

\$~4 (2021 Cause List)

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

Date of Decision: 07.12.2021

+ W.P.(C) 443/2020

RASHTRIY HIGHER SECONDARY SCHOOL Petitioner

Through: Mr. Sanjay Sharawat, Advocate
versus

CENTRAL BOARD OF SECONDARY
EDUCATION

..... Respondent

Through: Ms. Seema Dolo, Advocate for
CBSE.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. The challenge in this writ petition is to a communication dated 17.08.2019, by which the respondent- Central Board of Secondary Education ["CBSE"] rejected the application of the petitioner- Rashhtri Higher Secondary School ["the School"] for affiliation.
2. The School was established in the year 2002 in District Shonbhadra, in the State of Uttar Pradesh and is affiliated to the Uttar Pradesh Education Board. On 30.06.2015, the petitioner sought to switch over its affiliation from the Uttar Pradesh Education Board to CBSE for which it successfully submitted an online application form.

The CBSE, by a communication dated 20.11.2015, identified various deficiencies in the application for recognition. The petitioner responded to this communication on 15.12.2015 and claims to have answered each of the deficiencies raised by CBSE. The CBSE thereafter constituted an Inspection Committee for inspection of the School. This was communicated to the members of the Inspecting Committee by a communication dated 03.02.2016, a copy whereof has been placed on record along with counter affidavit filed by CBSE. It appears that no further progress was made thereafter until CBSE issued the impugned communication dated 17.08.2019.

3. By the impugned letter, the petitioner's application has been rejected with the following observations:

"1. The school is required to submit an affidavit duly supported with evidence to this effect that the applicant school had intimated to the concerned Education Department of the State about the application made to CBSE for seeking affiliation to the Board.

2. The School is required to furnish land documents i.e. Lease deed/Sale deed in favour of School/Society running the school duly executed in the office of the Sub Registrar along with land certificates as per appendix VI prescribed in the Affiliation Bye Laws duly signed by Competent Authority to the effect that the said entire land constitutes as single plot.

3. The School is required to submit an affidavit of NPC in original duly sworn in before a first-class magistrate by the President or Secretary of the Society/Trust running

the school to the effect that the Society is of non-proprietary character in nature.

4. The school is required to submit an affidavit in original duly sworn in before the First-Class Magistrate to the effect that the students of "State pattern class, from IX XII will be closed in phased manner"

5. The School is required to submit last 03 years State Board result of class X."

5. While issuing notice in this petition, by an order dated 14.01.2020, the Court recorded a *prima facie* observation that the impugned order does not appear to be sustainable as the entire blame cannot be placed on the petitioner if the Inspection Committee constituted by the CBSE did not carry out an inspection. An opportunity was given to the learned counsel for CBSE to take instructions, and to file a counter affidavit if CBSE wished to resist the petitioner. The counter affidavit has since been filed.

6. Mr. Sanjay Sharawat, learned counsel for the petitioner, submits that the decision of CBSE is wholly irrational inasmuch as the petitioner's application has been rejected due to failure of the Inspecting Committee to conduct the inspection and submit its report within the time stipulated. Mr. Sharawat submits that the petitioner was not to blame for these state of affairs, and ought not to be meted with the consequences.

7. Ms. Seema Dolo, learned counsel for CBSE, submits that the petitioner was also sent a copy of the communication dated 03.02.2016 and was well aware that the inspection was to be conducted within 30 days. The petitioner did not address any

correspondence to CBSE in this regard until the order of rejection was issued almost three years thereafter. In these circumstances, Ms. Dolo submits that it would be appropriate to direct the petitioner to approach CBSE afresh for affiliation. She states that with the passage of time, the norms of affiliation have also undergone a change and the petitioner's application would in any event have to be considered only for the academic year 2022-23.

8. Having heard learned counsel for the parties, I am unable to accept the principal contention of CBSE. The impugned order rejects the application of the petitioner only on the ground that the Inspecting Committee did not submit its report. The Inspecting Committee was constituted by CBSE, and was not within the control of the petitioner. The petitioner cannot be held responsible for any failure on its part to conduct the inspection or submit its report within the stipulated time. There is no allegation of any other act or omission on the part of the petitioner which may have hampered the Inspecting Committee in this regard.

9. Ms. Dolo's submission that the petitioner did not follow up on its application is also unpersuasive: the petitioner had made an application; the application was being processed; and an Inspecting Committee had been appointed. A public authority cannot be heard to say that it is bound to act on an application and take a decision only if the applicant chases it to do so.

10. In view of the aforesaid circumstances, the impugned decision of CBSE dated 17.08.2019 is, liable to be set aside.

11. The question which then arises is as to the relief which ought to

be granted in favour of the petitioner. The petitioner's application was made in the year 2015. More than six years have since passed. According to Ms. Dolo, the requirements of affiliation, including the application, and the required documentation have undergone some changes in the meantime. In my view, the appropriate course in these circumstances would be to direct CBSE to consider the petitioner's application in the light of its current affiliation norms, and for the next academic year i.e., 2022-23. The fact that the petitioner was content to await the orders of CBSE from 2016 to 2019 demonstrates that it was also not entirely diligent in pursuing its application. The petitioner cannot be permitted now to prosecute its application on the basis of the norms which existed in the year 2015-16.

12. For the aforesaid reasons, the writ petition is disposed of with the following directions:-

- a. The impugned order of the CBSE dated 17.08.2019 is set aside.
- b. CBSE is directed to reconsider the petitioner's application for affiliation in accordance with its current affiliation norms and to dispose of the same in time for the academic session 2022-23.
- c. The petitioner will not be required to submit any further fees for this purpose.
- d. The petitioner will submit any further documents, forms or other information required by CBSE in order for it to assess the petitioner's eligibility in terms of the current norms.
- e. In the event CBSE wishes the petitioner to submit a fresh application when the portal opens for filing of applications in January, 2022, the petitioner will do so and CBSE will ensure

that the application is accepted without any further payment of fees.

- f. As the impugned decision of CBSE is being set aside, CBSE is directed to ensure that the petitioner's application is processed and decided in time for the academic session 2022-23, positively.
13. The writ petition is disposed of with these directions.

PRATEEK JALAN, J

DECEMBER 7, 2021
'Bp'/'



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