the school was running at two sites. In other words, the fact that the school might have been running at two sites could not be treated as a fetter to grant of affiliation to the school.
- (iv) Mr. Sherawat next invites my attention to a communication dated 7th September, 2013, from the CBSE to the school, which observed that, as per the land certificate possessed by it, the school was running on a campus area of approximately 1 acre, which did not amount to fulfilment of the minimum land condition. In juxtaposition therewith, Mr. Sherawat invites attention to the communication dated 8th October, 2013, which calls upon the school to intimate the exact distance between the school and the proposed piece of land for the playground. This, Mr. Sherawat would seek to submit, indicates that, even in the opinion of the CBSE, the playground could be located on two separate plots.

- (v) Mr. Sherawat also questions the rationale for the insistence, by the school, on the entire area of 1.5 acres having to be in one contiguous plot. He submits that there is no justification for requiring fulfilment of such a condition, so long as the facilities in the school were sufficient to ensure overall welfare of the students.
- (vi) Mr. Sherawat next refers to another communication dated 24th December, 2013, from the CBSE to his client, which alleges that the school had not submitted the registered lease deed of its playground. He submits that, in response to this communication, the school had, in fact, submitted the said registered lease deed.
- (vii) Mr. Sherawat would next invite my attention to the fact that an Inspection Committee had been appointed, *vide* communication dated 6th March, 2014 of the CBSE, for inspection of the school. He would submit that inspection of the school hoped to have taken place only after the respondent had been satisfied about the entitlement, of the school, to affiliation. He draws attention to serial No. 2 of the 4 specific points for verification as communicated to the Inspecting Committee in the said communication, which reads thus:

“2. The Inspection Committee is requested to verify the Original land documents of the school and match its location with the address of the school mentioned in NOC and specifically report that the school is running from the same site as mentioned in the land documents and NOC. Also area of campus may be verified and see that same in order and school land is in a Single Compact Plot. If school land is not in a single plot, area of different plots and distance between plots may clearly be given in the report.”

(viii) Mr. Sherawat next refers to a circular dated 26th October, 2012, issued by the Department of School Education and Literacy, Ministry of Human Resource Development, dealing with the “Requirement of playgrounds specified under schedule to the Right of Children to Free and Compulsory Education (RTE) Act, 2009”, para 2 of which reads thus:

“2. The matter has been examined in the Ministry. The intent of inclusion of playground as an infrastructural requirement of a school is to ensure that children have sufficient open space for sports and other physical activities during school hours. It is not necessary that the school management provides this facility within the school premises. It would be sufficient compliance if school managements make adequate arrangements, in an adjoining playground/municipal park etc., for children

to play outdoor games and other physical activities.”

- (ix) Mr. Sherawat would submit that, in view of this communication, the fact that the playground, for the children, was in an adjoining plot, or in a plot separate from where the school was located, could not be an inhibiting factor, for the affiliation of the school.
- (x) Mr. Sherawat would finally seek to submit that there were sufficient instances where schools, which were located at more than one site, were granted affiliation. He draws attention, in this regard, to the affiliation granted to the Police Modern School which, even in its application for affiliation, accepted that it was operating from two sites.

7. In view of these submissions, Mr. Sherawat would seek to contend that the decision, of the CBSE, to refuse affiliation to his client, for the sole reason that the area of 1.5 acres, though possessed by the school, was located at two separate locations, of 1 acre and 0.5 acres respectively, was inherently faulty, in fact as well as in law.

8. Countering the said submission, Mr. Amit Bansal, learned counsel for the CBSE, submits that there was no ambiguity regarding the applicable legal provisions, which clearly required the school to possess 1.5 acres of land. He would seek to impress on the wording of the clause,

which stipulates that the building should be constructed on a part of the land, with proper playgrounds on “the remaining land”. This stipulation, Mr. Bansal, would submit, itself made it clear that the land had to be in the form of one contiguous plot and not two plots located at a distance of 900 meters from each other.

9. Insofar as the various communications to which Mr. Sherawat placed reliance, were concerned, Mr. Bansal would submit that these communications did not, in any way, detract from the scope and ambit, or the effect, of the aforementioned clauses i.e. 3(i), (ii)(a) and (ii)(b) of the Bye-Laws. Specifically referring to the circular dated 26th October, 2012, of the Department of School Education and Literacy, Mr. Bansal would submit that the said communication had been issued in the context of the schedule of the RTE Act and the requirement of playgrounds specified therein and had nothing to do with the stipulations contained in clauses 3(i), (ii)(a) and (ii)(b) of the Affiliation Bye-Laws, which constitutes a self-contained code, insofar as affiliation of schools was concerned.

10. Mr. Bansal is at pains to point out that the validity of the said clauses is not under challenge, and that, therefore, no exception could be taken, by the petitioner, to the decision of the CBSE to refuse affiliation to it, for non-compliance with the aforementioned bye-laws. Mr. Bansal also places reliance on the judgment of the Supreme Court in *St. John’s Teachers Training Institute (For Women), vs. State of Tamil Nadu (1993) 3 SCC 595*, as well as the judgment of a learned Single Judge of

this Court in W.P.(C) 20787-20788/2005 (*Rajdhani Public Secondary School vs. Central Board of Secondary Education*), decided on 13th December, 2005.

11. Mr. Sherawat would submit, in rejoinder, that the Circular dated 26th October, 2012, though issued in the context of the RTE Act, was required to be read harmoniously with the CBSE Bye-laws. He contends, in this context, that the CBSE Bye-laws were not statutory in nature, but were merely administrative instructions, which, therefore, could not be placed on a pedestal higher than the circular dated 26th October, 2012.

Analysis

12. Having heard learned counsel, I proceed to examine the issue in controversy.

13. It is true that there is no express stipulation, in Bye-law 3(1)(ii)(a) to the effect that the land admeasuring 1.5 acres, as required to be possessed by the School, in order to entitle it to seek affiliation, had to be in one single/contiguous plot. At the same time, a holistic reading of the clause discloses that it specifically stipulates that the land should have a building constructed on a part thereof, and proper playgrounds on the remaining part. What is, therefore, required is that the school possesses not less than 1.5 acres of land, on part of which a building should be

located, with the remaining part being devoted to a proper playground. The Bye-law stipulates that “the school must have not less than 1.5 acres of land and a building constructed on a part of land and proper playground on the remaining land”.

14. This Court is of the view that it is not possible to agree with the submission of learned counsel for the petitioner that the mandate of the above Bye-law would stand satisfied if the school had 1 acre land in one plot and 0.5 acre land in another plot, located 900 meters away. It may be noted, here, that it is an admitted position that the entire 1 acre in the first plot was occupied by the school building and the entire 0.5 acres located 900 meters away was occupied by the playground. Such an arrangement could not be treated to be in fulfillment of Bye-law 3(i)(ii)(a) of the Affiliation Bye-Laws. The stipulation of the school requiring to possess 1.5 acres, in my opinion, necessarily means that the area of 1.5 acres should be located at one plot and not in two places located nearly 1 kilometer apart. An interpretation, such as that canvassed by Mr. Sherawat, if accepted, would in my opinion, frustrate the very purpose of the stipulation contained in bye-law 3(i)(ii)(a) of the Affiliation Bye-Laws. I may note that, in its decision in *Richa Mishra vs. State of Chhattisgarh*, (2016) 4 SCC 179, the Supreme Court has held that the golden rule of interpretation has, in recent times, shifted from the rule of literal interpretation to that of purposive interpretation. If one were to interpret the Bye-law purposively, no exception could, in

my opinion, be taken to the incidence, by the CBSE, of the entire area of 1.5 acres being required to be located in one contiguous piece of land.

15. Insofar as the reliance, by Mr. Sherawat, on the various communications between the parties; is concerned, I am of the view that the said communications are not of serious significance, as they deal with issues which are not germane to the controversy at hand. The various communications, to which Mr. Sherawat has drawn my attention, do not, at any point, opine that the possessing of 1 acre and 0.5 acres of land with a distance of 900 meters between the two was sufficient for the school to be entitled to affiliation.

16. Insofar as the issue of whether the said requirement was justified or not is concerned, Mr. Bansal has correctly pointed out that the validity of the clause is not under challenge in these proceedings. It is not, therefore, for this Court to second guess the intent of the framers of the bye-laws, or conjecture as to whether the said stipulation was justified or not justified.

17. I may note, in this regard, that the Supreme Court has held, in *St. John Teachers' Training Institute* (supra), that such guidelines regarding the possession of land, as a condition for affiliation of educational institutions, are justiciable in writ proceedings.

18. Insofar as the communication dated 26th October, 2012 (supra) of the Department of School Education and Literacy is concerned, Mr. Bansal correctly points out that the said communication was issued in an entirely different context, under the RTE Act, and cannot deal with the mandate of the Affiliation Bye-laws or the conditions contained therein, relating to the requirement of possession of land.

19. The submission regarding other Schools, which were located at more than one site, having been granted affiliation, can also not carry the case of the petitioner any further. Apart from the fact that Mr. Bansal has pointed out that the Police Modern School, which was granted affiliation actually possessed land in excess of the necessary requirement, this submission of Mr. Sherawat ignores the fact that the CBSE has rejected the prayer of the petitioner of affiliation not on the ground that the school was located at two sites, or that the playground was located at a site different from the school. In fact, most of the submissions advanced at the bar seemed to proceed on the premise that the ground for rejection of the petitioner for affiliation was that the petitioner/school was located at two sites with the playground and the school building located at a distance of 900 meters from each other. It is quite clear that this is not the basis on which the request for affiliation was rejected by the CBSE. The CBSE has proceeded on the ground that the mandate of the Affiliation Bye-Laws, requiring a minimum of 1.5 acres of land to be possessed by the school, with a building located on a part thereof and playgrounds located on the remainder of the land was not fulfilled, by the

petitioner school, as it did not possess 1.5 acres of land at any single location.

20. I am not convinced that interference, with the said decision of the CBSE, is merited, under Article 226 of the Constitution of India.

21. The writ petition is, accordingly, dismissed with no order as to costs.

C.HARI SHANKAR, J.

DECEMBER 06, 2018
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