

\$~

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

Reserved on: 6th October, 2020

Date of decision: 18th November, 2020

+

W.P.(C) 3071/2020

SARAH KHAN AND ANR.

..... Petitioners

Through: Dr. Farrukh Khan, Advocate.
(M:9971786060)

versus

UNION OF INDIA AND OTHERS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal R Digpaul, Advocate for R-1.
(M:981125100)

Mr. Ashok Kumar and Mr. Ujjwal
Goel, Advocates for R-3.
(M:9810011826)

Mr. Saurav Aggarwal, Ms. Aakriti
Dawar and Mr. Sai Abhishek
Manthena, Advocates for R-4.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The judgment is pronounced through video-conferencing.
2. The present petition has been filed by Ms. Sarah Khan and Mr. Shazaan Mohammed Khan, through their father i.e., Mr. Shamshir Khan. They are students of the International Indian School, Buraidah, Saudi Arabia (*hereinafter, "school"*). The grievance of the Petitioners is that they have been transferred out of the said school vide impugned Transfer Certificate Nos. 012004 and 012005, dated 6th April, 2020.
3. This writ has been filed before this Court by the Petitioners on the

basis that the school is an international school sponsored by India, located in Saudi Arabia. The Indian Ambassador in Saudi Arabia is the patron-in chief of the school and officials of the Indian Embassy are on the Managing Committee of the school. The school is also affiliated with the Central Board of Secondary Education (*hereinafter*, “CBSE”). The reliefs sought are:

- 1) Issue a writ of mandamus/ other apt. writ/ direction quashing the Transfer Certificate against the Petitioners
- 2) Issue a writ of mandamus to R1-R3 to ensure Petitioner is reinstated back in the school and allowed to participate in online classes
4. The Respondents entered appearance and filed their counter-affidavits. Pleadings are complete. Respondent No.4 i.e., the school, as also the other Respondents, including the Central Government and the CBSE, have raised preliminary objections as to the maintainability of this petition and the jurisdiction of this Court to entertain this petition.

Submissions

5. In support of these two objections, Mr. Saurav Aggarwal, Id. counsel appearing for the school, has taken the Court through various documents which constitute the school. He submits that the registration certificate of the school is issued by the Department of Education, Kingdom of Saudi Arabia. The school is regulated by the Foreign Schools bye-law's, and the Council of Foreign Schools supervises the management setup, and structure of the school. Id. counsel further submits that the School Management Council constitutes of parents as well as officials from the foreign embassy. The overall supervision is under the Ministry of Education, Riyadh and the Higher Board which monitors the functioning of the school. He submits that

the Department of Education appoints the school principal or one of the parents, as the head of the steering and election committee, which consists of seven elected members, for the selection of the Management Council.

6. Ld. counsel further submits that a dispute first arose because the father of the Petitioners wanted to get elected to the Management Council in 2015, by making false allegations against other members. He was initially permitted to contest, however, he could not be chosen. Thereafter, in 2018, his candidature was rejected. The father of the Petitioners later filed a suit for defamation against members of the school, which was rejected in January, 2020. Ld. Counsel submits that, even post this, he continued to malign the school in various fora. Accordingly, the Petitioners were transferred out of the school.

7. The submission of ld. counsel for the school is that this Court does not have the jurisdiction to entertain the present petition inasmuch as neither is the school located in Delhi nor has any part of the cause of action arisen in Delhi. He relies upon the judgment in *Dominic Simon v. Central Public Information Officer & Anr., 2018 SCC OnLine Del 7026*, which deals with International Indian Schools in Saudi Arabia, wherein the ld. Single Judge has held that such schools are not covered under the Right to Information Act, 2005. He submits that because of the school being a completely foreign school located outside India, this Court has no jurisdiction to entertain this petition.

8. Mr. Aggarwal, ld. counsel, further submits that the school is located in Riyadh and the same is governed by the laws of Saudi Arabia and is hence under the direct administration of the Kingdom of Saudi Arabia (*hereinafter, "KSA"*). He submits that no part of the cause of action arises

within Delhi and hence no relief can be granted by this Court under Article 226 of the Constitution of India. Ld. counsel submits that fundamental rights guaranteed by the Constitution of India cannot be enforced outside the Indian Territory. He relies upon *Ex. Rect./GD Vinod Kumar v. Union of India and Ors, 135 (2006) DLT 414 (DB)* and *Lt. Governor v. V. K. Sodhi, (2007) 15 SCC 136*, to argue that the school is not State as there is no deep or pervasive control by the Government of India on the school.

9. Ld. counsel concluded his submissions by stating that the present case is an unfortunate one, where the father of the Petitioners has put his personal interest over and above the interest of his children. It is due to his conduct and his repeated interference in the administration that the school was forced to terminate the admission of the students. Ld. counsel submits that the Petitioners' father still, during the pendency of this writ, continues to write letters to various authorities against the school and continues to bring bad repute to the school.

10. On behalf of CBSE, Mr. Ashok Kumar, ld. counsel submits that he reiterates the submissions of the school. He further submits that insofar as CBSE is concerned, it has no role whatsoever, prior to 9th standard. Reliance is placed on Regulation 7.1 and 7.2 of the CBSE Regulations to argue that the school is primarily run by the local Government where the school is located, until the eighth grade. It is only for admissions in the ninth grade and thereafter that the CBSE plays a role. He thus submits that in the present case, CBSE has no role to play and he also reaffirms the school's submission that the present writ petition cannot be entertained by the Delhi High Court.

11. On behalf of the Union of India (*hereinafter, "UOI"*), Mr. Ajay

Digpaul, Id. standing counsel, submits that the writ is liable to be dismissed for to the following reasons:

- i. All the events have taken place outside the territorial jurisdiction of this Court.
 - ii. The school is governed by the Ministry of Education, KSA
 - iii. The Indian Embassy has no role to play in the day to day governance and management of the school. The day to day affairs of the school are managed by the KSA.
 - iv. The role of the Indian Embassy is limited to ensuring that the CBSE guidelines are being adhered to by the school.
 - v. The Petitioners have already availed their legal remedies by filing a complaint before the appropriate authorities in Saudi Arabia. When the initial complaint was dismissed, an appeal against the said order had been filed which was also rejected. Thus, the Petitioners having availed of their legal remedies in the KSA cannot now try their chances before this Court.
12. Mr. Digpaul, Id. counsel also relies upon paragraph 13 of the counter affidavit to submit that there are other schools where the Indian Embassy plays a role. The details of the schools are mentioned in paragraph 13. These are the schools where the Petitioners have the option of seeking admission in accordance with the prevalent rules and regulations.
13. Finally, Mr. Digpaul also relies upon the judgment of the Supreme Court in *Ahmed Abdulla Ahmed Al Ghurair v. Star Health and Allied Insurance Company Ltd. & Ors., 2019 13 SCC 259* to argue that in the said case, the main company against whom the relief was sought was a company based in Dubai. The parent company was also based in Dubai. Under such

circumstances, the Supreme Court held that despite one of the related companies being based in Madras/Chennai, the Madras High Court has no jurisdiction. In conclusion, it is submitted that the Indian Embassy's role being limited to the management of the school, the present writ petition is not liable to be entertained.

14. Dr. Farrukh Khan, Id. counsel for the Petitioners, on the other hand has firstly drawn the attention of this Court to the impugned Transfer Certificates which have been issued by the school to both the Petitioners. The same have a remark to the following effect:

*“21. Remarks: Non-compliance of charter
(issued by Embassy of India Riyadh) for IIS
parents by candidate's father”*

15. A perusal of the said remark, according to him, shows that the allegation is that the Petitioners are in non-compliance of the Charter issued by the Embassy of India. Dr. Khan, Id. counsel submits that the impugned Certificates itself having been issued by invoking the charter, which is issued by the Embassy of India, the writ is maintainable. He further submits that as per Article 31 of the Vienna Convention on Diplomatic Relations 1961, immunity is given for such administrative actions to the Embassy officials in the receiving States. Thus, they would only be subject to jurisdiction of the home country i.e. India in this case. Accordingly, he submits that the present writ petition is maintainable before this Court.

16. Dr. Khan, Id. counsel further relies upon various e-mails written and received by the Petitioners' father, which according to him state that the decision to remove the Petitioners was taken on the basis of the advice by Col. Maneesh Nagpal, who is the Observer, Representative of the Indian

Embassy to the Management Committee of the school. He further submits that the Charter for the Indian International Schools (*hereinafter*, 'IIS') clearly shows that any grievance would have to be first raised with the school, however thereafter if it is unaddressed, the issue would have to be raised only with the Embassy of India, which cannot be subject to the jurisdiction of Saudi Arabia.

17. He places vehement reliance on the counter-affidavit filed by the Ministry of External Affairs (*hereinafter*, 'MEA'), especially paragraphs 13 and 15 to the effect that the MEA has stated therein that it is agreeable to redact the remark in the impugned Certificate to ensure that the career of the children is not affected and so they can seek admission in other schools in Saudi Arabia. This itself according to him is an admission to the effect that the MEA controls the school and its functioning, in Saudi Arabia.

18. Dr. Khan's further submission is that the management structure of the schools clearly show that they are subject to the CBSE's overarching supervision. As per the CBSE bye-Laws, CBSE exercises control even on unaided schools.

19. Dr. Khan further relies upon the CBSE affiliation bye-laws 2018, especially Clause 15.9, to argue that CBSE's argument that it is not concerned with any aspect of the school prior to grade 9th is not correct. He submits that insofar as grades 1st to 5th are concerned, if the school is affiliated to CBSE for grades 6th to 12th, then CBSE conducts inspection for affiliating it for grades 1st to 5th as well. Further, a fee is also taken by the CBSE, for the same. Thus, the Affiliation Bye-Laws 2018 clearly show that the CBSE supervises schools not just at the higher level but also from the lower grades i.e., from class 1 onwards. Finally, ld. counsel points out that in

the CBSE bye-laws, the jurisdiction is stated to be only with the courts in Delhi, as per clause 18.3.2. He then points out the charter for IIS Parents, Indian International School in KSA, to argue that the Ambassador of India in Saudi Arabia is the patron-in chief of the school, and therefore there is an absolutely close connection with India.

20. Further, Dr. Farrukh Khan, ld. counsel, has also placed reference and reliance upon two judgments of this Court in ***Vikramaditya Jain (Minor) v. Union of India*** [(1998) 47 DRJ 410] and ***Andi Mukta Sadguru Shree Mukta v. V.R. Rudani and ors.*** [(1989) 2 SCC 691, 700] to argue that once the affiliation is granted by CBSE, and the school is set up under the patronage of the Embassy of India, the school is amenable to jurisdiction of this court under Article 226.

21. Dr. Khan finally relies upon the charter of International Indian Schools to argue that the Ambassador is the patron of the school as per Article 3(b) of the said charter, and that Ambassador is duty bound to take care of the educational needs of the Indian students studying in the school. He relies upon Article 3(d) to argue that all Indian schools have to be affiliated with the CBSE. Thus, according to him, this Court has jurisdiction to entertain this petition.

22. In rejoinder, Mr. Saurav Aggarwal, ld. counsel for Respondent No. 4 i.e. the School, has shown this Court, the records of the meetings of Election Commission of the school, where the candidature of the Petitioners' father was rejected, and according to him this has caused the acrimony between the school and the Petitioners' father.

23. Ld. counsel further submits that the MEA's affidavit was based on the school's submission on the first date of hearing before this Court where the

school had agreed to redact it and the said submission has been reproduced in the counter-affidavit of the MEA.

24. He submits that the CBSE bye-laws provide a completely different specific bye-law governing foreign schools i.e., clause 2.5.(1), which deals with the affiliation of foreign schools and also makes it clear that the legal and administrative framework, with respect to schools affiliated with CBSE located abroad, would be of the country where the school is located. He, further, submits that the license for running the school is also as per the concerned Government. If the license gets stripped of, then the affiliation cannot subsist. Moreover, the Saudi Arabian Government is not amenable to be made a party in this writ petition. He submits that since, the said Ministry of Education, being the licensing body for the school, is not amenable to the jurisdiction of this Court, the writ itself would not be maintainable. Moreover, the fact that the school has to adhere to local norms of the country where it is located, also makes it clear that it is a local Government which exercises jurisdiction over the school.

25. It is also submitted by Mr. Aggarwal that insofar as the Managing Committee of the school is concerned there are only a few representatives of the KSA and one or two officials of the Embassy of India, in the said committee. However, the school is broadly run by the parents of the schools and there are two levels of management i.e., the Managing Committee and the Higher Board. Both are approved by the Ministry of Education, KSA. He submits that the school is neither functionally, financially or administratively subject to the jurisdiction of the Government of India and hence the writ is not maintainable.

26. Mr. Ashok Kumar, ld. counsel for the CBSE disputes the

interpretation to the Affiliations bye-laws given by Dr. Farrukh Khan. He submits, in rejoinder, that there is a difference between recognition and affiliation. The school may be affiliated to the CBSE; however, it is recognized by the State where it is located. In this case, it is recognized by the local Government in Saudi Arabia. The purpose of affiliation and the clause 15.9 is only to ensure the availability of infrastructure. Insofar as management etc. are concerned, the CBSE is not concerned and has no role at all in any manner.

27. He further submits that the infrastructure of the school has to be ensured by the CBSE, but insofar as administration of the school till class 8th is concerned, that would be governed as per the laws of where the school is located.

28. Mr. Ajay Digpaul, Id. CGSC, submits that he adopts the arguments of the CBSE and the school on the question of maintainability and he submits that no order can be passed against the UOI in this writ petition.

Analysis and Findings

29. At the outset it is recorded that Mr. Shamshir Khan the parent of the Petitioners-children, appeared before the court. Some proposals were explored between the Petitioners and the school. However, no amicable resolution was arrived at.

30. The preliminary objection that has been raised, in respect of the maintainability and jurisdiction of this petition, is being presently decided. In order to appreciate the controversy, it is relevant to take note of the parties in the present case. Both the Petitioners are minor children, who are residents of Saudi Arabia along with their family. The present petition has been filed by the minor children through their father Mr. Shamshir Khan.

The Respondent No.1 is Ministry of External Affairs, Union of India. The Respondent No.2 is Royal Embassy of Kingdom of Saudi Arabia. The Respondent No.3 is Central Board of Secondary Education and the Respondent No.4 is the International Indian School, Buraidah. The reliefs that are sought by this petition are in respect of the impugned Transfer Certificates by which, the Petitioners have been transferred out of the Respondent No. 4 - school. The reason given for the said transfer is “*non-compliance of charter (issued by Embassy of India Riyadh) for IIS Board by candidates’ father*”.

31. The ground on which the challenge is being raised before this Court is that the school is affiliated to CBSE. The school is stated to be sponsored and governed by the Indian Embassy in Saudi Arabia and the effective control and management of the school is with the Indian Embassy. The Indian Ambassador in Saudi Arabia is the patron in-chief of the school. The main submission of the Petitioners is that the school being affiliated with CBSE, any irregularity in the school can be adjudicated before this Court. It has further been submitted that the Ambassador and other officials of Indian Embassy enjoy diplomatic immunity, and cannot be subjected to the jurisdiction of the Courts in Saudi Arabia. Further, the issuance of the Transfer Certificates on the ground of alleged misconduct by the father of the Petitioners is submitted to be arbitrary and illegal. Finally, it has been urged that the same being discriminatory qua the Petitioners, the Transfer Certificates issued by the school deserve to be quashed.

32. It is alleged in the writ petition that during the COVID-19 pandemic, online classes are being conducted by the school and the impugned transfer would cause irreparable damage to the career and education of the

Petitioners, who are studying in grades 6th and LKG.

33. All the Respondents challenge the jurisdiction of this Court to grant such reliefs. The crux of their submissions is that the school is governed by the Department of Education, Saudi Arabia and is regulated by the Foreign Schools bye-laws in Saudi Arabia. According to them, the overall supervision of the school is also governed by the Ministry of Education and Higher Education Board, KSA, and mere affiliation with the CBSE or the fact that the Indian Ambassador is patron-in chief would not vest jurisdiction of this Court to pass directions against the school, including the quashing the impugned Transfer Certificates.

34. The submissions of all the counsels have been set out in detail herein above. In order to appreciate the submissions of the maintainability/lack of jurisdiction, the Charter governing the school and various bye-laws of the CBSE etc. would be relevant. International Indian Schools in KSA are 10 in number. They are affiliated to the CBSE to provide education to the Indian community in Saudi Arabia. The Charter of the school has been placed on record and contains various provisions as to the general conduct of the school and the conduct required of the parents and students. The Charter is general in nature and recognizes the role of parents and the role of the school. As per the Charter, the school invites regular feedback and observations from the parents. A grievance redressal grid has also been set up by the school. The school is itself regulated by the Foreign Schools bye-laws. Every foreign school in KSA has a management council, which runs the day to day management of the school. The parents of the students are represented on the council and the representatives of the Ministry of Education have the right to attend meetings of the Management Council.

The responsibility of the Management Council are set out by the Department of Education, KSA. The manner of appointment on the Council, role of the Department of Education, role of parents etc. are set out by the Department of Education, KSA. The Charter recognizes that Indian Ambassador would be the patron-in-chief of the IIS in KSA, however the role of the ambassador is advisory in nature. The purpose is also to ensure that the School does not violate the guidelines issued by the Ministry of Education, KSA, as also the CBSE. The role of the ambassador is set out in Article III para B(1) of Charter, which reads as under:

“Article III

....

B) Embassy of India, Riyadh:

i) The Ambassador of the Republic of shall be the Patron of each International Indian School in the Kingdom, in which capacity he shall advise Members of the Higher Board/the Managing Committees/Head of the Institution/Members of all the Indian Schools to ensure that educational needs of Indian citizens and their educational institutions run in this country in the best possible way, and to ensure that these Schools do not violate the guidelines issued by the Ministry of Education, Kingdom of Saudi Arabia, and the Central Board of Secondary Education. He will also ensure that the educational interests of the Indian community, particularly those of the pupils, are fully safeguarded at all times in the Kingdom of Saudi Arabia.”

35. Article III of the Charter shows the management structure of the school. Ministry of Education, KSA, is the upper most body, with the Embassy of India and Higher Education Board, thereafter, to monitor the schools. The hierarchy as per the Charter is set out herein below:

W.P.(C) 3071/2020

Page 13 of 30

“Article III: Management structure of the International Indian Schools

The following are the components of the management structure of International Indian Schools in the Kingdom:

A) Ministry of Education, Kingdom of Saudi Arabia:

i) The Ministry of Education is the supervising body of the International Indian Schools being authorized to issue rules, regulations, circulars and management principles of the foreign schools in accordance with the regulations pertaining to establishment of the foreign schools issued by the Ministerial Council vide its circular No. 26, dated 4/2/1418 A.H. All the International Indian Schools shall, therefore, follow the instructions issued by the Ministry of Education, Kingdom of Saudi Arabia.

ii) The Ministry of Education, Kingdom of Saudi Arabia will nominate one Officer to be the “Observer” of each International Indian School in the Kingdom to ensure that the School is functioning in accordance with the guidelines set by the Ministry of Education. He will also assist the school administration by liaising with the relevant offices of the Government of Saudi Arabia to meet the various requirements of the School.

B) Embassy of India, Riyadh:

i) The Ambassador of the Republic of shall be the Patron of each International Indian School in the Kingdom, in which capacity he shall advise Members of the Higher Board/the Managing Committees/Head of the

Institution/Members of all the Indian Schools to ensure that educational needs of Indian citizens and their educational institutions run in this country in the best possible way, and to ensure that these Schools do not violate the guidelines issued by the Ministry of Education, Kingdom of Saudi Arabia, and the Central Board of Secondary Education. He will also ensure that the educational interests of the Indian community, particularly those of the pupils, are fully safeguarded at all times in the Kingdom of Saudi Arabia.

ii) An officer from the Embassy of India, Riyadh, or the Consulate General of India, Jeddah, not below the rank of Second Secretary, shall attend the meeting of the Managing Committee of each International Indian School in the Kingdom as an "Observer".

iii) In case of the closure of an International Indian School in the Kingdom due to unforeseen circumstances or due to cancellation of its license for any reason, all the movable and immovable properties of the School shall be settled under the supervision of the Ministry of Education according to Clause (19) of the Byelaws relating to Foreign Schools issued by the Ministerial Council vide circular No. (26), dated 4/2/1418 A.H., in coordination with the concerned authorities.

C) Higher Board to monitor the International Indian Schools in the Kingdom

i) There shall be a Higher Board to monitor the functions of all the International India Schools in the Kingdom. The Board will be made up of the following:

- a. *All Chairmen of the elected Managing Committees of the International Indian Schools, as members.*
 - b. *An expert (Indian national) in the field of education, as member.*
 - c. *An expert (Indian national) in the field of finance, as member.*
 - d. *An expert (Indian national) in the field of administration, as Member.*
 - e. *A representative of the Ministry of Education*
 - f. *A representative of the Embassy of India, not below the rank of Second Secretary, as observer.*
- ii) *The above-mentioned three Indian experts will be nominated as the Members of the Higher Board with the coordination and consultations between the Ministry of Education and the Embassy of India, Riyadh.*
- iii) *The President of the Higher Board will be selected from amongst the Members of the Board.*
- iv) *The Board shall meet routinely once in three (3) months or any time in case of emergency and shall submit its reports, decisions and recommendations in respect of each International Indian School in the Kingdom to the Department of Education under whose jurisdiction the School is located, Directorate General of Education (Foreign Education), Riyadh, and the Embassy of India for their consideration.*
- v) *All the Members of the Higher Board shall have the right to cast a vote. The decisions and the recommendations will be taken through majority vote.*

vi) Detailed rules relating to the functioning of the Higher Board shall be finalized within three months of the approval of this Charter by the Ministry of Education.

D) Central Board of Secondary Education, New Delhi

Each International Indian School, on the educational and academic side, shall function within the framework of the principles, rules, norms and procedures prescribed by the Central Board of Secondary Education, New Delhi, on the basis of a formal affiliation with the Board.

E) The Managing Committee:

i) Each school shall have a Managing Committee formed according to the procedures outlined in this Charter by the Ministry of Education and its rules & regulations. The tenure of the Managing Committee of each International Indian School shall be three years from the date of its formal constitution. The Managing Committee shall take care of the administrative, financial and educational interests of the School. The Committee, through its Chairman, will be responsible for all the affairs of the School before the government authorities and organizations of the Kingdom of Saudi Arabia.

ii) The Managing Committee shall be constituted as follows:

(a) One nominee of the Department of Foreign Education, under whose jurisdiction the School is located, as Observer

(b) One nominee of the Ambassador of India, Riyadh, as observer.

(c) A representative of the Directorate General of Education (Foreign Education), whenever it is needed.

(d) Elected members : Seven parents of the students of the school (five in case of School's with less than 1,000 students), who will be elected by the parents as per the rules laid down by the Ministry of Education), Riyadh; and

(e) The Head of the Institution will be the Member-Secretary of the Managing Committee of the School, who will be a non-voting member of the Committee.

(f) In case of non-availability of enough eligible candidates due to less number of students, the minimum number of Members would not be less than three.

F) Chairman of the Managing Committee

i) Chairman of the Managing Committee will be selected by the members of the Committee from amongst the elected members to head the Managing Committee of the School.

G) The Head of the Institution

Each School shall have a Head of the Institution, who shall be responsible for implementing the academic, administrative and financial decisions of the Managing Committee. The larger Schools shall have a separate Head of the Institution designated as the "Director" of the School. In smaller Schools (i.e. having less than 2,000 pupils), the Principal of the School will be the Head of the Institution. The selection of the Head of the Institution/Principal shall be done by the Committee in accordance with the rules and

*regulations laid down by the Ministry of
Education on appointment of
Director/Principal of the foreign schools.*

36. From a perusal of the above, it is clear that the following are the various bodies under which the school functions.

- (1) **Ministry of Education, KSA** - The Ministry of Education, KSA is the overarching authority under which the school operates. It exercises supervisory control and issues rules and regulations and management principles that are to be followed. The Ministry also nominates one officer as observer to ensure that the school functions as per the guidelines prescribed by the Ministry.
- (2) **Embassy of India, Riyadh**– The next body in the hierarchy is the Embassy of India in Riyadh. The Indian Ambassador in Riyadh is the patron-in-chief of the school, however the duty of the Embassy is also to ensure that the school does not violate the guidelines issued by the Ministry of Education, KSA and the CBSE. An Indian Embassy official attends the meetings of the school, only as an observer.
- (3) **The Higher Board to monitor International Indian Schools in the Kingdom of Saudi Arabia** – This is a board consisting of the chairman of the Managing Committee of the International Indian Schools, along with experts, and a representative of the Ministry of Education and Embassy of India.
- (4) **Central Board of Secondary Education, New Delhi**- The

International Indian Schools, which are affiliated to CBSE, shall work within the framework prescribed by the CBSE.

- (5) **The Managing Committee** – The school is primarily administered by the Managing Committee which is elected every 3 years. It takes care of the administrative, financial and the educational interests of the school. The Committee is answerable to the government authorities in KSA. It consists of the nominee of Department of Foreign Education, one nominee in the form of the Indian Ambassador, the representative of Director General of the Education, elected members etc.
- (6) **Chairman of the Managing Committee** – The Chairman of the Managing Committee is chosen from the nominated members of the Committee.
- (7) **The Head of the Institution** – The Director of the school is the head of the institution in case the school functions with more than 3000 students. In cases when the school functions with less than 2000 students, the Principal will be the head of the institution. The Director or the Principal are chosen by the Managing Committee in terms of the rules prescribed by the Ministry of Education, KSA.

The functions of each of the above entities are also contained in the Charter. Further, the school is licensed by Ministry of Education, KSA, and the license number is 72/J.

37. Disputes between the Petitioners and school appears to have been arisen due to some allegations levelled by the father of the Petitioners

against the school, which generated enormous animosity, leading to the impugned Transfer Certificates being issued against both the children. This Court is not concerned with respect to the nature of the allegations raised by the father - against the school, in respect of the management of the school, against the ex-principal of the school, etc. The father of the Petitioners has in the past contested the elections to be represented on the Management Council of the school, however, was not successful in the same. The question in this case is not in respect of the allegations or about the election of the Petitioners' father, but only in respect of Transfer Certificates issued in respect of the Petitioners, and whether this Court has the jurisdiction to pass any directions against the school concerned, which is located in the Kingdom of Saudi Arabia.

38. The two preliminary grounds on which the Petitioners seek to knock the doors of this Court are (i) due to the affiliation of the school with CBSE and (ii) the Indian Ambassador in KSA being the patron-in-chief of the school. Whether these two facts by themselves would be sufficient for this Court to exercise jurisdiction, when the school, located in Saudi Arabia, admittedly is under the direct supervision of the Department of Education, KSA is a question to be examined.

39. The bye-laws of the CBSE, which are relied upon by the Petitioners in respect of foreign schools are as under:

“2.5 Special Provisions for Foreign Schools

The following special provisions have been made in respect of the schools situated in foreign countries seeking affiliation with the Board. The special provisions are to be read in reference to the existing provisions applicable to the schools in India. The other provisions will be applicable to

the foreign schools to the extent possible of not otherwise provided for.

2.5.1 No Objection Certificate (NOC)

The schools will submit No Objection Certificate issued after due diligence by the High Commissioner/ Consulate/ Embassy of India in the concerned country clearly stating that the school has been established with the legal and administrative framework if the respective country by an entity permitted to establish and run school in that country. The NOC shall clearly mention that the school fulfils all the conditions required for establishing and opening a school including land requirements in the respective country.

2.5.2 Teachers

The school situated in foreign country shall have qualified teachers as per the qualifications prescribed in the respective country for teachers at various levels.

2.5.3 Salary of Teachers and Staff

The school situated in foreign country shall pay salary and allowances to teachers and staff as per the prescribed norms of the respective country.

2.5.4 School Management Committee (SMC)

The school situated in foreign country shall constitute a School Management Committee if the local laws of the respective country provides/ mandates for the same. In case, the local laws does not provide/ mandates for constitution of School Management Committee (SMC), the school shall submit a declaration/ affidavit stating the same.

2.5.5 Building, Fire, Water and hygiene Certificates

The school situated in foreign country shall procure and submit the Building, Fire, Water and

Hygiene Safety Certificates if issued by the concerned department/s in the respective country. In case these certificates are not being issued in the respective country, the school shall submit a declaration/ affidavit stating the same.

2.5.5 Finances and Accounts

The school situated in a foreign country shall maintain its accounts in accordance with applicable laws in the respective country.”

XXXXX

“2.5 Application for running the classes from Class- I onwards for schools already affiliated for classes VI onwards

No school affiliated with the board for running classes 6th onwards, shall start classes 1st to 5th without formal approval from the Board. Such application of the school will be subject to the following.:

15.9.1 The board may conduct an inspection before deciding on the request of the school.

15.9.2 The request for running classes 1st onwards is subject to deposition of requisite fee as given in Appendix -I

15.9.3 The school shall obtain the recognition for classes 1st to 5th under RTE Act 2009 from the Education Department of State.

15.9.4 The school shall run the classes 1st to 5th from the same campus where the higher classes are running and the address on which the affiliation as granted.”

`XXXXX

“18.3.2 The legal jurisdiction for the suits to be filed against the Board shall be the Union Territory of Delhi only.”

It is on the strength of the above clauses of the bye-laws that the Petitioners wish to maintain the writ petition before this Court.

40. A perusal of the above bye-laws of the CBSE shows that in respect of foreign schools, there are specific provisions stipulated within the said bye-laws. As per clause 2.5, the school has to be established as per the local and administrative framework of the respective country where it is located, by an entity which is permitted to establish and run the school - in that country. The clause also requires that a no objection certificate is issued by Embassy of India in that country, in which the School is to be opened, and it has to be specifically mentioned that the school satisfies the conditions, required for establishing and opening the school, in the said country. It is, therefore, clear that the primary administration and framework under which the school operates is subject to the local authorities where the school is located and the CBSE does not control the schools.

41. In the present case, the School operates under the administration and rules and regulations framed by the Department of Education, KSA. The qualifications of the teachers would also have to be prescribed by the same body. Pay, salary and allowances are also governed by the local administration. The School Management Committee is established as per the local laws. Further, the finance and accounts would also be as per the application of the laws of the country where the school is situated. Thus, the CBSE itself recognizes that the primacy is of the local administration of the country where the school is located. It is only after the said conditions and terms having been satisfied, that the CBSE can even consider the application for affiliation. There are certain requirements for CBSE to grant affiliation to a particular school in terms of the local requirements i.e. land

requirement, physical infrastructure requirement, staff, financial resources, fees, school management committee, etc. On the inspection of a local school, all these conditions would be required to be satisfied, however in case of foreign schools, the requirements that are to be satisfied are those prescribed in the country where the school is located.

42. The CBSE may inspect the school for the purpose of granting affiliation for higher grades i.e. 10th and 12th, however, the same would not mean that the school itself is governed by the CBSE or by the Indian Ambassador stationed in Saudi Arabia.

43. The grievances raised in the present case do not relate to affiliation with CBSE but relate to the management and administration of the school. The school is under the direct control of the management committee of the school as also the Council, Department of Education, KSA. Any allegations raised against any staff member of the school would not come under the jurisdiction of the CBSE or under the supervision of the Indian Ambassador. The allegation of mis-management of the school or any other mis-demeanours by any office bearer in the school would have to be dealt with, only in accordance with local laws.

44. The school itself has a proper Management Council, election to which is periodically held as per the local laws. Elections to the management council is not the subject matter of this petition, and does not fall within the jurisdiction of CBSE or the Indian Ambassador. The Transfer Certificates against the Petitioners were issued by the school in terms of the Charter, due to the conduct of the parent of the students. The Charter itself has various provisions in respect of the manner in which the parents have to conduct themselves. While the Indian Ambassador may be patron-in-chief, the

Charter which governs the school is not under the sole authority of the Indian Ambassador. As set out above, there are various hierarchy of entities, which are managing the school and are responsible for the functioning of the school. The functions of these bodies are set out in the Charter itself. The violation of the Charter would be subject to the local laws of Department of Education, KSA and cannot be monitored remotely by Indian Courts. The Transfer Certificates primarily state that there has been non-compliance of the Charter by the father of the Petitioner students. The mere fact that this Charter has been issued by the Indian Embassy in Riyadh would not mean that the school would be amenable to the writ jurisdiction by this Court. The structure of the management of the school itself shows that the Management Council and Higher Board consists of various persons within KSA including nominees by the Department of Education, Director of Education and one nominee by Indian Embassy. The Managing Committee is not answerable to this Court in any manner, whatsoever, neither is the head of the institution. The conduct of the parents and discipline to be maintained in the school etc., are also local issues which are to be addressed within the school and cannot be subjected to the jurisdiction of a foreign Court.

45. That is, however, not to say that this Court would not have jurisdiction in any circumstances, whatsoever. There could be various factual scenarios where certain issues may involve allegations against any Embassy official or withholding/cancellation of affiliation by the CBSE, which could be raised, and could be considered by this court if permitted in law. However, the allegations in the present case are concerned with the local administration and conduct of the school, which would clearly not be within the jurisdiction of this Court.

46. Dr. Khan, ld. counsel appearing for the Petitioners relies upon the judgement in *Vikramaditya Jain (minor) v. Union of India & Ors., 1998 (47) DRJ* and *Andi Mutka Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors., (1989) 2 SCC 691*, to argue that the school would be a public authority under Article 226. On this proposition, there could be no doubt that a school, which is recognized by the Department of Education or Board in India, would be subject to the writ jurisdiction of this court. The question that arises here is not as to whether such a school can be subjected to the writ jurisdiction, but rather concerns as to whether a foreign school, located in Saudi Arabia, can be subjected to the writ jurisdiction of this court. The grievances concerned with the foreign school, even as per the CBSE bye-laws, being in terms of the local laws of KSA, the school cannot be held to be amenable to the writ jurisdiction under Article 226, in respect of issues which relate to the local administration and management of the school.

47. Dr. Khan has also relied upon the Vienna Convention on Diplomatic Relations 1961 to argue that under Article 31, a diplomatic agent enjoys an immunity, and therefore the Ambassador may not be questioned on his decision and recommendation in KSA. Article 31 of the Vienna Convention on Diplomatic Relations, 1961, would have no application in the present case, inasmuch as the grievance of the Petitioners is not against the Indian Ambassador or the Indian Embassy. Rather, the allegation is against the school, which has issued Transfer Certificates due to a violation of the Charter, which governs the school. The Charter by itself may have been prescribed by the Indian Embassy, however such a prescription only means that the school functions under the said Charter, and nothing more. The

Charter, thus, recognizes the role of the various bodies including the Department of Education, Management Committee of the school and various nominees therein, with respect to the manner and conduct of day to day administration and management of the school. Merely because the Charter is prescribed by the Indian Embassy cannot make the school amenable to writ jurisdiction of this Court.

48. In *Dominic Simon v. Central Public Information Officer & Anr.*, **2018 SCC OnLine Del 7026**, this Court was concerned with the same school in Saudi Arabia and the question as to whether the said school would come under the purview of the RTI Act, 2005. The Id. Single Judge of this Court held that the IIS's located in KSA, do not constitute a "public authority", even under the definition provided Section 2(h) of RTI Act, 2005. The relevant observations are set out herein below:

"2. The petitioner also prays for an order: (i) declaring that "the International Indian Schools in Saudi Arabia come under the purview of the RTI Act, 2005"; and (ii) directing the respondents to disclose the information sought by the petitioner.

Xxxx

7. The respondent has filed a counter affidavit wherein it is affirmed that all the International Indian Schools in the Kingdom of Saudi Arabia are directly controlled by the Saudi Ministry of Education through a set of (i) Organizing Rules and (ii) the Charter of International Indian Schools in the Kingdom of Saudi Arabia. It is affirmed that since more than three million Indians are residing in the Kingdom of Saudi Arabia and education in Saudi Arabia is expensive, Saudi Arabian authorities have issued licences to run ten International Indian Schools, which are located in nine cities in the Kingdom of Saudi Arabia. These

schools are affiliated to CBSE.

8. It is also affirmed that the Indian Embassy of the Indian Government does not shoulder any administrative or financial responsibility with regard to the said schools. It is stated that the said schools are run by financial contribution of the members of the Indian community. The schools are managed by a Higher Board (hereafter 'the HB') and the Managing Committee of the International Indian Schools in Saudi Arabia. It is stated that the Indian Ambassador to Saudi Arabia has been given the status of "Patron" as a special gesture by the Saudi Authorities. It is stated that he has no effective role to play and his status as a patron is merely symbolic. Based on the aforesaid status, he is also a Member of the Managing Committee. It is stated that he can attend the meetings of the said Committee as an Observer but he has no voting right in the decisions of the said Committee. He also has a right to nominate a person to attend the meetings as an Observer in his place.

9. In view of the above, the Indian International Schools located in the Kingdom of Saudi Arabia cannot be considered as public authorities within the definition of Section 2(h) of the Act as they are neither controlled nor funded by an appropriate government."

49. As held above, this Court, in respect of the same school, has already come to the conclusion that the school would not be a 'public authority' for the purpose of the RTI Act in India. Similarly, for the purpose of quashing of Transfer Certificates issued by the school, which is an action wholly within the administration and control of the management of the school, this Court concludes that the present writ petition is not maintainable. Further, due to the school being located in a foreign land, no directions can be issued

by this court, in respect of the allegations raised in this writ petition against the school and this court lacks territorial jurisdiction to entertain this petition.

50. When the present writ petition was filed, this Court had initially granted an interim order directing the school to continue online classes for the Petitioner students, to ensure that they do not suffer in terms of education, due to the pandemic. This interim order was in the form of a statement by the counsel for the Respondents, before this court. This position continues till date and the students have been permitted to attend the online classes. In view of the fact that some period has lapsed since the time when the present writ petition has been pending adjudication before this Court, it is deemed appropriate to request the school to consider not discontinuing the online classes to the Petitioners, and permitting the Petitioners to complete the current academic year, in order to ensure that the students are not academically jeopardized in any manner.

51. With these observations, the writ petition is dismissed as being not maintainable. This Court has not made any observations on the merits of the allegations made. The remedy of the Petitioners to approach the appropriate forum, in accordance with law, is left open.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 18, 2020/dk/Ak