

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8353 of 2019

Holy Cross International School, Lekha Nagar, Ashopur, Near DAV School, Cantt. Road, Patna (Bihar)-801503 Through its Manager Mayank Paritosh, Gen-Male, aged around 32 years Son of Shri B.K.Thakur resident of 1-D, Sneh Plaza, Sardar Patel Path, North S.K.Puri, P.S.-Srikrishnapuri, Boring Road, Patna-800001

... .. Petitioner/s

Versus

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

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh Mr. Apurv Harsh Mr. Manu Tripathi
For the Respondent/s	:	Mr. Sanjay Kumar (Gp17)
For CBSE	:	Mr. Vijay Krishna Tripathi

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 26-07-2019 Heard learned counsel for the petitioner and the counsel appearing on behalf of the State as well as learned counsel for the Board.

2. This is the second round of litigation. In the earlier round, petitioner challenged the order of withdrawal of affiliation by the CBSC and also the decision of the State Government withdrawing the no objection certification.

3. The C.W.J.C. No. 15034 of 2018 was allowed vide order dated 20.12.2018. The relevant part of the order dated 20.12.2018 is quoted below:-



“I find substance in submission made on behalf of the petitioner that the impugned order dated 16.4.2018 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 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 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 28.2.2019.

This application is allowed with the observation and directions above.

No order as to cost.”

4. After the order of the Hon’ble Court the C.W.J.C. No. 1503 of 2018, the CBSE passed order reiterating the decision of withdrawal of affiliation.

5. Mr. Sanjay Singh, learned counsel appearing on behalf of the petitioner would submit that decision to disaffiliate the institution is the decision visiting civil consequences and such decision cannot be taken by the CBSE without strict compliance of principle of natural justice.

6. Mr Singh submits that when consequences are grave the decision has to be taken after full compliance of principle of natural justice. Mr. Singh submits that the institution in question has submitted that reply to the show cause notice dated 31.1.2018 on 22.2.2018.

7. For ready reference Annexure-3 dated 22.2.2018 is quoted below:-



To

The Deputy Secretary (Aff.).

**Central Board of Secondary Education,
Delhi.**

**Sub:- reply to your show cause notice dated
31.1.2018 communicated vide letter No.
CBSE/Aff/330529/2018/1350995.**

Sir,

Vide your letter mentioned above, the undersigned has been directed to submit his show cause on the basis of the observations made by an enquiry committee of the State Education Department. The undersigned shall give point wise reply to the Observations of the enquiry committee which shall make it clear that the observations are incorrect and without any foundation. Before replying to the show cause notice I would like to draw your attention that the present matter is an outcome of a false news report regarding sexual assault of an eight year old girl student by a sweeper working in the school. The Regional Officer, Patna had sent an enquiry committee to the school which visited the school at around 16:00 hrs on 8.12.2017. The Committee viewed the CCTV footage of the relevant camera and did not find the incident to be true. The Committee it appears has, however, erred in observing that there is only one girl's toilet in the school and no separate toilet or boy's student on the ground floor. This is incorrect as on ground floor there is separate toilet for boys and girls. This fact can be



verified by any officer of the Board at any time. However, for your convenience I am attaching photographs of the toilet to support my contention.

That now the undersigned would submit his response to the observations of the enquiry committee of the State Education Department. The first observations of the committee that there was no CCTV camera installed in Class-II, Class IV, Class V and Class VI is incorrect as every classrooms and observation that a male sweeper was posted to clean the toilet instead of female sweepers is false as the school has a female sweeper and she is responsible for cleaning of the Girl's toilet and to take care of the small girls while using the washroom/toilet. This also takes care of the third and seventh observation that there were no fixed responsibilities to the female sweeper. The fourth observation with respect to bad touch has already been relied above and the enquiry committee constituted by the Regional Officer, CBSE, Patna viewed the CCTV footage of the relevant camera and did not find the incident to School is not as per norms is surprising. Since the school has boundary wall having a height of 8 feet. This height is sufficient and this fact can also be verified by the Board. So far as the sixth observation that the Chairman Smt. Sanju Thakur and the Secretary Shari Bipin Kumar Thakur are husband and wife is concerned it is brought to your notice that Smt. Sanju Thakur is no longer the Chairman. The mistake once discovered has been rectified and



Virvansh Shah is the Chairman. A xerox copy of the affidavit is being attached for your perusal. That so far as the eighth observation that the School has not done police verification of the Staff from local police authority it is stated that the school has started taking steps for police verification of it staff and the same shall be completed shortly.

That the undersigned states that the School has been abiding the provisions of the Affiliation and Examination Bye Laws of the Board. The enquiry committee constituted by the State Education Department in its general observations does not state that the School has violated any provisions of the Affiliation and Examination bye laws of the Board. Further the observations are incorrect and without any foundation are clearly manifest from the statements made in the preceding paragraph and as such no action is warranted by the Board in this matter.

8. After the reply to the show cause the CBSE passed order on 16.4.2018 which was subject matter of C.W.J.C. No. 15034 of 2018. The Court on consideration of order dated 16.4.2018 arrived at a conclusion that the order is cryptic and non-speaking.

9. The petitioner filed the present writ application on 17.4.2019 for setting aside the order dated 26.2.2019 issued by the Secretary CBSE. The order dated 26.2.2019 is Annexure-12.



From perusal of Annexure-12, it is manifest that decision was taken by the Board and there is no reason to revise the decision of the Board dated 16.4.2018. In other words, the Board came to the same conclusion which was quashed in C.W.J.C. No. 1534 of 2018.

10. For ready reference the order dated 26.2.2018 is quoted below:-

**Central Board of Secondary Educations
No. CBSE/AFFL/330529/2019/1461842 dt.26.2.19
ORDER**

WHEREAS, the Holy Cross International School, Danapur, Patna was granted affiliation for secondary school lev with the Boar w.e.f. 01.04.2014 to 31.3.2017 vide letter No. CBSE/Aff/SL-01591-1314/330529/2014/706749 date 20.4.2014 and further upgraded for senior secondary level w.e.f. 01.04.2017 to 31.03.2020 vide letter No. CBSE/Aff/330529/-SS-01002-1718/2017/1261334 dated 09.06.2017.

WHEREAS, the case was examined and inquired by the different committee, wherein they had submitted the reports, which are as under:-

Recommendation of the Committee constituted by CBSE RO Patna: The Committee has recommended that a another committee have been formed by the State Government and also police has lodged a criminal case against the accused persons, nothing conclusive can be submitted at this stage.

Recommendations/Report of the Regional Education Deputy Director, Patna Education Department, Bihar. The four member committee which was headed by Deputy Director



of the Education Department has recommends at strong action against the Principal and School management in view of the lapses in safety and security of the students.

WHEREAS, the show cause notice was served to the school in which the school was sked as to why the provisions affiliation up to senior secondary granted to the school may not be withdrawn.

WHEREAS, as the reply of show cause notice dated 22.2.2018 received from the school was not found satisfaction and equivocal in nature, therefore, provisional affiliation was withdrawn with immediate effect vide Order No. CBSE/AFFL./330529/2018/1372617 dated 16.4.2018 under Rule 17.2a(xiii) which stipulates that any violation of the norms that have been prescribed by the Hon'ble Supreme Court of India in the writ petition (Criminal) nos. 666-70 of 1992 Vishaka and others V/s State of Rajasthan and others delivered on 13.8.1997 for protection of women from sexual harassment at the work place if established would attract strict action against the institution which may ever lead to disaffiliation.

WHEREAS, the school has challenged the disaffiliation order dated 16.4.2018 of the Board by way of filing CWJC No. 15034 of 2018 before the Hon'ble High Court of Judicature at Patna. The Hon'ble Court has directed in its order dated 20.12.2018 that 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 school on record by 28.2.2019.

WHEREAS, in compliance of the direction of the Hon'ble High Court the Board has examined the matter afresh based on the rules and regulations relating to granting affiliation



and other applicable norms alongwith additional show cause reply of the school vide No. 082/HCIS/DNR/CBSE/Aff/Pat dated 18.5.2018. The school was not disaffiliated. The defence of the school management is not acceptable as one illegal act cannot justify another illegal act. Recently, the Hon'ble High Court of Judicature at Allahabad has passed an order on 10.1.2019 in the case of Writ Petition © No. 389/2019 – held that the parity cannot be claimed with other institutions acting in illegal beach of affiliation byelaws on the foot of Article 14 of the Constitution of India. The law is well settled that equality claimed under Article of the Constitution of India is not a negative equality. In other words, one illegality cannot justify or become the basis for committing another illegality. Moreover the incident of Ryan International School, Gurugram has different standing as State Government has suo-motu taken over the Management of the school by appointing an Administrator to run the school after incident.

WHEREAS, the CBSE circular No. CBSE/AFF/SCHOOL SAFETY/19 DATED 12.9.2017 CIRCULAR NO.19/2017 reiterated that all schools affiliated with CBSE are hereby directed to strictly adhere to all the guidelines issued by MHRD and Board from time to time. Any violation/lapses with regard to safety and well being of children in school campus would invite appropriate action including the disaffiliation of the school as per the provisions under Affiliation Bye-Laws of the Board. In the past 14 years, the Central Board of Secondary Education (CBSE) has issued eleven separate circulars emphasizing the importance of school security and student safety. The Board had reiterated that the onus of keeping students safe within schools would “solely lie upon the school



authorities”, bringing the very topic of safety and security of children in schools to centre stage.

WHEREAS, the school management are solely responsible for background verification of the staff engaged and there are many good reasons to conduct pre-employment background checks for student safety and verification should include place of residence, past employment, and checking for any past criminal records as well as on-going criminal case. It is found that school management failed in background verification of the failed in background verification of the sweeper before deployment in the school and adopted casual approach. It is the responsibly of the school to ensure that the students:

(a) come to school feeling safe and welcomed

(b) have a trusting relationship with at least one adult in school

(c) understand academic and behavioural expectations clearly

(d) have access to mental health services

WHEREAS, the Hon’ble Supreme Court of India has laid down guidelines to be adhered by the school for child safety for prevention of sexual assault, rape and other related crimes on school going children in the school premises/bus as under:-

a. School management should ensure that no school children are handed over to anyone except parents/or those authorized by the parents. (Through ID Cards).

b. No minor female students should be left alone with male staff.

c. School management should install sufficient CCTV cameras on its premises and also facing road and entry, exit and periphery.

d. In case of emergency principal shall personally authorize custody of the child to a



female teacher until the parent/guardian comes and take stock of the situation.

e. Senior sections should be separated from junior ones.

f. School management should ensure that there are separate male/female toilets and both at a distance from each other. Female attendants (Ayah) should be appointed to monitor near the female toilets.

g. School management should compulsorily insist for police verification certificate with antecedent and address verification while appointing/hiring teachers, physically instructions, lab technicians, drivers, janitors and other support staff including the security.

h. School management should ensure they hire staff from the reputed outsourced vendors in transport, security, housekeeping and canteen sections.

i. School management should insist that the vendors should compulsorily get the verification done to the staff who are supplied by them and produce the verification certificate to the principal before deputing them on duty to the schools.

j. School management should appoint security guards. Alongwith male guards female guards should be deployed at the entrance and exit gates during school hours.

k. School management should make security guard responsible to go round the entire campus and class rooms after the school is over to ensure nobody is there in the class and report to the principal or senior teacher.

l. School management should send a circular to the parents of the children who are using private 3 wheeler/four wheeler/cabs or any form of transport to get satisfied about their



conduct and antecedents along with proper address.

m. School management should ensure that all areas of the school premises like class rooms, led play-grounds, canteens, corridors, etc. should be regularly monitored and unauthorized person be questioned for their presence.

n. School management should appoint some staff as vigilance monitors on rotation to keep an eye on all activities of kids arrival and departure from school, during playtime, mealtimes, near toilets etc.

o. School management should ensure that no child should be given dark room or solitary confinement punishments.

p. School management should set up an internal vigilance committee comprising of staff, parents and education department officials and meet periodically and discuss the issues concerning the deficiencies in security and related issues and take corrective actions.

q. School management nominate coordinator counsellor for parents to inform about their concerns to him/her in confidence.

r. School management should periodically or during their meetings with both teaching and non-teaching staff.

s. School should take attendance of children at the beginning of school, after lunch and at the time of school closing. In case if any students are not available then immediately the matter should be brought to the notice of the parents/guardians and to the concerned including police.

t. The school principals should give strict instruction to the van drivers and van attendants not to pick up any un-authorized persons into the vehicle who are not connected with the school.



u. The bus the driver/attendant should not allow the child to get down in the middle other than the place of residence from where the child was picked up.

v. School management should install Display board regarding “Dos & Dont’s” in front of the school/College premises.

w. School management may introduce Group messaging system.

WHEREAS, therefore after considering matter afresh with reference to the settled rules position & norms of the Board, guidelines framed by the Supreme Court of India and replies of the School management it is considered view of the Board there are no mitigating grounds to reconsider withdrawal of disaffiliation of Holy Cross International School, Patna Bihar. Thus, the Competent Authority of the Board finds no merits and reasons whatsoever to revise the decision of the Board as conveyed vide order dated 16.04.2018 wherein the affiliation of school was withdrawal by the Board.

This is issued with approval of the Competent Authority of the Board.

Secretary

**The Manager
HOLY CROSS INTERNATIONAL SCHOOL
Lekha Nagar, Ashopur, Danapur,
Near DAV School Cantt, Road,
Patna, Bihar-801503.**

11. Later on, the CBSE decided to pass fresh order on 7.5.2019. The order dated 7.5.2019 is Annexure-14.

12. With reference to order dated 7.5. 2019 Mr. V.K. Tripathi, learned counsel appearing on behalf of the CBSE would submit that affiliation of the institution was rightly



withdrawn by the CBSE. He submits that the order dated 7.5.2019 was passed after consideration of the show cause reply contained in Annexure-3.

13. Mr. Tripathi read out the order contained in Annexure-14. He submits that the issues raised in the show cause reply Annexure-3 was considered thread-where and thereafter the order dated 7.5.2019 was passed.

14. From the order dated 7.5.2010 it appears that most of the finding is based on the enquiry of the report of the State Government. It is admitted by Tripathi that CBSE has not made any enquiry in the affairs of the institution but the CBSE has passed decision on the basis of report submitted by the Education Department. Most of the finding on fact with regard to the institution and deficiency leading to disaffiliation are based on the enquiry report of the State Government. Reading Annexure-3 and finding Annexure-14 it is difficult to digest that finding recorded by the CBSE are based on its objective satisfaction. CBSE has assigned reason to reject the plea Annexure-3 are not the basis of its own finding recorded after enquiry but on the finding of the committee of the State Government. It is well settled principle of law that no order visiting evil and civil consequences can be passed without



compliance of principle of natural justice particularly where the matter was remitted back to the CBSE by the competent court it was incumbent upon CBSE to adhere principle of natural justice before taking any decision adverse to the institution. Disaffiliation is a matter of grave civil consequences. The allegation of lapse are based on the report of the Committee of the State Government. The CBSE has not verified from the State Government whether the report of the State Government are based on inspection with notice to the petitioner.

15. It is not in dispute that after quashing of the order of withdrawal of no objection, the State has not proceeded any further against this institution. It is not in dispute that the report which is the foundation of order contained in Annexure-14 was ante withdrawal of no objection by the State Government and after the quashing of the order of withdrawal of no objection by the State Government in C.W.J.C. No. 1503 of 2018.

16. Under the aforesaid circumstances, when the State Government after quashing of the order of withdrawal of no objection has not proceeded any further would indicate that the State has not taken the report seriously in decision making process. Otherwise there was no occasion of State not to take fresh decision on the basis of such report after quashing of the



withdrawal of no objection. In addition thereto, the court is unable to understand as to how the CBSE can rely upon the report of the authorities of the State Government when the action of withdrawal of no objection was quashed by this court.

17. Since there are two versions (1) as evident from Annexure-3 show cause reply and (2) the basis of order contained in Annexure-14 i.e. report of the State Government and there is no material on record independent of the report of the State Government the CBSE has not enquired into the matter and arrived at the different finding that the plea taken by the petitioner institution were baseless and therefore, it was rejected. The reason for the rejection is based on the report of the State Government authorities and as such the Court is not inclined to approve the decision of the CBSE contained in Annexure-14. The order contained in Annexure-14 is accordingly quashed. However, quashing of Annexure-14 will not dis-entitle the CBSE from taking fresh decision after holding fresh enquiry in the matter after opportunity of hearing to the institution independently and not on the basis of report of the State Government. If the CBSE wishes to take any decision, they are required to give specific notice and opportunity of hearing and thereafter complete enquiry with opportunity to the petitioner



institution and take fresh decision in accordance with law within a period of sixty days. If the CBSE wishes to conduct fresh enquiry with opportunity to the petitioner, they can do so within a period of sixty days, failing which the it shall be deemed that CBSE has nothing to proceed against the institution and petitioner shall be entitled to restoration of all privileges as if no action was initiated against the institution for disaffiliation.

18. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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