

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

Reserved on: 18th December, 2018

Pronounced on: 7th January, 2019

+ W.P.(C) 8791/2018 & CM APPLs. 52194-95/2018

MASTER SINGHAM

(THROUGH NATURAL GUARDIAN) Petitioner

Through: Mr. Tanmaya Mehta, Adv. with
Mr. Mohit Mudgal and Ms. Akansha Sharma,
Advs.

versus

DIRECTORATE OF EDUCATION AND ANR ... Respondents

Through: Mr. P.S. Sudheer, Adv. with
Mrs. A. Mathew and Mr. Bharat Sood, Adv.
for R-2

Mr. Gautam Narayan, ASC for GNCTD
with Ms. Mahamaya Chatterjee and Ms.
Shivani Vij, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. Master Singham is an 8-year old boy. He was granted admission, in the Sanskriti School (hereinafter referred to as “the School”) in 2013, under the Economically Weaker Section (EWS) category. Three years later, his admission was ignominiously cancelled, by the Directorate of Education (DoE), *vide* under Section 24(3) of the Delhi School Education Act, 1973 (hereinafter referred to as “the DSE Act”) read with clause 6(a) of Notification, dated 7th

January, 2011, issued by the Education Department of the Government of National Territory of Delhi (GNCTD). Acting through his father Gaurav Goyal, Master Singham has petitioned this Court, by means of the present proceedings, invoking its jurisdiction under Article 226 of the Constitution of India. Needless to say, the petitioner prays for issuance of a writ of mandamus, quashing the aforementioned order, dated 13th August, 2018, issued by the DoE, whereby his admission, to the School, has been cancelled, as well as the Show Cause Notice, dated 20th July, 2018, wherefrom it emanated.

The Facts

2. All unaided schools [as defined in sub-clause (iv) of clause (n) of Section 2 of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “the RTE Act”)] are mandatorily required, by clause (c) of Section 12(1) of the RTE Act to admit, in Class I, at least 25% of the strength thereof, children belonging to the weaker section and disadvantaged group in the neighbourhood, and to provide free and compulsory elementary education to such children till the completion of such education. The proviso to the said clause clarifies that, in cases of schools imparting pre-school education, the clause would apply for admission to such pre-school education. “Child belonging to weaker section” stands defined, in clause (e) of Section 2 of the RTE Act, as “the child belonging to such parent or guardian whose annual income is lower than the minimum limits specified by the appropriate Government, by notification”.

3. The petitioner was admitted to the School, in 2013, under the aforementioned EWS category. The petitioner's father provided, to secure the said admission, a domicile certificate, dated 18th February, 2012, issued by the Executive Magistrate in the office of the Deputy Commissioner (New Delhi District), certifying that he was a domicile of Delhi and a resident of A/154, Block S-117, Sanjay Camp, Chanakya Puri, New Delhi, and that he had been in continuous residence, at the said camp, for the past three years. The certificate was also attested by a Judicial Member of the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the CESTAT"). He also provided an Income Certificate, issued by the Tehsildar in the office of the Deputy Commissioner (New Delhi District), certifying, on the basis of the affidavit filed and documents produced by the petitioner's father, and "in view of the verification an enquiry report furnished by bailiffs/field staff etc.", that "the income from all sources" of the petitioner's father was assessed at ₹ 67,200/- p.a. The certificate also clarified that it was being issued for the purpose of school admission.

4. On 3rd January, 2018, the petitioner's father wrote to the School, informing the School that he, and his family, had shifted residence to the RVG UPSC Academy, B-5/180, Safdarjung Enclave, and that, owing to augmentation of his income, he had ceased to fall within the EWS category. He, therefore, sought that he, and his ward, i.e. the petitioner herein, be decategorised from the said EWS category.

5. The said communication, dated 3rd January, 2018, addressed by the petitioner's father, was forwarded, by the School, to the DoE which, in turn, wrote to the District Magistrate on 19th February, 2018, requesting it to enquire into the certificates produced by the petitioner's father at the time of admission of the petitioner into the School.

6. The Sub-Divisional Magistrate (SDM) responded, *vide* communications dated 21st February, 2018 and 7th March, 2018, addressed to the DoE, stating, clearly and unambiguously, that the Income Certificate dated 8th January, 2013 and the Domicile Certificate dated 18th December, 2012, had been issued by his office, and that they were genuine. These communications, it may be noted, also referred to the petitioner's father as being a resident of A-154, Block S-117, Sanjay Camp, Chanakya Puri, New Delhi.

7. On 15th/16th March, 2018, the School lodged a First Information Report (FIR), against the petitioner's father, in the Chanakya Puri Police Station. To the extent the contents thereof are relevant to the present case, the FIR, while observing that the notice, for admission to pre-school, issued for the 2018-2019 academic year, had clearly warned that, if any information provided was found to be incorrect or altered, the admission of the student would be cancelled by the School, alleged that, insofar as the documents produced by the petitioner's father, to secure his admission in the School were concerned, there was an "apprehension" that they "might not be genuine". The other allegations in the FIR bore no relation whatsoever

to the admission of the petitioner in the School, or to the veracity or genuineness of the documents produced by his father, for the purposes thereof.

8. On 31st March, 2018, the DoE issued an order, alleging that
- (i) though the letter, dated 21st February, 2018 (*supra*), of the SDM, vouchsafed that the Income Certificate, dated 8th January, 2013, was genuine, no examination had been done regarding the underlying basis thereof;
 - (ii) the subsequent report, dated 27th March, 2018, of the District Magistrate (hereinafter referred to as “DM”), on the other hand, alleged that, during a visit at Sanjay Camp on 22nd March, 2018, the SDM recorded the statements of ten residents of the said Camp, who deposed that the petitioner’s father, and his family, had never resided in the said Camp;
 - (iii) a letter, dated 27th March, 2018, had also been received from the School, to the effect that the School had lodged an FIR in respect of serious infirmities found in the documents submitted by the petitioner’s father for change of the category in which the petitioner was studying, and;
 - (iv) a letter, dated 28th March, 2018, had also been received, from the Deputy Commissioner of Police (DCP), alleging that

(a) the dates of the voter identity cards of the petitioner's father and mother had been found to be altered,

(b) the school authorities suspected that the documents submitted by the petitioner's father, at the time of securing admission for the petitioner, might not have been genuine, and

(c) the investigation, carried out consequent on the aforementioned FIR, lodged by the School, revealed that

(i) though the issuance of the certificate, dated 5th January, 2013, showing the date of birth of the petitioner was 24th March, 2010, had been confirmed by the North Delhi Municipal Council, "further verification" had revealed that the petitioner was, in fact, born on 12th August, 2009, at Gauri Hospital, which was also confirmed from the Municipal Corporation of Delhi (MCD), Civil Lines Zone, and that the Date of Birth certificate, dated 16th August, 2009, mentioned the name of the petitioner as Subhash Goyal,

(ii) though, in the Income Certificate, dated 8th January, 2013, submitted by him, the income of the petitioner's father, from all sources, was certified as being ₹ 67,200/-, the petitioner's father had, for the financial year 2012-2013, declared a total income of ₹ 4,23,850/-, on which he paid income tax of ₹ 28,350/-, thereby indicating that the

Income Certificate dated 8th January, 2013, had been fraudulently obtained by him, and

(iii) the petitioner's father had also tampered with his Voter identity Card, which had also been submitted by him at the time of securing admission for the petitioner.

9. The Order proceeded, on the basis of the above, to observe that the evidence thus gathered indicated that the three documents, which played a decisive role for obtaining admission under the EWS category, i.e. the date of birth certificate, the income certificate and the residence proof and domicile certificate, had all either been fraudulently obtained, or reflected the incorrect position. The certificates had, therefore, it was alleged, been obtained, by the petitioner's father "on false premises by misrepresenting and concealing his actual total income and deliberately giving false declaration of residential address, along/fake birth certificate", as a result whereof he had "not only committed a fraud but also prevented another economically deprived child from getting admission in the said school". For these reasons, the order expressed the opinion that the admission, obtained by the petitioner's father, for the petitioner, under the EWS category in the School, was illegal and void *ab initio*. Consequently, the order proceeded, purportedly in exercise of the powers conferred by Section 24(3) of the DSE Act, to cancel the admission of the petitioner.

10. The petitioner assailed the said Order, dated 31st March, 2018, before this Court, by way of W.P.(C) 6572/2018, praying that the said Order be quashed and set aside.

11. *Vide* judgment dated 2nd July, 2018, the said W.P. (C) 6752/2018 was allowed, by learned Single Judge of this Court, on the ground that, though the Order, dated 31st March, 2018, relied on a report of the DM, no Show Cause Notice had been issued, to the petitioner's father, either by the said DM or even by the DoE. As such, holding that the Order dated 31st March, 2018, had been issued in violation of the principles of natural justice, this Court quashed the order and directed admission of the petitioner in the School observing, however, liberty, to the respondents, to take appropriate action, in accordance with law, if so advised.

12. This resulted in the issuance, to the petitioner's father, of an "Order", dated 20th July, 2018, by the DoE, which is impugned herein. Interestingly, the said Order reads almost as a verbatim reproduction, para by para, comma by comma, and line by line, of the earlier Order, dated 31st March, 2018 *supra* which was quashed by this Court. The only replacement, worth its name, was that the operative portion of the Order, dated 31st March, 2018 *supra*, contained in its two concluding paragraphs, was replaced by the following:

“ Accordingly, Head of Sanskriti School, Chanakya Puri was directed vide this Directorate order dated 31/03/2018 by the then Director (Education) under Section 24 (3) of the DSEAR, 1973 to cancel the admission of Master Singham along with certain other directions.

The action of this Directorate taken vide order dated 31/03/2018 was challenged before the Hon'ble High Court by Master Singham vide WP (C) 6572/2018 titled as "Master Singham Vs Directorate of Education and others which was disposed off by the Hon'ble High Court on 02/07/2018 setting aside the order dated 31/03/2018 of this Department with the direction to afford an opportunity of hearing to the petitioner before passing any order.

Keeping in view of the direction of Hon'ble High Court, Sh. Gaurav Goyal, father of Master Singham is hereby granted a reasonable opportunity of personal hearing on 27/07/2018 at 02.00 p.m. in the chamber of undersigned at Room No 12, Directorate of Education, Old Secretariat, Delhi-110054, that why the admission of Master Singham under EWS category should not be cancelled and name of the child should not be struck off the rules of the schools on the basis of above facts and circumstances of the case.

Accordingly, Head of Sanskriti School is hereby directed under Section 24 (3) of the DSEAR, 1973 not to take any course of action against Master Singham till further orders passed by this Directorate."

13. As the above Order was a verbatim reproduction of the Order, dated 31st March, 2018 (*supra*), which already stood quashed by this Court, it contained several asseverations which were more conclusive than suggestive in nature. In fact, the following recital conspicuously finds place, towards the conclusion of the said Order:

“ Based on the report of District Magistrate (New Delhi) an Investigation report of DCP (South), *the following conclusions are drawn: –*

(i) The date of birth certificate which was one of the basic documents used by Mr. Gaurav Goyal, *has been found to be fraudulently obtained*. The actual date of birth of the child is 12.08.2009 and child was born in Gauri Hospital, Jawahar Nagar, nearly 7 months before the date of birth *showed in the false date of birth certificate*, wherein the child has been shown to have been born at home, at the permanent address i.e. 19 C/UA, Jawahar Nagar, Delhi. While it does not make the child eligible for admission into Nursery Class, *it does prove that the admission was secured on a false/fraudulent date of birth certificate*.

(ii) Sh. Gaurav Goyal has obtained income certificate from the Revenue Department *by misrepresenting his actual income* and declaring his total annual income as ₹ 67,200/- from all sources against the self-declared income in the Income Tax returns for himself alone of ₹ 4,23,850/- as stated by DCP (South) in the report. Not only that, the police investigation also states that for the next two years (2013-14 and 2014-15) his self-declared income for himself was ₹9.14 lakhs and 7.35 lakhs, respectively, whereas the criteria for EWS is an annual income of less than ₹ One lakh from all sources from the entire family. Also, it is unlikely, that an individual who claims to be earning less than ₹ 1 lakh in a year, from all family sources can undertake 24 foreign trips, from July 2011 to January 2018.

(iii) Mr. Gaurav Goyal, Ms Nidhi Goyal and Master Singham never resided at House No 154, Block A, S-117, Sanjay Kamp, Chanakyapuri, New Delhi from where the domicile certificate and voter card was issued and on the basis of the said residential address, which is in the neighbourhood of 0-1 km of Sanskriti School, Master Singham was selected in the school. The certificates have been

reported as “merits to be declared null and void” by the District Magistrate.

Thus, it is evident that Mr. Gaurav Goyal has obtained admission of his child Master Singham on the basis of Date of Birth certificate, Income Certificate and Domicile Certificate, all of which have been obtained on false premises by misrepresenting and concealing his actual total income and giving false declaration of residential address, wrong birth certificate and hence he has not only committed a fraud but also prevented another economically deprived child from getting admission in the said school.”

(Emphasis supplied)

14. The petitioner’s father responded, on receiving the abovementioned Order dated 20th July, 2018, *vide* communication dated 27th July, 2018, requesting for being provided all the material relied upon, in the said Order including, *inter alia*, the details, as well as the statements of the ten alleged residents of Sanjay Camp, which were being relied upon, to belie the assertion, of the petitioner’s father, that they were residents of the said Camp.

15. On 27th July, 2018 itself, personal hearing was accorded, to the petitioner’s father, albeit by the Deputy Director of Education (the DDE), instead of the Director of Education (DoE). The record of proceedings, of the said date, as recorded by the DDE who granted hearing to the petitioner’s father, noted that the DDE was granting hearing to the petitioner’s father “in order to avoid inconvenience to” him, as the DoE was scheduled to attend a meeting, being convened by the Deputy Chief Minister at 2 PM on the same day. The minutes merely proceed to observe that the request, of the petitioner’s father,

for being supplied the documents are relied upon, in the Order dated 20th July, 2018, was taken on record.

16. On the next date, i.e. 31st July, 2018, the petitioner's father was granted hearing by the DoE. Directions were issued to supply, to the petitioner's father, all the documents sought by him, except his own representation and the details and statements of the ten persons, allegedly residing in the Sanjay Camp, who were supposed to have denied having known the petitioner, or his parents, as residents thereof. The petitioner's father was directed to submit his reply, to the allegations against him, within 7 days, whereafter an order would be passed by the DoE.

17. On 3rd August, 2018, the petitioner's father addressed a representation, to the DoE, pointing out that he had not been supplied any copy of the enquiry report, dated 23rd March, 2018, of the SDM (Chanakyapuri), on which the Order, dated 20th July, 2018, placed reliance. He also submitted that it was necessary that he be provided copies of the statements recorded from the ten persons, alleged to be residing at the Sanjay Camp, who had professed not to know him, or his family members. He further submitted that, once the said statements were made available to him, it might have been necessary for him to cross examine the said persons.

18. The DoE proceeded to pass the impugned Order, dated 13th August, 2018, which forms the main target of the petitioner's challenge in the present writ petition. The said Order recites that, in

accordance with the directions of this Court, in its order dated 20th July, 2018 (*supra*), the petitioner's father was issued a Show Cause Notice, followed by an opportunity of personal hearing. It was further observed that, despite all documents requested, by him, except for the details and statements of the ten alleged residents of the Sanjay Camp, having been provided to the petitioner's father on 31st July, 2018, no reply had been received, from him, to the allegations against him. The impugned Order goes on, thereafter, to again reproduce, verbatim, the reference, to the report of the DCP, consequent to the lodging of FIR by the School, as reproduced earlier in the Order, dated 31st March, 2018 and, thereafter, in the Order dated 20th July, 2018 (referred to, in the impugned Order, as a "Show Cause Notice"). The said Report, cites the impugned Order, concluded that the petitioner's father had managed to have the petitioner admitted in the School by hatching a criminal conspiracy, based on fraudulently obtained documents/certificates from various authorities. The impugned Order also relies on another Order, dated 7th May, 2018, issued by the Executive Magistrate, cancelling the Domicile Certificate, dated 18th December, 2012 and Income Certificate, dated 8th January, 2013 *supra*. This, the impugned Order proclaims, resulted in the "*locus standi*", of the admission of the petitioner "itself standing lapsed".

19. The petitioner is before this Court, thereagainst.

Rival Submissions

20. Exhaustive, and extensive, submissions were advanced, at the Bar, in respect of the respective clients, by Mr. Tanmay Mehta, learned counsel appearing for the petitioner, and Mr Gautam Narayan, learned Additional Standing Counsel appearing for the DoE.

21. Mr. Mehta complains, first, that the documents, on the basis of which the impugned Order dated 13th August, 2018, was based, were different from the documents relied upon, in the Order dated 20th July, 2018. The order, dated 7th May, 2018, and the Status Report, dated 7th August, 2018, relating to the FIR dated 16th March, 2018, he points out, did not figure in the Order dated 20th July, 2018. (Mr. Narayan responds, to this, correctly, that the Status Report, dated 7th August, 2018, was not relied upon, by the DoE, while passing the impugned Order dated 13th August, 2018.) Besides, he points out, all documents, relied upon by the DoE in passing the impugned order, were not provided to the petitioner. Specifically, Mr. Mehta invites attention to the reference, in the impugned Order, to the order, dated 7th May, 2018, of the Executive Magistrate which, he points out, was neither put to his client, nor was any copy thereof provided to him. Mr. Mehta also submits that the issue in controversy involved extremely disputed questions of fact, which could hardly be decided by a summary enquiry, in violation of the principles of natural justice which, he would emphasise, included, *inter alia*, an opportunity to cross-examine the ten alleged residents of the Sanjay Camp, who had testified not to having known the petitioner. Mr. Mehta points out that

the Domicile Certificate and the Income Certificate, submitted by his client's father, had been issued by competent statutory authorities after verification, and that the said statutory authorities had, on enquiry, vouchsafed, in writing, to their veracity and genuineness. In the circumstances, Mr. Mehta would submit that the subsequent cancellation of the said Certificates, merely on the basis of an unverified report, could not justify confirmation of an allegation of a misrepresentation or fraud, on the part of the petitioner's father. Mr. Mehta submits that it would be ridiculous to rely on the statements of ten random persons found in the Sanjay Camp, which was a slum cluster of more than 10,000 inmates. Mr. Mehta would submit that such issues could not be decided in a summary fashion; least of all could such a decision be used as the basis to rusticate the petitioner from school.

22. Mr. Mehta has also filed CM 52194/2018, for stay, and has annexed, therewith, two documents.

23. The first is a letter, dated 18th April, 2018, from the SDM, Chanakyapuri, to the DCP, Parliament Street, dealing with the verification of the domicile certificate and income certificate issued by the Tehsildar in respect of the petitioner's father. This document is not specifically cited, in the impugned Order dated 20th July, 2018, or in the order dated 13th August, 2018, following as a sequel thereto, but is, nevertheless, referred to, as there is a recital, in the said orders, that the Domicile Certificate and the Income Certificate provided by the petitioner's father, at the time of securing admission of the petitioner

in the School “have been reported as ‘merits to be declared null and void’ by the District Magistrate”, which recital is to be found only in the said letter, dated 18th April, 2018. The stay application avers that the petitioner’s father became aware of the issuance of the said document, only when a copy thereof was provided along with the chargesheet filed by the School in FIR No. 15/2018. Attention is further invited, in the said Stay Application, as well as by Mr. Mehta, during the course of his submissions, to the statement of the Tehsildar, as recorded during the course of the said investigations, which is summarised, in the letter, thus:

“While working as Executive Magistrate in Chanakya Puri Sub Division in New Delhi District, a Certificate bearing No Domicile/7/73/344/3/12/2012/932101-34/52, dated 18.12.2012, shown to me today, was issued by me on the basis of verification report of Bailiff. All the documents were checked and found in order as per requirements. Sh. Isidor Kerketta, now retired, was the Bailiff at that time. A Certificate was also given by Sh. Ashok Jindal, Member (Judicial) Customs Excise and Service Tax Appellate Tribunal that Sh. Gaurav, applicant was residing at A/154, Block S-117, Sanjay Camp, Chanakya Puri, New Delhi, for the last 3 years, which is also recorded in the said Domicile Certificate. An affidavit was also submitted by Sh. Gaurav, applicant, certifying the fact of his residence at A/154, Block-S-117, Sanjay Camp, Chanakya Puri, New Delhi. The record of the applicant for issue of certificate was handed over to Bailiff for office records. The record of the Domicile Certificate issued in respect of Sh. Gaurav, applicant must be available in the record room of Chanakya Puri Sub-Division for ascertaining the veracity of the same.”

The said letter also refers to the statement of the incumbent Tehsildar, and Rajesh Kumar Yadav, to the effect that the Domicile Certificate dated 18th December, 2012 and the Income Certificate dated 8th

January, 2013, issued by Mr. M.K. Naunihal, Tehsildar and Mr. Hariom, Tehsildar, Chanakya Puri, could not be located despite thorough search. The letter also referred to the Spot Verification Report, by the SDM (Chanakya Puri), relating to the purported statements of ten residents of Sanjay Camp, who were alleged to have deposed that the petitioner's father, and his family, including the petitioner, never resided in the said Camp. The communication arrives at the conclusion that, on the basis of the said facts and the Enquiry Report of the SDM (Chanakya Puri), it was clear that Gaurav, i.e. the petitioner's father and his family, including the petitioner, had never resided at A-154, Block S-117, Sanjay Camp and that, therefore, the Domicile Certificate, on the basis thereof admission had been secured to the petitioner, was fabricated, and a misrepresentation of facts. The report concluded that "hence, Domicile Certificate No. Domicile/7/73/344/3/12/2012/9321012734/52 dated 18.12.2012 and Income Certificate No. Income/7/73/2418/12/12/2012/9321012860/108, dated 8th January, 2013, merits to be declared null and void which shall be acted upon final receipts of reports from all the Branches and Sub- Divisions of New Delhi District in response to the Circular issued on 26th March, 2018, pertaining to non-availability of files/records of above mentioned Domicile Certificate dated 18th December, 2012 and Income Certificate dated 08th January, 2013."

24. The Stay Application filed by the petitioner also annexes the statement of Hariom, the Tehsildar who had prepared and issued the Income Certificate of Gaurav, i.e. the petitioner's father, as recorded on 26th March, 2018. It reads thus:

“The statement is made by me on 26/03/2018 with reference to the verbal direction of Ms Ankita Anand (IAS) SDM (Chanakya Puri) regarding the issue pertaining to the issuance of an income certificate to Sh. Gaurav issued from the New Delhi District and having the following details:

Certificate/Ref. No:-Income/7/73/2418/12/12/2012/
9321012860/108

Date of Issuance: 08/01/2013

I was posted as Tehsildar (Chanakya Puri) from December, 2012 December, 2013 in the New Delhi District.

To the best of my knowledge and memory, it is submitted that the procedure adopted for issuance of Income Certificate during my tenure was that the application form detailing the income detail of the applicant used to be supported by an affidavit *which was thereafter, to the Field staff/revenue staff i.e. Bailiff for verification.*

On the basis of reports/recommendation of the Field staff, the application form used to be processed and disposed accordingly.

In the instant matter i.e. income certificate issued to one Sh. Gaurav, the same procedure as detailed above would have been adopted. On the basis of the report of the then Field staff and the affidavit filed by the applicant, the income certificate in favour of Sh. Gaurav might have been issued from the office.”

(Emphasis supplied)

25. Apropos the allegation that his client had travelled abroad, twice, during the year 2012-2013, Mr. Mehta referred me to a certificate, dated 5th December, 2018, purported to be issued by M/s Trilok Chand Ravindra Kumar, Grain Merchants and Commission

Agents, certifying that, in the year 2012-2013, the petitioner's father had travelled, by flight, to Thailand and Nepal on the expenses of the said firm, for the purpose of taking physical samples from suppliers, as seeds were not allowed to be sent through courier, for fear of their germination being damaged thereby.

26. In these circumstances, Mr. Mehta would submit, the present case was certainly not one in which the admission of the petitioner, in the School, could be cancelled, three years after he had obtained admission, on the basis of a summary enquiry procedure, with the matter still being under investigation and trial before the competent criminal court. Without prejudice thereto, Mr. Mehta would submit that the procedure followed was completely flawed, and blatantly violative of the principles of natural justice and fair play.

27. Mr. Mehta advanced, as his concluding submission, the proposition that Rule 35 of the DSE Rules did not permit striking off, of the name of a student, from the rules of a School, in circumstances such as the present. Rule 35 of the DSE Rules may, for ready reference, be reproduced thus:

“35. Striking off the name from the rolls –

(1) The name of a student may be struck off the rolls by the head of the school on account of:

(a) non-payment of fees and other dues for 20 days after the last day for payment:

Provided that nothing in this rule shall apply in case students of class VIII and below, studying in Government or aided schools, or in schools run or aided by the appropriate

authority, except where such students have attained the age of fourteen years;

(b) continued absence without leave for six consecutive days by a student who has attained the age of fourteen years.

(2) In the case of absence of any student who has not attained the age of fourteen years, from a school without leave for six consecutive days, the head of school shall intimate such absence to the parent or guardian of such student.

(3) In respect of payment of fees, however the head of school may grant not more than 10 days' of grace in deserving cases on application by the parent or guardian.

(4) Notwithstanding anything contained in sub-rule (1), no student's name shall be struck off the rolls except after giving the parent or guardian of such student a reasonable opportunity of showing cause against the proposed action.”

28. Mr. Mehta also seeks to draw sustenance from Rule 37(1)(b), read with Rule 37(2) of the DSE Rules. It is not necessary to refer to the said provisions, as they deal with disciplinary measures to be taken against students, for misdemeanours committed by them, and it is nobody’s case that the cancellation of the admission of the petitioner was by way of any disciplinary measure taken against him, for any act, of omission or commission, on his part.

29. Mr. Gautam Narayan, arguing in opposition, strongly opposes the reliance, by Mr. Mehta, on the documents filed along with his Stay Application, stating that, if these documents were worth consideration,

they ought to have been filed with the writ petition. That apart, Mr. Gautam Narayan submits that the present case was one of a colossal fraud, perpetrated by the petitioner's father, whereby a seat which could, otherwise, have gone to a deserving EWS student, was effectively hijacked by the petitioner. He drew my attention to the fact that, in different documents, proximate in point of time to each other, the petitioner's father was shown to have been residing at different addresses. Mr. Narayan pointed out that Income Certificates were always given on the basis of self-certification, without any verification. He emphasised the fact that the Domicile Certificate, the Income Certificate and the Date of Birth certificate, tendered by the petitioner's father, at the time of securing admission for the petitioner, had all been subsequently cancelled. He also sought to dismiss the "certificate" issued by M/s. Trilok Chand Ravindra Kumar on 5th December, 2018, stating that the said firm had sent the petitioner's father abroad, to Thailand and Nepal during the year 2012-2013, contrasting it with the averment, in the Stay Application filed by the petitioner, to the effect that the petitioner's father would travel for the said firm as their agent and try to sell their products. Mr. Narayan also sought to answer the reliance, placed by Mr. Mehta, on Rule 35 of the DSE Rules, by submitting that recourse to the said Rule was, in fact, not required, where the admission of the student had been fraudulently secured, as fraud vitiates everything. An admission, fraudulently secured, on the basis of fabricated statements and misrepresentations made to the School would, Mr. Narayan would submit, be null and void *ab initio*. In such circumstances, Mr. Narayan would also seek to submit that there was no scope for sympathizing with the student

concerned, as the cancellation of the admission of the student was only an inevitable sequitur to the unearthing of the fraud perpetrated by his father, in order to secure his admission. Finally, Mr. Narayan would exhort this Court to bear, in mind, the “ripple effect” caused by the fraud perpetrated by the petitioner’s father, as it would embolden others, who were of similar bent of mind, to attempt such misadventures, and would completely negate the very intent and purpose of providing for a preferential right, to education, for students belonging to the economically weaker sections of society.

Analysis

30. The court deems it appropriate to address, first, the reliance, by Mr. Mehta, on Rule 35 of the DSE Rules, and the response, of Mr. Narayan, thereto. There can be no gainsaying that Rule 35 of the DSE Rules specifically covers the situations in which the name of a student could be struck off the rolls of the School. It contemplates only two such situations, i.e., where the student is guilty of non-payment of fees and other dues for twenty days after the last date for payment, or where the student is guilty of continued absence without leave for six consecutive days. The proviso, to clause (a) of sub- rules (1) of Rule 35, excepts the applicability of the Rule to students of Class VIII and below, studying in Government or aided schools or schools run or aided by the appropriate authority. Inasmuch as the Sanskriti School is not a Government or unaided school, this proviso would not apply. Students, of the respondent-School could, therefore, be struck off its rolls, where the student was guilty of non-payment of fees and other

dues for twenty days, or was continually absent without leave for six consecutive days (provided he had attained the age of 14).

31. Is this provision, however, applicable to the present case at all? The answer, in my considered opinion, has necessarily to be in the negative. Rule 35 deals with the circumstances in which a school could strike the name of a student, studying in the said School, off its rolls. In the present case, the School has not struck the name of the petitioner off its rolls. Rather, the admission of the petitioner has been cancelled, on the ground that the admission had been obtained by fraud. The submission of Mr. Gautam Narayan, in this regard, is well taken. Fraud, it is trite and well settled, vitiates everything, ecclesiastical and temporal. Mr. Narayan is right, therefore, in contending that the cancellation, of the petitioner's admission, was merely the inevitable fallout, and the necessary sequitur, to the finding that his admission had been obtained by fraud. Considerations of sympathy would have no place in such situations, as the entire exercise stood vitiated *ab initio*.

32. As such, the reliance, by Mr. Mehta, on Rule 31 of the DSE Rules, has to be rejected as misguided.

33. Having so held, however, I am not able, on the facts of this case, to sustain the impugned Order, dated 13th August, 2018, or the cancellation, by the said order, of the admission of the petitioner, from the School. The entire exercise undertaken by the DoE, consequent on the order, dated 2nd July, 2018, of this Court in W.P. (C) 6752/2018, in

my view, was vitiated from its very inception. The order, dated 2nd July, 2018 (*supra*) noted that the decision to cancel the admission of the petitioner was founded, in its entirety, on the report, dated 27th March, 2018, of the District Magistrate, and that no Show Cause Notice was ever issued, to the petitioner's father, either by the District Magistrate, by the DoE. Holding that the principle of *audi alteram partem* was required to be applied, in a case such as this, "with full force and vigour", this Court set aside the decision to cancel the admission of the petitioner. No doubt, while doing so, the respondents were granted liberty to take appropriate action, in accordance with law.

34. Can it, then, be said that the action taken, by the respondents, against the petitioner – rather, against his father Gaurav Goyal – culminating in the cancellation of the petitioners admission, was taken "in accordance with law"? If it was, undoubtedly, the jurisdiction of this Court, while exercising its power of judicial review, would be circumscribed by the well-known truism that the court, while exercising a writ of certiorari, does not sit in appeal over the decision of the administrative, or quasi-judicial authority, but is more concerned with the manner in which the decision was arrived at. No doubt, if the decision is found to be so perverse, as not to command acceptance to any person of reasonable intelligence, conversant with the facts of the case, the court would interfere, even if, in arriving at the decision, due process was followed.

35. One of the fundamental tenets, of due process, and, indeed, of the sanctified principles of natural justice, is that a notice to show

cause has to be a notice to show cause, and nothing more than that. It cannot read as a determination, even before trial, of the issue at hand. Any impression, cast by a Show Cause Notice, to the effect that the person issuing the notice has already made up her, or this, mind, regarding the ultimate decision to be taken thereon, vitiates the Show Cause Notice itself, *ab initio* and in its entirety.

36. I may advantageously refer, in this context, to the following passages, from *Oryx Fisheries (P) Ltd v. U.O.I., (2010) 13 SCC 427*, which neatly encapsulate the law on the issue:

“22. For a proper appreciation of the points involved, the show-cause notice is set out in extenso:

“Sub.: Show-cause notice

Your attention is invited to our HQ's Letter No. IV/53/06-MS/HO dated 25-10-2007 and subsequent joint meeting with the buyer held at our head office on 5-9-2007 on the trade complaint received from M/s Cascade Marine Foods, LLC, Sharjah.

At the meeting it was convincingly proved that the cargo shipped by you to the abovementioned buyer was defective and you have not so far settled the complaint. Therefore, in exercise of the powers vested in me vide Office Order Part II No. 184012005 dated 25-11-2005 read with Rule 43 of the MPEDA Rules, I hereby call upon you to show cause why the Certificate of Registration as an exporter granted to you should not be cancelled for reasons given below:

1. *It has been proved beyond doubt that you have sent sub-standard material to M/s Cascade Marine Foods, LLC, Sharjah.*

2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of defective cargo sent by you and have now evaded from the responsibility.

3. This irresponsible action have brought irreparable damage to India's trade relation with UAE.

Your reply should reach the undersigned within 10 days from the date of receipt of this letter failing which it will be presumed that you have no explanation to offer and we will proceed with action for cancellation of your registration certificate without further notice to you. If ultimately a decision is reached to deregister you under the provisions of the MPEDA Rules, it will automatically entail deregistration under Registration Exporters' policy also.”

23. Relying on the underlined [**Ed.:** Herein italicised.] portions in the show-cause notice, the learned counsel for the appellant urged that even at the stage of the show-cause notice the third respondent has completely made up his mind and reached a definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

24. *This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind*

while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in ***Khem Chand*** [AIR 1958 SC 300] held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;”

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. *It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.*

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. *Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.*

29. In the instant case *from the underlined [Ed.: Herein italicised.] portion of the show-cause notice it is clear that*

the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred under Section 33 of the Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature.

31. *It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.*

32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.*

33. *The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.”*

(Emphasis supplied)

37. The situation that obtains in the present case is, if anything, worse than that which arose for consideration in *Oryx Fisheries (supra)*. The passages, extracted in para 13 hereinabove from the Order dated 31st March, 2018 – which, according to the DoE, was a “Show cause notice” –, unequivocally indicate that the authority issuing the said order had already arrived at a conclusion, regarding the guilt, of the petitioner’s father, in obtaining admission, for the petitioner, in the School, using fabricated documents, which misrepresented the true state of affairs. Not only that, the entire “Order” [which, this Court is constrained to observe, appears to have been a Freudian slip], dated 13th August, 2018, appears, to this Court, to have been an exercise in perversity. The DoE did not even care to draft of a proper Show Cause Notice, which at least looked like one, seeking the explanation of the petitioner’s father thereto. Instead, it chose to reproduce the entire Order, dated 31st March, 2018, which stood quashed by this Court, and add, at the conclusion thereof, two paragraphs calling on the petitioner’s father to show cause. To show cause against what, one wonders. It almost appears as though the petitioner’s father was informed that he had already been found conclusively guilty of the allegations against him, and was merely being asked to show cause, because this Court had opined that this was required. To say the very least, such an act was totally unconscionable in law. The “Order”, dated 20th July, 2018 was, therefore, vitiated *ab initio* and, with it, all its attendant sequelae, which culminated, inexorably, in the impugned Order dated 13th August, 2018.

38. This Court cannot, and will not, act as an authority to enquire into the allegations against the petitioner's father, or the manner in which admission had been secured, for the petitioner, in the School. In the first instance, that exercise is necessarily required to be undertaken by the authorities statutorily conferred with the power and competence to do so, namely, in the present case, the DoE. This would require the issuance, to the petitioner's father, of a proper Show Cause Notice, setting out the allegations against him and enclosing, therewith, all the documents, on which reliance was being sought to be placed, to buttress the said allegations. Copies of all such documents, as sought by the petitioner's father would, thereafter, have necessarily to be supplied to him, before embarking on the enquiry into the said allegations. I may observe, here, that the reluctance, on the part of the DoE, to supply, to the petitioner's father, the copies of the statements of the ten witnesses, who were, purportedly, residents of the Sanjay Camp, is completely inexplicable. The ground taken to deny the said material, i.e., that they were personal to the said witnesses, makes no sense at all, as providing copies of the said statements could not be said to have compromised the privacy of the individuals concerned in any manner. It could not have been forgotten, by the DoE, that it was not as though the petitioner's father had no material, whatsoever, to sustain his case. The petitioner's father had provided an apparently valid Domicile Certificate, Income Certificate and Date of Birth Certificate, while securing admission for the petitioner. These were certificates issued by statutory authorities and were presumed, therefore, to have been issued in the regular course of business, under Section 114 of the Indian Evidence Act, 1872 (hereinafter referred to

as “the Evidence Act”). Illustration (e), in Section 114, stipulates that the court “may presume that judicial official acts have been regularly performed”, and Illustration (f) states that the Court “may presume that the common cause of business has been followed in particular cases”. Section 4 of the Evidence Act, further, stipulates that whenever the said Act provides “that the Court may presume of fact, it may either regard such fact is proved, unless and until it is disproved, or may call for proof of it”. These are broad guiding principles, regarding appreciation of evidence, which apply to every authority exercising powers which are judicial in nature, whether they are “purely” judicial or “quasi-judicial”. *Prima facie*, therefore, it appears questionable whether the Domicile Certificate and Income Certificate, issued by the Tehsildar, could be wished away merely on the basis of statements recorded from ten residents of the Sanjay Camp – assuming, that is, that they were residents, as no opportunity was granted, to the petitioner’s father, to test the said statements. It cannot, in that regard, be overlooked, either, that the Domicile Certificate also recorded the certification, of the residents of the petitioner’s father in the Sanjay Camp, by a Judicial Member of the CESTAT, which is a statutory tribunal entitled to a high degree of respect. An officer of the rank of a Judicial Member of the CESTAT cannot lightly be regarded as having lent his approval to a false certificate. The manner in which the said certificate has, therefore, been dismissed, by the DoE, leaves, in the opinion of this Court, much to be desired. That, however, needless to say, does not mean that, if, in fact, on a proper appreciation of the said Certificate, the circumstances in which it was issued, the evidence in support of its genuineness and veracity, *vis-à-vis* the material cited to

question the correctness thereof, the certificate is actually found to be tainted, it should still be accepted by the DoE. All that this Court opines, in this regard, is that a much greater degree of care and circumspection was required, on the part of the DoE, before blindly relying on the opinion, of the District Magistrate, founded on the purported statements of ten residents of the Sanjay Camp, to arrive at the conclusion that the certificate could not be accepted.

39. As regards the genuineness, veracity and acceptability, of the Income Certificate, dated 8th January, 2013, the DoE sought to question the validity thereof, on the ground that it was disconsonant with the Income Tax return filed by the petitioner's father during the year 2012-2013. Mr. Mehta submitted, in this regard, that, as per his instructions, the income was correctly declared as on the date of such declaration, as ₹ 67,200/-, and that the income of the petitioner's father had increased, thereafter, resulting in a higher income reflected in the Income Tax return. This Court refrains from returning any opinion on the correctness, or even the acceptability, of the said submission of Mr Mehta. Suffice it to state that the petitioner's father ought to have been granted an appropriate opportunity to submit his explanation in that regard, which would have had to be considered, by the DoE, in all earnestness, and in accordance with law.

40. This Court observes, however, that there is no justification, whatsoever, to deny notice, to show cause notice, access to all the material that is sought to be relied upon, against him. Exceptions may exist in cases where the material is prejudicial to national security, or

is part of pending court proceedings, etc.; in all other cases, a person who is required to show cause, is entitled to access to all documents and details, as well as statements of witnesses, on which reliance is proposed to be placed against him. An order, which adjudicates a show cause notice, relying on material which has not been put to the noticee, and to which he has not been allowed access, stands vitiated even on that sole ground. The law does not permit withholding, from a person on trial, the material sought to be relied on, against him, save and except in exceptional circumstances, where the inherent nature of the material is such as would permit, and justify, holding it back. In the present times, when accessibility to information has undergone a paradigm shift, with the advent and Laika-like ascendancy, as it were, of the Right to Information Act, 2005, the concept of confidentiality and secrecy of information – especially official information – which, at one time, was regarded as sacred and time-tested, is fast becoming anachronistic. Transparency is the call of the times – and, indeed, the need of the hour. Condemning the citizen, on the basis of material to which he is not allowed access is, presently, jurisprudentially unthinkable. *Audi alteram partem* has finally come of age and, in its present *avatar*, cannot countenance an inquisitorial exercise such as that which was undertaken, by the DoE, in the present case, while pronouncing on the guilt of the petitioner's father and, on the basis thereof, cancelling the admission of the petitioner himself.

41. While penning this order, this Court makes it doubly clear that it is not pronouncing on the genuineness, or otherwise, of the documents produced by the petitioner's father, at the time of securing the

petitioner admission in the School. They may, or may not, be genuine. The petitioner's father may, or may not, have been entitled to have his son admitted under the EWS category. These are purely issues of fact, to enquire into, which this Court, especially in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, is ill-equipped. The peripheries of the jurisdiction of this Court, exercising its powers under Article 226 of the Constitution of India, stand thus delineated, in para 59 of the judgment in *Air India Statutory Corporation v. United Labour Union*, (1997) 9 SCC 377:

“The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court acts as sentinel on the *qui vive* is to mete out justice in given facts.”

42. In thus meting out justice, the Court would interfere, in every case in which it appears that a person has been condemned without due opportunity. On this, it is important to enter a caveat. Mr. Narayan has impressed, on this Court – and, to an extent, justifiably – that, in adjudicating the dispute before it, this Court should not allow itself to be swayed by considerations of sympathy, or the fact that the act of his client has resulted in the cancellation of the admission of an 8-year-old child – which, I may note, was the very first which Mr Mehta sought to press into service. Mr. Narayan would contend that the perishing of grain, with chaff, was in the natural order of things, and could not be prevented. He would also strive to submit that, by unjustifiably securing admission, of his ward, as an EWS student, in the School, the petitioner's father had nixed the chance of another,

genuine EWS student, of securing such admission, which single circumstance eviscerated all possibility of any sympathetic consideration weighing with the mind of this Court.

43. Undoubtedly, the submissions of Mr. Narayan have substance and weight. If, indeed, the petitioner's father was guilty of securing admission, of his son, as an EWS student, on the basis of forged or fabricated documents, or by misrepresenting and suppressing material facts, the petitioner, though entirely innocent of the malfeasance, may have to suffer in the bargain. As Mr. Narayan points out, any such suffering cannot be treated as punishment of an innocent, as no punitive action is being taken against the petitioner as such. A case such as this – assuming, that is, that the petitioner's father had, in fact, secured admission, for the petitioner, by fraud – would fall into that fortunately rare specie of cases, in which the person being punished is distinct from the person who actually suffer the brunt of such punishment. The wheels of justice, however, do, sometimes, inexorably grind thus, and the court is powerless to halt their revolution.

44. At the same time, while assessing the justifiability of interference, by it, under Article 226 of the Constitution of India, with the act of the administrative authority, the Court is not meant to be blind to the consequences of the act being scanned. To take an extreme example, the court may justifiably distinguish between the situation in which, such as the present, a child is, practically in his infancy, being uprooted from the school in which he studies, perhaps,

thereby, damaging his entire academic career, with a case in which the act of the authority results, for example, in some minor pecuniary loss to a citizen. It would be unrealistic to subject both acts to the same degree of circumspection, or call for equal application, of the principles of natural justice, in both cases. The consequence of the condemnation, in the present case, of the petitioner's father, as having secured the admission of the petitioner by fraud, is serious, as it blights, in all probability, the entire academic career of the petitioner, who is only 8 years old as on date. The court can justifiably take notice, in this regard, of the fact that even Rule 37 of the DSE Rules – though, as already observed hereinabove, the said Rule does not apply, directly, to the facts of this case – distinguishes between a child below 14 years of age and a child above 14 years of age. The psychological trauma, which a child of 8 may, conceivably, suffer, were he to be removed from school, is irreparable and long-lasting. In view thereof, this Court is of the opinion that the standard of care and circumspection, required to be observed, by the authorities concerned – be the authority the School of the DoE – is of a much higher degree than in normal cases. It is only where irrefutable proof, of the admission of the child having been secured by fraud, is available and forthcoming, that the child can be uprooted from school, or the admission of the child cancelled.

45. The said degree of care and circumspection is, in the opinion of this Court, lacking, in the present case. The “Show Cause Notice” dated 20th July, 2018 – which, revealingly, was itself titled an “Order” – opined that the fact of fraud, having been committed by the

petitioner's father, stood established, before requiring him to show cause. The conclusion, in such a case, in the opinion of this Court, was as good as pre-determined.

46. This is underscored by two other features of the impugned inquisitorial proceedings. Firstly, as already opined hereinabove, the DoE has proceeded in violation of the principles of natural justice. It could not have withheld, from the petitioner's father, the statements of the ten alleged residents of the Sanjay Camp, whose testimony the DoE chose to prefer, over the certificates issued by the competent statutory authority, i.e. the Executive Magistrate and the Tehsildar. Inasmuch as the statements of the said persons were being regarded as gospel truth, the request, of the petitioner's father, for permission to cross-examine them, could also not be regarded as unjustified. It is in this scenario that there appears to be substance, in the contention of Mr. Mehta, that these are facts which are highly disputed in nature, and the correctness whereof could, perhaps, not have been determined by the DoE in a summary proceeding. This Court does not intend, however, to lay down any absolute principle of law, to that effect. There is no legal embargo on the DoE in itself enquiring into the matter, without waiting for the outcome of the proceedings pending in the criminal court. If, however, the DoE does choose to don the mantle of an enquiry authority into such disputed – and undoubtedly disputable – facts, it has to proceed with the requisite degree of care and circumspection, while doing so. Mr. Mehta is justified in his grievance that the DoE could not have, in a summary fashion, have decided to cancel the petitioner's admission merely on the basis of an

enquiry by the District Magistrate, of ten alleged residents of the Sanjay Camp, or the report of the Police authorities which, itself, is under examination by the criminal court.

47. This aspect could be easily understood, when viewed from another angle, which may be considered as the second feature of the impugned proceedings, which indicates that the conclusion thereof was pre-determined. On what basis did the DoE choose to prefer, over the Domicile Certificate issued by the Executive Magistrate and the Income Certificate issued by the Tehsildar, the genuineness and correctness reconfirmed by the SDM on a fresh enquiry being posed by the DoE in that regard, the inspection report of the DM or the investigation report of the Police authorities? In the process, the DoE has effectively proceeded, in a summary proceeding, on the ground that the Executive Magistrate and the Tehsildar, who had issued and signed the Domicile Certificate and the Income Certificate, respectively, of the petitioner's father, had done so blindly, or even falsely. It has also ignored the fact that the Domicile Certificate was avowedly issued, by the Executive Magistrate, after a fact-finding enquiry conducted through a Bailiff. Again, as regards the Income Certificate produced by the petitioner's father, the DoE has proceeded to jettison the same without affording, to the petitioner's father, an adequate opportunity to explain the Certificate, *vis-à-vis* the Income Tax return submitted by him. Again, this Court cases to clarify that it is not lending its imprimatur to the Income Tax certificate submitted by the petitioner's father, or approving the same. The Court only opines that, before rejecting the said Certificate and, on the basis of

such rejection, cancelling the admission of the 8-year old son of the petitioner, the petitioner's father was entitled to adequate opportunity to present his defence, and an explanation in that regard. That is a constitutional guarantee, to every denizen of this country, flowing from the fundamental rights enshrined in Part III of the Constitution of India.

48. In the above background, it is worthwhile to have a re-look at the manner in which events proceeded in the present case. At the time of the commission of the petitioner, in the School in 2013, the petitioner's father provided a Domicile Certificate, dated 18th February, 2012 and an Income Certificate, dated 8th January, 2013, which certified that the petitioner was a resident of Sanjay Camp, and that the annual income of his father was ₹ 67,200/-. These Certificates were issued by two different officers, one by an Executive Magistrate and the other by a Tehsildar, and the fact that they were issued consequent to verification by the Bailiff is not disputed. When, later, the DoE wrote, on 19th February, 2018, to the District Magistrate, regarding the authenticity and veracity of the said Certificates, the response, as issued by the SDM on 21st February, 2018 and 7th March, 2018, to the DDE, was, clearly, that the said Certificates had been issued by his office, and were genuine. Apparently, subsequently, another report was issued by the DM, on 27th March, 2018, to the effect that ten of the alleged residents of the Sanjay Camp had, on being queried, stated that they did not know the petitioner's father and that he had never resided in the said Camp. A letter, dated 28th March, 2018, was also, purportedly, issued by the DCP to the DoE, alleging

that there had been tampering in the photo identity cards of the petitioner's parents and that, though the petitioner's father had declared his income, from all sources, as on 8th January, 2013, to be ₹ 67,000/- per annum, he had, for the financial year 2012-2013, declared a total income of ₹ 4,23,850/–, and had paid income tax of ₹ 28,350/- thereon, thereby indicating that the Income Certificate, dated 8th January, 2013, had been fraudulently obtained by him. On the basis of the said report, dated 27th March, 2018, from the DCP, the DoE issued an Order, dated 31st March, 2018, holding that the date of birth certificate, the income certificate and the domicile certificate, produced by the petitioner's father at the time of securing admission for the petitioner in the School, were all either obtained fraudulently or reflected the incorrect factual position. On this basis, the petitioner's admission was cancelled. The said decision was annulled, however, by this Court, *vide* its order dated 2nd July, 2018 in W.P. (C) 6752/2018, on the ground that it had been issued in violation of the principles of natural justice. Specific notice was taken, in the said order, of the fact that, though the report, dated 27th March, 2018, of the DM, had been relied upon, by the DoE, Show Cause Notice had not been issued, to the petitioners father, either by the DM or by the DoE. Preserving liberty to the DoE to proceed afresh in accordance with the principles of natural justice, therefore, the order dated 31st March, 2018 was set aside. The DoE merely re-issued the said order, on 28th July, 2018 to the petitioner's father, seeking his explanation thereto, even after holding the charges against him to stand proved. The said "Order", dated 20th July, 2018 again relied on the report, dated 27th March, 2018, of the DM and the letter, dated 28th March,

2018, of the DCP. An enquiry was held, in which the petitioner's father was denied access, despite his request, to the statements of the ten alleged residents of the Sanjay Camp, who had purportedly deposed that the petitioner never resided therein.

49. In fact, the DoE did not even condescend, after the hearing of 31st July, 2018, on which date directions were issued, by the DoE, for supply of the documents sought by the petitioner's father, to grant him a further opportunity of hearing to explain his case. Even if it were to be assumed that the petitioners father defaulted in filing any written response, the principles of natural justice necessarily required that he be granted an opportunity of personal hearing, to state his case on merits. It was clearly not open to the DoE to conclude the proceedings, insofar as grant of personal hearing was concerned, on the date when the petitioner's father was not in possession of the documents relied upon against him, and directions were issued to supply, to him, the said documents. It is axiomatic that, after the documents relied upon against a noticee are provided to him, the noticee is entitled to an opportunity of hearing, so that he could present his case on merits. This opportunity is not dependent on the noticee submitting a written statement of defence, and exists independent thereof. No such opportunity of hearing was ever granted by the DoE to the petitioner's father, in the present case. Instead, having directed, on 31st July, 2018, that the documents, sought by the petitioner's father be provided to him, the DoE proceeded, *vide* the impugned Order dated 13th August, 2018, to cancel the petitioner's

admission, effectively merely reissuing the earlier Order, dated 20th July, 2018.

50. This Order proceeded to rely, further, on a Status Report, dated 16th March, 2018, relating to FIR 15/2018, as well as an order, dated 7th May, 2018, of the Executive Magistrate, which find no place in the “Show Cause Notice”/Order dated 20th July, 2018. Again, it is axiomatic that an order of adjudication cannot rely on material which does not form part of the Show Cause Notice, of which it is intended to be a culmination. This single factor, even by itself, would be sufficient to vitiate the impugned order dated 13th August, 2018. That apart, Mr. Mehta submits that these documents were not provided to his client, and Mr. Narayan is unable to rebut the said submission on facts. On the basis of this material, the original Domicile Certificate, dated 18th February, 2012 and Income Certificate, dated 8th January, 2013, have been completely rejected by the DoE.

51. Requests, made by the petitioner’s father, to cross examine the persons whose evidence/reports were being relied upon, against him, have been completely ignored. The procedure followed was, therefore, not only summary in nature, but was also in rank violation of the principles of natural justice and fair play.

52. Mr. Narayan had sought to impress, on the Court, the fact that, in different documents, different addresses, of the petitioner’s father, figured, and that the in-charge of the establishment where the petitioners father claimed to the side, in his letter dated 3rd January,

2018, i.e. the RVG UPSC Academy, had also deposed that the petitioner's father did not reside there. In view of the order that this Court proposes to pass, no findings are being returned on the said submissions. Suffice it, however, to state that the cancellation of the petitioner's admission could only be on grounds which are material for securing the admission in the first place. It is important to point this out because the impugned Order, dated 13th August, 2018 records, as a justification for the decision therein, a finding that the petitioner's parents had "also cheated various government agencies by submitting various documents as per their convenience for wrongful gains". Such a finding, in the opinion of this Court, has no place in a proceeding which is concerned with whether the petitioner's father had secured admission, for the petitioner, in the School, by misrepresentation. The present proceedings cannot be likened with disciplinary proceedings against a government servant, in which moral turpitude, irrespective of whether it relates to the discharge, by the government servant, of his official functions, or not, could independently constitute the basis to proceed against the government servant. Howsoever reprehensible, in the perception of the DoE, the petitioner's father might have been, as a person, that could not constitute a legitimate basis to cancel the petitioner's school admission. As such, it is reiterated that the DoE exceeded its jurisdiction in returning the above extracted finding, that the petitioner's parents had cheated government agencies for wrongful gains.

53. The defect noted by this Court, in the manner in which the petitioner's admission, from the School, was cancelled, continues,

therefore, to plague the said cancellation, and remains uncured. This Court is, therefore, constrained to, yet again, set aside the decision to cancel the petitioners admission from the School, as contained in the impugned Order, dated 13th August, 2018, and restore the said admission. In case the DoE still decides to proceed against the petitioner's father, and re-look at the proposal to cancel the admission of the petitioner, it cannot be proscribed from doing so; however, any such exercise, if conducted, would strictly abide by the observations and findings contained in the body of this judgment hereinabove.

54. Before parting with this judgment, this Court also takes note of the suggestion, which was made during the course of arguments, by learned counsel for the petitioner, that, even if the allegations against the petitioner's father were treated as true, it would not justify cancellation of the admission of the petitioner, but would, appropriately, justify recovery, from the petitioners father, of additional fees, treating the petitioner as having been admitted under the general category instead of the EWS category. This contention is, in my view, obviously unacceptable, for the simple reason that, if it were to be accepted, it would provide a *carte blanche* to unscrupulous parents, to obtain admissions, for their wards, under the EWS category and, on the fraud being detected, claim that the admission be retained, but under the General category. This would, obviously, open the floodgates for perpetration of fraud, which no civilised legal system can tolerate. In case the admission of a child is proved, in accordance with law and keeping in mind the exacting standards applicable to such proof, to have been obtained under the EWS

category by fraud and suppression of facts, the admission must, of needs, be cancelled, as an inevitable and necessary sequitur. There can be no escape therefrom.

Conclusion

55. Resultantly, the impugned “Order”, dated 20th July, 2018, as well as the Order, dated 13th August, 2018 resulting therefrom, are quashed and set aside. The petitioner’s admission in the School shall stand restored. This Court has not, however, expressed any opinion on the merits of the allegations against the petitioner’s father, regarding the manner in which the admission of the petitioner, in the School, under the EWS category, was secured. In case, however, the DoE chooses to re-visit the said issue, it shall proceed in accordance with the observations and findings recorded and contained hereinabove. All contentions of the parties shall, in such eventuality, remain open. Needless to say, the rights of the petitioner, or his father, to re-agitate any grievance which may survive, in the event of any decision, on the part of the DoE, adverse to the interests of the petitioner, would also remain reserved.

56. The writ petition stands allowed to the above extent, with no order as to costs.

C. HARI SHANKAR, J

JANUARY 7, 2019

HJ