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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17th December, 2018

Pronounced on: 8th January, 2019

+ W.P.(C) 6123/2018 & CM APPL. 23758/2018

SMT. KHAZANI DEVI EDUCATIONAL
SOCIETY

..... Petitioner

Through Mr. J.P.Sengh, Sr. Adv. with
Mr. Harsh K. Sharma, Mr. Shashi Pratap
Singh, Ms. Mrigna Shekhar, Ms. Namisha
Mehta and Mr. Akash Mishra, Advs.

versus

CENTRAL BOARD OF SECONDARY
EDUCATION & ORS

..... Respondents

Through Mr. Amit Bansal, Adv. with
Ms. Seema Dolo, Adv. for CBSE
Mr. Roshan Lal Goel, Adv. with Mr.
Rishesh Mani Tripathi, adv. for R-2/UOI
Mr. Sumit Jidani, Adv. for R-3/Delhi Police

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. The *terminus a quo*, of the present proceedings, may justifiably be said to be a complaint, launched by the Central Board of Secondary Education (CBSE) with the Crime Branch, Delhi Police, on 27th March, 2018. The said complaint alleged that the CBSE had received a complaint, on 23rd March, 2018, from an unknown source, that the Economics Question Paper, relating to the 12th Class Board Examinations conducted by the CBSE on 26th March, 2018, had

leaked, and had been circulated, nationally and internationally, by WhatsApp. The numbers, from which the papers were circulated, were also indicated in the complaint.

2. Consequent to the above complaint, three teachers, working in the petitioner-School (hereinafter referred to as “the school”), namely Mr Rishabh, Mr Rohit and Mr Tauqeer (reference to whom would, for the sake of convenience, be made, hereinafter, sans their honorifics), were arrested by the Delhi Police, though the petitioner categorically asserts that the said teachers were not even on duty, at the spot where the leakage of the paper was alleged to have occurred.

3. Skipping superfluities, one may proceed, now, directly to 1st April, 2018, when a Show Cause Notice was issued to the School, by the CBSE, alleging violation, by the School, of Clauses 13.12(i) and 17.2(a)(xi) of the Affiliation Bye-laws applicable to the School, as well as directions issued by the CBSE, relating to safekeeping of confidential extermination material. The Show Cause Notice noted the fact that the School had been notified as a centre for the Class X and Class XII Board Examinations conducted by the CBSE in 2018, and alleged that, on 26th March, 2018, when the Class XII Economics Examination was scheduled to be conducted in the School, requisite and due precautions, relating to safe storage of the question papers and maintenance of the sanctity of the examination, were not taken by the School. The Show Cause Notice alleged that access was allowed, to the question papers, to unauthorised teachers, prior to the designated time when the sealed packets, containing the question papers, were to

be opened. It was alleged that this unauthorised access led to the opening of the sealed packets and circulation of the question papers to a coaching centre which, thereafter, circulated the question papers through social media including, *inter alia*, WhatsApp. The School was, therefore, directed to show cause as to why the provisional affiliation, granted to the School to the Secondary and Senior Secondary level, be not withdrawn, and action be not taken against the School under Clause 17.2(b) of the Affiliation Bye-laws.

4. The petitioner responded, *vide* letter dated 7th April, 2018 addressed to the CBSE. It was submitted, in the said letter, that the sealed packet, containing the Economics paper, brought by K. S. Rana, Observer of the CBSE, had been received, at the school, at 9:05 AM, and had not been opened till 10 AM, when it was opened in the presence of K.S. Rana, Praveen Kumar Dagar, Principal of the petitioner-School, Sanjay Rana, Member of the Examination Committee, Ravi Vats, Examination In-charge and the four designated invigilators, Pooja, Asha Nain, Kapil and Prachi Goel, in accordance with the prescribed Guidelines in force in this regard. A photograph and a certificate, to the said effect, were enclosed with the response. Also enclosed was a certificate issued by the representative of the CBSE, in the presence of the Examination In-charge and the Centre Superintendent/Principal, certifying the smooth conduct of the examination. It was pointed out that, in each room, two invigilators were posted for the said purpose.

5. Insofar as the two teachers, Rishabh and Rohit, who were alleged to have leaked the Economics question paper, was concerned, the School submitted that, while Rishabh, who were employed as an *ad hoc* Post-Graduate Teacher (PGT), was not even present in the School on 26th March, 2018, having been assigned the duty of checking the answer sheets of the CBSE, Rohit, though available between 9:40 a.m. and 2 p.m., had been assigned the duty of preparation of the school record of the examination and was, therefore, not involved with any invigilation. It was further submitted that, despite enquiries, no evidence, or even complaint, of leakage of the question papers, within the precincts of the School, had surfaced. Drawing attention to the fact that, in the present digital era, capturing of photographs and transmission thereof could take place within split seconds, so that it could not be said, with any definitive degree of certainty, that the photographs of the question paper had been taken within the precincts of the school, and had not been transmitted to the persons who had allegedly leaked them, the School pointed out that the entire matter was under investigation and that, therefore, any action, to withdraw affiliation from the School would be precipitate in nature, and would also jeopardise the future of numerous students in the school as well as the careers of several employees, employed therein.

6. The certificate, dated 26th March, 2018, which was supposedly issued in accordance with the Guidelines to the said effect as promulgated by the CBSE, and on which the School placed reliance in

its aforementioned reply, dated 7th April, 2018, to the Show Cause Notice dated 1st April, 2018, read thus:

“To

The Regional Director
Central Board of Secondary Education
Regional Office Delhi
PS 1-2, Institutional Area,
I.P. Extn, Patparganj,
Delhi-110092

Subject – Certificate regarding opening of Question Papers.

Sir,

This is to certify that the Question Paper packets of Class XII Exams 2018 date of exam 26/03/2018 subject ECONOMICS (030) were received at the Centre at 9:05 AM. The packets were found intact with seal unbroken and the packets were opened at 10:00 a.m. in the presence of the following as per photograph sent on WhatsApp.

Name of Invigilator	Designation	Signature
KAPIL	TGT	
ASHA NAIN	PRT	
PRACHI GOEL	PRT	
POOJA	PRT	
SANDEEP	PGT	

It is further certify that the undersigned has personally visited and ensured that no mobile phone or communication device were in use at the Centre during conduct of examination.

Date: 26/03/2018
Time: 10:00 a.m.

Signature
Name of Centre Superintendent: PRAVEEN KUMAR
DAGAR

Centre No: 805
Name and Address of the Centre”

7. The above Certificate, dated 26th March, 2018, also bears the signature of the representative of the CBSE, with the date 26th March, 2018. This indicates, without doubt, that the said certificate was, in fact, signed by the representative of the CBSE on 26th March, 2018.

8. On the same date, i.e. 26th March, 2018, a certificate, regarding the smooth conduct of the examination, was also issued, bearing the signatures of the representative of the board (who had signed the aforementioned Certificate regarding opening of question papers), the Examination In-Charge and the Centre Superintendent (i.e. the Principal of the School). The said certificate may be reproduced, thus:

“CERTIFICATE REGARDING SMOOTH CONDUCT OF
EXAMINATION

1.	Date	26/03/2018
2.	Class	XII
3.	Centre No.	8059
4.	Centre Address	Mother Khazani Convent School, Mungeshpur, Delhi-39
5.	Subject Name and Code	Economics (030)
6.	Question Paper received	250
7.	No. of Students Registered	236
8.	Number of Students Present	232
9.	Number of Students Absent	04
10.	Rule No. Of Absentee	9138127, 201, 273, 9138322
11.	No. Of Question Paper and used	14+04 = 18
12.	Question Paper opening time	10:00 a.m.

the Police authorities had revealed that, in fact, the question paper had been circulated by three other persons, namely Sheru Ram, Om Prakash and Anju Bala, on 23rd March, 2018, i.e. three days prior to the examination, and that the question paper was available throughout the states of Himachal Pradesh, Punjab and Haryana. The petitioner also submitted that, in view thereof, the learned Additional Sessions Judge (hereinafter referred to as “the learned ASJ”) had, *vide* order dated 18th May, 2018, granted anticipatory bail to the Principal of the school and regular bail to the two teachers Rishabh and Rohit. A reading of the order, dated 18th May, 2018, however, discloses that bail was granted, by the learned ASJ, not on the ground that the actual persons involved in circulating the question paper were the aforementioned Sheru Ram, Om Prakash and Anju Bala, but on the ground that co-accused had already been enlarged on bail, though the contention, of the applicants before the learned ASJ, to the above effect, was noted.

11. Without any further communication, on 9th May, 2018, the CBSE issued the impugned order, withdrawing the provisional affiliation granted to the School, and disaffiliating it with immediate effect. The order deserves to be reproduced, in *extenso*, thus:

“No. CBSE/AFF./2730383/2018/1377522

Dated: 09.05.2018

SUBJECT: WITHDRAWAL OF PROVISIONAL
AFFILIATION FOR SECONDSARY AND SENIOR
SECONDARY LEVEL GRANTED TO THE SCHOOL

WHEREAS, the Mother Khazani Convent School, Mungeshpur, Qutabgarh, Dist North-West Delhi-110039, was granted Provisional Affiliation for Secondary Level w.e.f. 01.04.2003 to 31.03.2006 vide letter number CBSE/AFF./2730383/2003/18530-34 dated 08.12.2003 and was granted upgradation of the school from Secondary to Senior Secondary Level vide letter no. CBSE/AFFL./2730383 (SS-00241-0809)/2008/136164 dated 26.06.2008, subsequent extension of Provisional Affiliation was granted vide letters dated 21.03.2007, 18.02.2012 and 01.06.2016 subject to the conditions that the school will abide by the provisions of the Affiliation and Examinations Bye-laws of the Board.

AND WHEREAS, the school was fixed as a centre for the Boards Examinations – 2018 for classes X and XII. The school was expected to conduct examination in accordance with the provisions contained in the examinations bye-laws and instructions issued by the Board from time to time. It has come to notice of the Board that on 26/03/2018 when the Board Examination of Economics for Class-XII was scheduled to be conducted in the school, *the directions of the Board and due precautions in connection with safe storage of question papers and maintain the sanctity of the examination were not taken by the school.*

AND WHEREAS, *access to the question papers to unauthorised teachers was given while the Question Paper Packets were to be stored in the school in the most confidential and secure manner under the custody of the Centre Superintendent before opening at the designated time. The non-observance of the guidelines/instructions on the part of the Centre Superintendent amount to gross negligence resulting in compromising with the confidentiality and sanctity of the Examination process and question papers thereby leading to the opening of the sealed packets of the question papers and circulating the same to a coaching centre which thereafter circulated same through social media.*

AND WHEREAS, *it has been found that the school has indulged in the violation of the terms of its affiliation with the Board and has compromised the whole system of examination and directions of the Board in connection with the safekeeping of the confidential examination material with will-fully and intentionally misconduct and negligent actions, including acts and omissions both, and the aforesaid omissions and commissions of the school attracts penal provisions under Rule 17.2(a)(xi) of Affiliation Bye-laws.*

AND WHEREAS, the Board vide letter dated 01.04.2018 has issued a 'Show Cause Notice' to the school keeping in view of involvement of certain teachers of the school in collusion with the easy Coaching Classes comprising the sanctity of the Board Examination held on 26.03.2018 for Class XII.

AND WHEREAS, in response of which the school has submitted its compliance report vide letter stated 07.04.2018 and 14.04.2018 against the Show Cause Notice which is not found to be satisfactory by the Competent Authority of the Board and the following observations are made:-

1. The involved staff of the school was arrested and the matter is under investigations by the Crime Branch and *suitable action as per Court of law is being undertaken.*
2. The School vide letter dated 14.04.2018 has intimated that the Chairman of the school has suspended the Principal cum Centre Superintendent of the School namely Sh. Praveen Kumar Dagar, on the grounds of suspected negligence in the duty of Boards examination. The school has also suspended two of its teaching staff namely Sh. Rishab and Sh. Rohit, keeping in view of the suspicious involvement in the matter, which is under investigation by the Crime Branch.

3. The school has although denied the charges made in the Show Cause Notice, however, *the school has failed to provide suitable and sufficient evidences which proves noninvolvement of its Principal and other teaching staff in the matter.*

4. This is a serious misconduct on the part of the school w.r.t. Examination.

5. The above misconduct by the School Officials has tarnished the image of the Central Board of Secondary Education which warrants penal provisions against the school as per Rule 17.2a(XI) of Affiliation Bye-Laws of the Board which states that the Board may withdraw affiliation of the school in case of any misconduct in connection with examination which in the opinion of the Board warrants immediate disaffiliation of the school.

NOW THEREFORE, after due deliberation, the Competent Authority of the Board has decided to withdraw the Provisional Affiliation for Secondary and Senior Secondary Level granted to the school as per penal provisions given under Rule 17.2 a (xi) of Affiliation Bi-Laws of the Board. Therefore, the Mother Khazani Convent School, Mungeshpur, Qutabgarh, Distt North-West Delhi-110039 stands disaffiliated with immediate effect. The school shall not use the name of CBSE and Affiliation number in any manner henceforth.

The Manager, the Mother Khazani Convent School, Mungeshpur, Qutabgarh, Distt North-West Delhi-110039 is hereby directed not to admit/register any student in Class IX/X/XI/XII henceforth. However to save the career of the existing enrolled students of class X/XII shall be allowed to appear in the Boards examination in 2019 and the bona fide students of class IX/XI shall be allowed to appear on the Boards examination in 2020.

This issue is with the approval of Chairperson of the Board.

DEPUTY SECRETARY (AFF.)

The Manager,
Mother Khazani Convent School,
Mungeshpur, Qutabgarh,
Distt North-West Delhi-110039”

12. Aggrieved thereby, the school is before this Court, in the present writ proceedings, seeking quashing of the impugned Order, dated 9th May, 2018, issued by the CBSE.

13. Before concluding the recital of facts, it would be appropriate to reproduce Clause 17(1) and 17(2a) of the Examination Bye-Laws of the CBSE, as under:

17. Withdrawal of Affiliation Provisionally Affiliated Schools –

1. Affiliation may be withdrawn by the Board either in a particular subject or in all subjects. Institution may be disaffiliated if the Board is satisfied that the school concerned is not fit to enjoy continuing affiliation to the Board.

2 a. Proceedings for withdrawal of affiliation may be initiated by the Board in case the schools are found guilty of following after reasonable notices:

(i) Not paying salaries and allowances to teachers and other employees, at least at par with those obtaining in State/Union Territory institutions; default or delay in payment of salaries and allowances.

(ii) Financial irregularities including channelling of funds for purposes other than those provided for in these Bye-Laws.

(iii) Engagement in activities prejudicial to the interest of the State, inculcating or promoting feelings of disloyalty or disaffection against the Government established by law.

(iv) Encouraging or tolerating disharmony/hatred between different sections of the Society.

(v) Non-fulfillments of conditions laid down regarding deficiencies to be removed, even after due notice.

(vi) Disregard of rules and conditions of affiliation even after receiving warning letters.

(vii) Hindrance in the smooth functioning of the school on account of dispute between rivalries within the school management.

(viii) Absence of approved terms and conditions of service, or frequent dismissal of teachers from service.

(ix) Poor academic performance of the school for three consecutive years in not being able to keep at least 50 per cent of passes of the general pass percentage.

(x) Non-availability of proper equipment/space/staff for teaching a particular subject.

(xi) Any other misconduct in connection with the admissions/examinations/any other

area which in the opinion of the Board warrants immediate disaffiliation of the school.

(xii) In case of transfer of property/sale of school by one Society/Trust/ # Company Registered under section 25 of the Companies Act, 1956/Management to another Society/Trust/# Company Registered under section 25 of the Companies Act, 1956/Management through agreement/Sale deed.

(xiii) 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 even lead to disaffiliation.

(xiv) Violation of provision of sub-clause 3.3 (f) of Chapter II.

(xv) Violation of Item 20.2 (vii) of Chapter VI.

b. Once Provisional/Regular/Permanent Affiliation granted to the school is withdrawn by the Board on establishment of serious irregularities which amount to cheating the Board/causing embarrassment to it, the Board may Black List such a school to debar it from seeking re-affiliation in future.

3. The Board shall provide adequate time and opportunity to the Management of the school served with a 'Show Cause Notice', upto a

maximum of one year for adequate compliance/removal of defects failing which the Board may declare the institution disaffiliated. Such decision by the Board shall be final and binding.

The maximum period of 'Show Cause Notice' due to clause 17(2)(xi) may not exceed one month.

4. In case a school seeks legal redressal from the Court against the decision of the Board, the jurisdiction of the court of Law shall be Union Territory of Delhi only and not any other place.”

14. In its counter-affidavit, the CBSE seeks to contend that, as the Economics question paper was leaked an hour before commencement of the examination in the School, action had rightly been taken against it, for disaffiliation. The counter-affidavit specifically alleges that Rohit and Rishabh had access to the Examination Hall, and managed to click photographs of the question paper, on their mobile phones. Reliance has been placed, for this purpose, on the investigation report, dated 24th May, 2018, of the Deputy Commissioner of Police (DCP). The following passages, from the said report (which is annexed to the counter-affidavit of the CBSE) are significant:

“ During the course of investigation, sincere efforts were made, members of WhatsApp group were identified and interrogated to find out the source of leaked question paper. Two modules were identified behind leakage of class XII Economics Question Paper. One was handwritten question paper and other one was printed question paper. The handwritten question papers of Economics and Maths were leaked on 23rd March, 2018 from Una, Himachal Pradesh and circulated on WhatsApp and the printed question paper of Economics of XII class

was leaked 1 hour before commencement of exam from Mother Khazani School, Bawana, Delhi.

One of the class XII student revealed that he had received the printed question paper from his Tuition teacher namely Md. Tauquir at about 9:15 AM, on the date of examination i.e. on 26.03.18. Md Tauqueer, s/o Lt. Sh. Mohd Hussain, the Tuition teacher was interrogated at length. During interrogation, he revealed that he used to get the WhatsApp images of question papers on the day of examination at about 9:15 AM from 1 of his friends namely Rishabh (who is a Physics teacher in Mother Khajani Convent School, Mungeshpur, Delhi). He further revealed that he got Class XII Economics Question Paper from one Rohit (who is also a teacher in Mother Khajani Convent School, Delhi). Rohit, Rishabh and Md Touqueer were thoroughly interrogated. Rohit and Rishabh revealed that they were having access to the Examination Hall of the school. On the date of examination, they cleverly used to take photographs of the question paper through their mobile, prior to start of the examination and send it to Md Tauqueer. When sufficient evidence came on record, against all the three namely Md Tauqueer, Rishabh and Rohit, they were arrested in case FIR No 88/18, PS Crime Branch, Delhi.

The WhatsApp images of Mobile phone of Tauqueer was analysed, on analysis, handwritten images of question paper of Class XII for Economics was also found in the mobile. On interrogation, he revealed that he received the handwritten question paper from one of his students.”

- 15.** The counter-affidavit alleges that, despite not having been on examination duty, the above-extracted investigation report of the DCP indicates that the two teachers, Rishabh and Rohit, managed to gain access to the question paper before the commencement of the examination, which was possible only because of the laxity and

negligence of the management and administration of the School, which had failed to take adequate precautions in connection with safe storage of the question papers and maintenance of the sanctity of the examination. It has also been pointed out, in the counter-affidavit, that the interests of the students, studying in Classes IX to XII in the School, stand protected, as they have been permitted, by the impugned order, to sit in the examinations conducted by the CBSE, though the School has been restrained from making fresh admissions in the next academic session, i.e. 2019-2020. Given the magnitude of the seriousness of the lapse, on the part of the School, the counter-affidavit asserts that the withdrawal of provisional affiliation, granted to the school, could not be treated as unjustified. It is also pointed out that the school would be at liberty to apply for re-affiliation after two years, even as per the applicable Bye-Laws of the CBSE. The CBSE, therefore, prays that the writ petition be dismissed.

Rival submissions

16. I have heard Mr. J.P. Sengh, learned Senior Counsel appearing for the petitioner and Mr. Amit Bansal, learned counsel appearing for the CBSE, at length.

17. Mr. Sengh took me through all the relevant documents, and submitted that the certificates issued, under the signature of the representative of the CBSE, at the time of receipt of the question papers at 9 a.m., as well as at 10 a.m. when the question papers were opened, clearly showed that the question papers were received in a

sealed condition at 9 a.m. and remained sealed till 10 a.m., when they were opened in the presence of as many as seven persons, of whom five were invigilators and one was the representative of the CBSE itself. The allegation that the paper had been leaked an hour prior to the commencement of the examination was, therefore, it was submitted, ludicrous. The examination had commenced at 10 a.m., and as the packet was opened only at that time, there could be no question of the papers being leaked an hour prior thereto. The entire case, it was pointed out, was based on the statements of Rishabh and Rohit, who claimed to have clicked the question paper at 10 a.m. in the examination hall.

18. Mr. Sengh further points out that the impugned order was totally unreasoned and did not consider the petitioner's representation or the contentions contained therein. He also faults the impugned order for having been passed without granting an opportunity of hearing to the petitioner. Reliance has been placed, by Mr. Sengh, on the judgments in *Hari Om Gupta v. G.N.C.T.D.*, 227 (2016) DLT 600 (DB), *Mekaster Trading Corporation v. UOI*, 2003 (71) DRJ 376 and *Hyundai Rotem Co. v. Delhi Metro Rail Corporation*, 224 (2015) DLT 715 (DB).

19. Mr. Sengh also sought to rely on para 4 of the Status Report filed, in the present proceedings, by the Assistant Commissioner of Police (ACP), Crime Branch. The said reliance is, however, misguided, as para 4 of the report refers to the leakage of the handwritten Economics paper, whereas the paper allegedly leaked by

Rishabh had Rohit was the printed Economics paper. The reference, by Mr. Sengh, to the leakage that had taken place from Himachal Pradesh, and the involvement, therein, of three other persons does not, therefore, advance the case of his client to any extent.

20. Responding to the submissions of Mr. Sengh, Mr. Amit Bansal, learned Counsel appearing for the CBSE submits that the certificates, purportedly issued at the time of receipt of the package containing the question papers and at the time of opening thereof, were actually issued by the Centre Superintendent, who was the Principal of the School, and not by the representative of the CBSE. While candidly acknowledging that he was not in a position to explain as to how the representative of the CBSE had signed the said certificates, Mr. Bansal submits that the report of the DCP clearly indicated the involvement of teachers in the School and, *prima facie*, the involvement of the top management of the School as well. In these circumstances, given the magnitude of the offence, and the ramifications thereof (Mr. Bansal points out that as many as 12 lakh students had to repeat the examination), no case, for interference by this Court, Mr. Bansal would submit, exists. Responding to the submission, of Mr. Sengh, that the impugned order is unreasoned, Mr. Bansal submits that the gist of the offence stands captured in the impugned order. Mr. Bansal also places reliance on para 23 of the judgment in *M. S. Grewal v. Deep Chand Sood, (2001) 8 SCC 151*.

21. Arguing in rejoinder, Mr. Sengh submits that the specific assertion, in para 3.5 of the writ petition, to the effect that K.S. Rana

had handed over custody of the sealed packets, containing the question paper, to the officials of the School, was not denied in counter-affidavit. Reiterating that the question paper had reached the Examination Hall only at 10 a.m., Mr. Sengh submits that there could be no question of its having been leaked, by Rishabh and Rohit an hour prior thereto. Mr. Singh submits, therefore, that the impugned decision of the CBSE, to withdraw affiliation from the School, could not sustain the scrutiny of law, and deserves, therefore, to be quashed and set aside.

Analysis

22. It is apparent, at a plain glance, that sub- clause (xi), in Clause 17(2)(a) of the affiliation Bye-Laws of the CBSE, is *sui generis*. While each of the other sub-clauses in Clause 17(2)(a) deals with a specific, and a specified, misconduct, sub-clause (xi) covers “*any other misconduct* in connection with the admissions/examinations/any other area *which in the opinion of the Board warrants immediate disaffiliation of the school*”. It is clear that the distinguishing feature, of this sub- clause, as compared to the remaining sub-clauses of Clause 17(2)(a), is the opinion, of the Board, that the misconduct “*warrants immediate disaffiliation of the School*” as, otherwise, the sub- clause, by the usage of the expression “any other misconduct in... any other area”, covers all possible species of misconduct. Sub-clause (xi) is, in other words, an emergency clause, to be invoked in emergent situations. This is emphasised by sub-clause (3) of Clause 17 which, while stipulating one year as the maximum period for

adequate compliance/removal of defects by the Management of the school, to which Show Cause Notice is issued, for any of the *other* misconducts contemplated by Clause 17(2)(a), clarifies that, where the case falls under Clause 17 (2)(a)(xi), the maximum period “may not exceed one month”. Clause 17(2)(a)(xi) is, therefore, meant for invocation where the situation is so emergent that *immediate disaffiliation* of the school is essential, without granting more than one month’s time to the school to respond to the Show Cause Notice issued to it.

23. Emergency clauses, by their very nature, are, when invoked, substantially resistant to judicial scrutiny. This is for the simple reason that the decision on the question of whether an emergency exists, or does not exist, is largely fact-based, and would require judicious exercise of discretion by the authority on whom the discretion, to invoke the clause, has been vested. It is for the administrative authority concerned to decide whether, in the circumstances existing, and keeping in view all competing interests including the supervening consideration of public interest, whether the situation, which calls for taking of emergent measures has, or has not, arisen. So long as the court is satisfied that the decision, of the authority, to that effect is not vitiated by irrationality, arbitrariness or *mala fides*, the court would be loath to interfere therewith. In such cases, the court has to bear, in mind, the fact that it is ill-equipped to assess, objectively, whether any emergent situation did, or did not, exist. In case the authority, acting *bona fide*, was of the opinion that the situation warranted emergency measures, and the court, in

exercise of its power of judicial review, were to sit in appeal and arrive at a contrary conclusion, the damage resulting as a consequence thereof could be severe. It is for this reason that exercise of jurisdiction, regarding invocation of emergency clauses, is primarily within the sphere of the administrative authority concerned, and the discretion, vested in the administrative authority by statute, to that effect, is required to be judicially respected.

24. Needless to say, that does not imply total foreclosure, of judicial review, over the exercise of jurisdiction, by the authority, to invoke the emergency clause. Where the clause is invoked *mala fide*, or in a patently arbitrary fashion, or the invocation of the clause results in deprivation of the life, liberty or even property of the citizen – such as cases of preventive detention, or compulsory acquisition of land, or dismissal from service by invocation of the proviso to Article 311(2) of the Constitution of India – the court would be justifying in satisfying itself regarding the existence, or non-existence, of emergency, even while exercising its power of judicial review. In other cases, however, the approach of the court, while sitting in judicial review over the decision, of an administrative authority, to take urgent action, has necessarily to be circumspect.

25. Even in the case of compulsory acquisition of land by invocation of the emergency power contained in Section 17(4) of the Land Acquisition Act, 1894, the Constitution Bench of the Supreme Court has, in its well-known decision in ***Raja Anand Brahma Shah v. State of Uttar Pradesh AIR 1967 SC 1081***, ruled as under:

“8. It is true that the opinion of the State Government which is a condition for the exercise of the power under Section 17(4) of the Act, is subjective and a court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government under Section 17(4). The legal position has been explained by the Judicial Committee in ***King Emperor v. Shibnath Banerjee*** [72 IA 241] and by this Court in a recent case — ***Jaichand Lal Sethia v. State of West Bengal*** [***Criminal Appeal No. 110 of 1966 — decided on July 27, 1966***] But even though the power of the State Government has been formulated under Section 17(4) of the Act in subjective terms *the expression of opinion of the State Government can be challenged as ultra vires in a court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide*. If therefore in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of Section 17 are applicable, the court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue.”

(Emphasis supplied)

26. Viewed thus, I am of the opinion that it would be folly, on the part of this Court, to enter into the arena of facts, in the present case. No *mala fides* are alleged, by the petitioner, either against the CBSE, or against the Police authorities. The report, dated 24th May, 2018, of the DCP, refers to the statement of a student, to the effect that he had received the paper from his tuition teacher, Mohd Tauqeer, at 9:15 a.m. on 26th March, 2018. Mohd Tauqeer, on being interrogated, deposed that the images of the question paper were forwarded to him, by WhatsApp, by Rohit and Rishabh. Rohit and Rishabh, on being

questioned, disclosed that they had access to the examination hall of the school, and also deposed that they managed, “cleverly”, to take photographs of the question paper through their mobile, prior to start of the examination and forwarded the photographs to Mohd Taukeer. The image of the question paper was actually found on the mobile phone of Mohd Taukeer.

27. These circumstances cannot be wished away. Clearly, they hint at the *possibility*, at the very least, the involvement of Rohit and Rishabh in leaking of the question paper, from the Examination Hall. The report also records that Rohit and Rishabh deposed that they used, *cleverly*, to take the images of the question paper at the Examination Hall, prior to commencement of the examination. How they used to do so, of course is, at this stage, anybody’s guess, and this Court can hardly arrive at any finding, even tentative, in that regard.

28. Usage of unfair means in examinations, taken on a national level, has, with the passage of time, metamorphosed into an octopus, the tentacles of which spread far outside the examination hall and, indeed, the cloistered world of academia. It now partakes of the character of organized crime. The Vyapam wounds are still raw and festering, and do not promise to heal at any foreseeable distance of time. In a time and age when results in examinations have literally become an issue of life and death, an attitude of zero tolerance, in cases where usage of unfair means is suspected, is the pressing need of the hour. Allowing the usage of unfair means is not a malaise that

affects the students alone; it is an affront to the collective social conscience, executed with impunity, and a reckless disregard for every consideration of ethics and morality.

29. Liability, in such cases, has necessarily to be absolute, transcending even the *Rylands v. Fletcher*, [1868] UKHL 1, boundaries of strict liability. The purity of the educational system has, at all costs, to be maintained and nurtured. In a case such as the present, where there was *prima facie* material, though contained in the investigation report of the DCP, indicating complicity of Rishabh and Rohit, admittedly teachers working in the petitioner-School, in the leakage of the Economics question paper, and there exists a live possibility of the paper having been leaked after it had reached the petitioner-School, it is not possible for this court to characterise the decision of the CBSE, to invoke Clause 17(2)(a)(xi), and take emergent measures, thereunder, to disaffiliate the School, as arbitrary, perverse, or irrational, so as to warrant interference, by this Court, in exercise of its high prerogative jurisdiction, vested by Article 226 of the Constitution of India.

30. The submissions advanced by Mr. Sengh, no doubt, have substance and, in an ordinary case, would have been entitled to considerable weight. It is true that the certificates, dated 26th March, 2018, issued at the stage of receipt of the question papers at the School, and at the stage of opening of the question papers in the Examination Hall, seen in isolation, would seem to indicate that the question papers were received in a sealed condition, and remained in

sealed condition till they were opened in the Examination Hall. This, however, may not carry the case of the petitioner to any considerable extent, as the investigating report, of the DCP, notes the depositions of Rohit and Rishabh, to the effect that they had access to the examination hall and that they had covertly taken photographs of the question paper *after* it was opened in the Examination Hall. No doubt, there is a suggestion, in the complaint, that the question paper was leaked an hour prior to the commencement of the examination, which may throw up the question of whether the paper was leaked after the packet was opened in the examination hall, or prior thereto. These are all aspects, however, which have to be investigated and inquired into. As I have already observed hereinabove, the mechanics of the exercise, and the manner in which it was orchestrated and executed, are subject matter of serious investigation, which is underway, and regarding which it would be hazardous for me, in this judgment, to venture even at tentative opinion.

31. Suffice it to state, at the cost of repetition, that the possibility of the examination paper having been leaked, from within the premises of the petitioner-school, cannot be irrevocably foreclosed. The said possibility is, by itself, sufficient, in my view, to justify the impugned action, taken by the CBSE. Minor discrepancies, here and there, cannot convince this Court, in exercise of its writ jurisdiction in the present case, to arrive at any conclusion, even tentative, that the school is innocent in the entire episode.

32. For the same reason, the submission of Mr. Sengh, that the impugned order is unreasoned, does not convince me that the order deserves to be quashed on that ground. The substance of the allegation is, as Mr. Bansal correctly points out, reflected in the impugned order. At the same time, the order ought, in all fairness, to have been more elucidative, regarding the submissions of the petitioner, advanced in response to the Show Cause Notice issued to it. Equally, there in Mr Sengh's grievance, that his client has not been granted an opportunity of hearing prior to the passing of the impugned order. The nature of exercise of power under Clause 17(2)(b), where Clause 17(2)(a)(xi) is being made the foundation thereof, being emergent in nature, it may not be possible for this Court to read, into the said Clause, a necessary requirement of a hearing *a priori*. The petitioner would, however, be entitled to a post-decisional hearing, and a speaking and reasoned order, dealing with all the submissions advanced by it, and the material adduced by it in support thereof.

Conclusion

33. For all the above reasons, I am of the opinion that no case is made out, for interference, by this Court, with the impugned decision of the CBSE, as reflected in order No. CBSE/AFF./2730383/2018/1377522 dated 9th May, 2018 (*supra*). The petitioner would, however, be granted a post-decisional hearing, by the authority who passed the impugned order. For this purpose, the petitioner would appear, before the said authority, on 15th January, 2019. The petitioner is entitled to place all its submissions, before the authority, by way of a detailed written note, and to rely on the material

which it seeks to cite in support of its stand. The authority shall consider the same, and pass a reasoned and speaking order, dealing with *all* the submissions of the petitioner, within two weeks thereof. The authority shall also consider, in its order, the issue of whether the situation warranted *immediate* disaffiliation of the petitioner-School. In deciding the said issue, the authority shall proceed uninfluenced by the observations made in this judgment, which are intended solely to decide whether a case for quashing of the impugned order, dated 9th May, 2018, is made out, or not. In case the authority continues to remain of the view that the case warranted exercise of power, under Clause 17(2)(a)(xi) of the Affiliation Bye-Laws, and *immediate* disaffiliation of the petitioner-School was absolutely essential, clear and cogent reasons, therefor, would be contained in the order.

34. Needless to say, the petitioner, should it remain aggrieved by the order which the authority would pass pursuant to the above directions, would be at liberty to assail the same, in accordance with law.

35. The writ petition stands disposed of, in the above terms, with no order as to costs.

C.HARI SHANKAR, J

JANUARY 08, 2019

HJ