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

+ **FAO(OS) (COMM) 69/2023, CM APPL. 18633/2023 (Stay)**
AVIRAL EDUCATION WELFARE AND CULTURAL
SOCIETY & ANR. Appellants

Through: Mr. Kamal Gupta, Mr. Sparsh
 Aggarwal, Mr. Manish Vashist
 and Ms. Kriti Gupta, Advs.

versus

THE DELHI PUBLIC SCHOOL SOCIETY Respondent

Through: Mr. Puneet Mittal, Sr. Adv.
 with Ms. Sakshi Mendiratta,
 Advs.

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+ **LPA 213/2023 and CM APPL. 15480/2023 (Stay)**
AVIRAL EDUCATION WELFARE AND CULTURAL
SOCIETY & ORS. Appellants

Through: Mr. Kamal Gupta, Mr. Sparsh
 Aggarwal, Mr. Manish Vashist
 and Ms. Kriti Gupta, Advs.

versus

THE DELHI PUBLIC SCHOOL SOCIETY..... Respondent

Through: Mr. Puneet Mittal, Sr. Adv.
 with Ms. Sakshi Mendiratta,
 Advs.

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+ **LPA 214/2023 and CM APPL. 15482/2023**

SURBHI DUBEY & ORS. Appellants

Through: Mr. Gautam Narayan, Ms.
 Asmita Singh, Mr. Harshit Goel
 and Mr. Siddhant Singh, Advs.

versus

DELHI PUBLIC SCHOOL SOCIETY & ORS.

..... Respondents

Through: Mr. Puneet Mittal, Sr. Adv.
 with Ms. Sakshi Mendiratta,
 Advs.

Mr. Adarsh Shastri, Adv. for R-
 3.



CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
21.09.2023

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YASHWANT VARMA, J. (ORAL)

1. These two **Letters Patent Appeals**¹ and the appeal taken against an order granting injunction were taken up for consideration together since they emanate from a common dispute. The dispute itself relates to the termination of an Agreement which had been executed by **Delhi Public School Society**² with **Aviral Education Welfare and Cultural Society**³ and purporting to be a **Joint Venture Agreement**⁴ enabling AEWCS to establish an English medium school using the name “Delhi Public School/DPS”. The JVA dated 10 October 2016 in terms of Clause 2 conferred the following rights on AEWCS.

“Incidental to the arrangement between the parties, DPSS hereby permits and allows the AEWCS to use the name Delhi Public School, its logo and motto as a means of identification for the school mentioned in clause one and not for any other purpose. The aforesaid limited usage of the name Delhi Public School, its logo and motto shall be without any obligation to pay (upon the AEWCS) any consideration. It is further agreed that such usage is limited for the predetermined purpose and does not create any right, title or interest in favour of the AEWCS on the exclusive intellectual property rights of DPSS. Such limited usage is permitted only until the validity of this Agreement and such usage may, however, be in conjunction with any other name that may be decided between DPSS and AEWCS”

2. The termination clause stood comprised in Clause 13 and reads

¹ LPAs
² DPSS
³ AEWCS
⁴ JVA



as follows: -

“If any of the parties hereto at any time wishes to terminate this Agreement it shall do so by giving at least six months prior notice in writing to the other AEWCS of such intention, provided that such termination shall be effective only at the close of the academic session then underway.”

3. On 24 September 2018, DPSS is stated to have issued a notice apprising AEWCS that the Agreement would stand terminated w.e.f 01 April 2019. It also apprised AEWCS that consequent to termination, it would stand restrained from using the name/logo “*Delhi Public School*” / “*DPS*” or any other symbol, logo, name or acronym similar or deceptively identical thereto. AEWCS is stated to have initially moved this Court by way of a petition under Section 9 of the Arbitration and Conciliation Act, 1996 which came to be numbered as OMP(I)(COMM) 98/2019. However, on the very first date of hearing, the Court referred parties to the Mediation and Conciliation Centre to enable them to explore the possibility of reaching a settlement.

4. Since no settlement appears to have been arrived at, AEWCS proceeded to file a writ petition being W.P.(C) Nos. 8219/2020 seeking the following reliefs: -

“A. Declaration that last sentence of Clause 2 (“*Such limited usage is permitted only until the validity of this agreement ...*”), Clauses 8(i), 13 & 14 of the Joint Venture Agreement dated 10.10.2016, executed between the Petitioner No.1 & the Respondent, are absolutely illegal, arbitrary, unconscionable, unconstitutional, violative of public policy, contrary to Section 23 of the Contract Act, violative of Articles 14, 21, 21a of the Constitution of India & violative of the Right of Children to Free & Compulsory Education Act, 2009.

B. Declaration that Clause 16 of the JVA dated 10.10.2016 regarding Arbitration, is illegal, null & void, *void ab initio* &



unenforceable, being biased and in violation of Section 28 & Schedules to the Arbitration & Conciliation Act, 1996.

C. *Certiorari* quashing the notice of termination dated 24.09.2018 as being absolutely illegal, arbitrary, unconscionable, unconstitutional, violative of principles of natural justice, contrary to the public policy and being violative of the Fundamental Rights of the Petitioners.

D. Pass any other further orders which this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

5. On 22 December 2022, DPSS proceeded to institute CS(COMM) 580/2020 seeking a permanent injunction restraining AEWCS from infringing its trademarks. In the writ petitions, the principal question which appears to have been raised was with regard to its maintainability. Insofar as the suit is concerned, on 10 March 2023, the learned Single Judge while considering the application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 came to hold that the action of AEWCS in continuing to use the name/logo “*Delhi Public School*”/ “*DPS*” clearly amounted to infringement and passing off. While proceeding to frame an order of injunction, the learned Single Judge held as follows: -

“10. The above clearly proves infringement, passing off and amounts to false advertisement. Defendants intend to ride upon the goodwill and cachet enjoyed by DPSS. Mr. Mittal has also pointed out that for last three years, Defendants have admitted students representing themselves to be affiliated to DPSS, without disclosing that the underlying contract with DPSS (JVA), which gives them the right to use IP rights of DPSS, no longer exists. In view of the fore-going, the Court is convinced that DPSS has made out a strong *prima facie* case in its favour. Balance of convenience also lies in its favour and in case an order of injunction is not granted, irreparable loss would be caused not only to DPSS, but also to public at large. Accordingly, during the pendency of the suit:

(i) Defendants and their directors, employees, trustees, office bearers, agents, representatives, and all other person(s) acting for and on their behalf are restrained from offering for service/ sale,



advertising, adopting, using, or dealing in any manner with the well-known IP rights of DPSS ('Delhi Public School', 'DPS' and



' or any other trademark(s)/copyright(s) that are identical or deceptively similar to that IP rights of DPSS; and

(ii) DPS-S is directed to remove the impugned trademarks and copyrights and also name and photographs of office bearers of DPSS from their website (www.dpssahibabad.com) forthwith."

6. Reverting then to the writ petitions, it becomes pertinent to note that the learned Single Judge has ultimately held that the terms of the JVA did not stand imbued with any public law character and consequently, the writ petition would not lie. We deem it apposite to notice the following findings as were returned by the learned Single Judge insofar as the issue of maintainability of the writ petitions are concerned: -

"19. To sum up, DPSS may be discharging public duties or public function, however, in the instant case, JVA and obligations performed by DPSS, which is the subject matter of the present writ petition, cannot fall within the realm of public duty. There is no statutory or any other obligation cited or shown to the Court whereunder DPSS pose the duty or obligation to the public in the nature of entering into the JVA. The arbitrary action complained of, arising from the impugned termination notice, does not have any direct nexus with the discharge of public duty. Public law action which confers a right upon the aggrieved to invoke extraordinary writ jurisdiction under Article 226 of the Constitution is not meant for redressal of disputes arising from breach of contracts, which have no public element as their integral part. Even if the Court applies Article 12's expansive definition, granting DPSS 'State' status due to its functions, the actions challenged by Petitioners, stemming from the JVA and lacking public law elements, cannot subject DPSS to this Court's writ jurisdiction. Furthermore, RTE Act does not envisage a right of parent/student to gain admission to



a particular school; they merely have a right to seek compulsory education, which is unabridged by DPSS's impugned action.

21. Thus, the principles derived from the cited cases align with the Court's view. Article 226 of the Constitution does not permit writ jurisdiction to enforce purely private contracts between parties, as in this case. Thus, the Court sees no basis to entertain the current petition."

7. The learned Single Judge while construing the nature of the JVA has significantly observed as follows: -

"14. In general, parties to a contract have the freedom to agree on the terms of the contract, as long as the terms are not contrary to law. Upholding the sanctity of contracts is essential in a legal system. Thus, in the opinion of the court, allowing parties to challenge contractual clauses on constitutional grounds without demonstrating a clear violation of fundamental rights or a public law element would undermine the stability and predictability of contractual relationships. Challenging the termination of a contract on anvil of constitutional provisions and disputing the validity or enforceability of a contract clauses on the grounds of fairness or equity are not sufficient grounds for invoking a writ petition. Writ petitions are reserved for cases with a significant public interest or where constitutional principles are genuinely at stake. When a party challenges contractual terms being unconstitutional, higher threshold is required to be met for the court to admit such a petition. This is crucial to maintain the balance between upholding individual rights and respecting the sanctity of private contracts. No party can be allowed to bypass its civil remedies before the civil court simply by alleging unconstitutionality for invoking the writ jurisdiction. The inviolability of contractual terms must be maintained, and they cannot be disregarded without a valid justification before a writ court. This approach helps preserve the purpose of writ jurisdiction as a safeguard for protecting fundamental rights and addressing matters of public importance. Thus, AEWCS must clearly show fundamental rights violations or public law elements to challenge contractual terms based on constitutional provisions.

15. Herein parties have entered into a purely commercial venture/collaboration for establishing a school. Under the agreement, AEWCS has set up the school, which is presently affiliated with CBSE and recognised by the Government of Uttar Pradesh. CBSE has not de-affiliated the school on account of a termination of JVA. The termination of the JVA does not have the consequence of shutting down the school. It remains a recognised,



private school affiliated to CBSE, running independently since the year- 2019. Thus, school's existence is not at stake. What, then, are the ramifications of termination? To answer this question, it is essential to understand the rights, obligations, role, and responsibilities of parties under the JVA. This can be discerned from the clauses below:

"4. The School shall be managed and run by virtue of the present Agreement through a "Board of Management" which shall comprise of 9 (Nine) members as follows:-

- a) Chairman-Who shall be the Chairman of DPSS or any other person nominated by the Chairman, DPSS.
- b) Vice Chairman - Who shall be nominated by the Chairman, DPSS.
- c) Pro-Vice Chairman-Who shall be Head of AEWCS or his nominee and shall exercise powers of, Chairman and Vice Chairman in their absence.
- d) Six (6) other members out of which three (3) shall be nominated by the a) Chairman, DPSS and remaining three (3) shall be the nominees of AEWCS. The Principal of the School will act as Secretary to Board of Management. However, he shall not be a member of the Board.

5. The Board of Management shall be responsible for the management, control and running of the School and save as otherwise provided in this Agreement, all rights in relation to the School shall vest with the Board of Management. However the liability in relation to the School Board of Management shall be payable/reimbursable by AEWCS solely, and AEWCS hereby indemnifies DPSS and nominees of DPSS on Board of Management against all possible liabilities and not limiting to tortuous or contractual liability only in relation to the School The Board of Management will be under an obligation to faithfully implement policy decisions of DPSS. Further the Board shall be responsible for the following:

- a) To impart instruction through English medium and prepare students for Senior Secondary School Examination of CBSE.
- b) To appoint a Principal of the said school as per CBSE norms who will be selected by a Selection Committee duly constituted by Chairman DPSS to which one representative of AEWCS will be invited.
- c) To select teachers and other staff for the school as per CBSE norms through a duly constituted selection committee by the DPSS, which will include the Principal and one representative of AEWCS.
- d) To obtain affiliation of the said School with CBSE.



- e) To fix the fee structure for the School.
- f) To approve the budget (Capital and Revenue) of the said School.
- g) To raise funds, by way of loans, donations and voluntary contributions through AEWCS but in consonance with DPSS norms and reputation and on compliance of applicable rules and laws.
- h) To comply with all the Rules and Regulations of CBSE as may be enforced from time to time.
- i) To consider and approve or modify any emergency or adhoc decision(s) taken by the Pro-Vice Chairperson on the recommendation(s) of the Principal.
- j) To consider and approve or modify all the decisions (adhoc appointments, etc.) taken by the Local Sub Committee (presided over by Pro-Vice Chairperson) and consisting of Principal and other experts who may be nominees of AEWCS.
- k) To ensure compliance of all statutory requirements as may be applicable from time to time within the State.
- l) To meet at least three times in a year out of which at least one meeting to be held in Delhi.
- m) To appoint a second signatory for Bank Accounts of school from and among the four (4) members of AEWCS for all financial transactions, the first signatory being Principal and to ensure maintenance of proper books of account and audit thereof.
- n) To ensure proper recording of the minutes of the meetings.
- o) To approve audited accounts of the School.
- p) To appoint Statutory Auditor every year.

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7. DPSS in connection with running and management of the School hereby undertakes:

- a) To maintain a standard of excellence in education in the School.
- b) To carry out only such academic and other educational activities as shall be considered related or/ and incidental to imparting of quality education.
- c) To appoint such members to the Board of Management referred to in clause 5 above who are duly qualified and have sufficient experience. The right to replace and/or reappoint them shall be reserved to DPSS.
- d) To provide expertise, know-how and educational tools and material to ensure academic standards and co-curricular activities in the School as considered fit and proper by it.
- e) To evaluate and monitor academic and other activities in



the School periodically through visiting teams appointed by it from time to time. Such visiting teams shall report back its findings and recommendations to DPSS. Their advice and suggestions shall be considered by the Board of Management for implementation. The travel and incidental expenditure of the visiting team shall be borne by the School/AEWCS.

f) To nominate representatives for the selection/ recruitment of the staff.

g) That pursuant to clause 2 herein above, to restrictedly allow and permit the use/application of name/logo/motto of DPSS in the manner as set forth in clause 2."

8. According to learned counsel for the appellant, DPSS which is engaged in the establishment of educational institutions is clearly discharging a public function. It was the submission of learned counsel that education has been clearly recognised as being a public function since it essentially amounts to the discharge of an obligation which is primarily that of the State. According to learned counsel, since the JVA was in aid and extension of the aforesaid public purpose, the writ petition would clearly lie.

9. Joining the appellants in the challenge to the view taken by the learned Single Judge on the issue of maintainability, Mr. Gautam Narayan, learned counsel who appeared for some students would contend that the termination of the JVA unilaterally by DPSS undoubtedly had a direct and prejudicial impact on the right of students to pursue their studies. According to Mr. Narayan, it is this aspect which clearly imbued the action assailed before the learned Single Judge with a public law hue and constituted a legally justifiable ground for holding the petition to be maintainable.

10. We note that while considering the issue of maintainability of a writ petition under Article 226 of the Constitution, the Court in



Naresh Kumar Beri & Ors. v. Union of India & Ors.⁵ had enunciated the legal position which prevails in the following terms:-

“2. Mr. Nayar, learned Senior Counsel appearing for AIL, has taken a preliminary objection to the maintainability of the writ petition and submits that the writ petition would not lie since the terms of engagement of the petitioners was not governed by any statutory provisions. Learned Senior Counsel contended that since the engagement of the petitioners was governed by a mere contract of service, a writ petition either for its enforcement or alleged violation of its terms would not be maintainable. Mr. Nayar has in this regard placed reliance upon the following principles as laid down by the Allahabad High Court in **Ram Niwas Sharma vs. Union of India and Others**. [2020 SCC OnLine All 205]:-

“15. Roychan Abraham clearly holds that it is only a “public law action” which confers a right upon an aggrieved person to invoke the jurisdiction under Article 226 of the Constitution. It also notes that wherever the Courts have in fact intervened and invoked their powers conferred by Article 226, it was only in situations where service conditions were regulated either by statutory provisions or where the employer had the status of State.

16. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke this Courts powers conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions the matter would remain in the realm of an ordinary contract of service.

⁵ 2022 SCC OnLine Del 3585



17. This distinction which must necessarily be borne in mind has been eloquently explained by the Supreme Court in a decision rendered just a few days after Roychan Abraham in *Ramakrishna Mission v. Kago Kunya*. After noticing the earlier decisions rendered on the subject, the Supreme Court held thus:

“35. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

36. Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The nature of the work which is rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is purely voluntary.

38. It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226. Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organisations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In



Federal Bank (supra), while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the court held thus:

“33. ...in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank...”

(emphasis supplied)

39. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in *K K Saksena* (supra) this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the



general principle that a contract of personal service is not capable of being specifically enforced or performed.

...

41. For the above reasons, we are of the view that the Division Bench of the High Court was not justified in coming to the conclusion that the appellants are amenable to the writ jurisdiction under Article 226 of the Constitution as an authority within the meaning of the Article.”

18. As has been lucidly explained, contracts of a purely private nature even though entered by bodies which may perform a public function would not be subject to judicial review. The only exception would be where such contracts are governed or regulated by statute. In the present case it is the undisputed position that the byelaws and the service conditions which apply are non statutory. They are deprived of any statutory ordainment. Such a contract, as noted above, would remain a pure private contract of service. In that view of the matter the writ petition challenging the termination of such a contract would not be maintainable.”

11. It becomes pertinent to note that the decision of the Full Bench of the Allahabad High Court in **Roychan Abraham vs. State of U.P. & Ors.**⁶ has also been duly noticed and relied upon by the learned Single Judge in the impugned order. It is pertinent to observe that the maintainability of a petition under Article 226 of the Constitution is dependent upon identifying whether the same relates to an action which can be said to fall within the realm of public law. It is well settled that while a body may be discharging a public function or performing a public duty that alone would not be sufficient to hold that all its actions would be subject to judicial review by Courts while exercising the power conferred by Article 226. The test as formulated by the various decisions of the Supreme Court including in

⁶2019 SCC OnLine All 3935



Ramakrishna Mission & Anr. v. Kago Kunya & Ors.⁷ is that while functions which fall within the domain of a public function or public duty would be open to scrutiny under Article 226, actions or decisions that are taken purely within the realm of a private contract would not be amenable to challenge under Article 226. We note that the Supreme Court in *Ramakrishna Mission* had lucidly explained this distinction by holding that even if a body discharges a public function in a wider sense, in the absence of the contract which is assailed being imbued with a public law element, a writ petition would not be maintainable.

12. Similar was the view expressed by the Full Bench of the Allahabad High Court in *Roychan Abraham* and which had been noticed with approval by the learned Single Judge while rendering the impugned judgment.

13. We deem it pertinent to observe that while the JVA did have at the center of its objectives the establishment of an educational institution and thus subserving the aim of providing education to children, the learned Single Judge was essentially called upon to consider whether the rights and obligations of the AEWCS and DPSS as flowing therefrom and the allegation of infraction of its terms could form subject matter of consideration under Article 226 of the Constitution. The subject matter of contestation was undisputedly concerned with the individual rights and obligations as claimed by AEWCS and DPSS. That was a matter which fell clearly within the realm of an ordinary contract. The disputes which arose out of the

⁷2019 16 (SCC) 303



JVA cannot be said to those which fall within the domain of public law. Parties may voluntarily enter into agreements to pursue a venture or enterprise which may serve public interest in a larger context. However, that would not clothe that contract with a public law element. Merely because parties may enter into a collaborative agreement to set up an educational institution, a hospital or any other venture which benefits the public at large would not justify disputes emanating therefrom being adjudicated in a writ petition. The objective and aim of the venture would be wholly irrelevant to answering the question of maintainability.

14. Learned counsel for the appellant also sought to invoke the doctrine of unconscionable terms of contract when referring to the unfettered right claimed by DPSS to terminate the JVA. The doctrine of unconscionable terms and Henry VIIIth clauses was evolved by the Supreme Court in the context of parties placed in an unequal bargaining position and where the ordinary individual was left to face the might of the State and sign on the dotted line. Those principles clearly have no application to the facts of the present case. We note that nothing compelled AEWCS to enter into the JVA. It could have established an educational institution in its own right. In fact, such a right inheres in it even today. However, once it chose to accept the terms of the JVA unequivocally, it would not be open to it to assail the contract on lines as sought to be advocated. In any case, this was not a case where the theory of unequal bargaining power could have been invoked. This quite apart from our principal conclusion that the disputes arising out of the JVA could not have formed subject matter of contest under the writ jurisdiction.



15. As was noticed by us in the preceding parts of this decision, the writ petition was essentially concerned with the validity of the termination action as brought by DPSS. That termination flowed solely from the JVA which was a contract which was wholly private in character and had no public law element attached to it. For all the aforesaid reasons, we have no hesitation in affirming the view expressed by the learned Single Judge.

16. Mr. Narayan contended that since the rights of students pursuing their courses came to be impacted by the termination of the JVA, the same constituted sufficient ground for the writ petition being entertained. While it may be true that the interest of the students studying in the school administered by AEWCS may have been impacted or disrupted, the same in our considered opinion would not constitute a facet germane for the purposes of considering whether the writ petition would be maintainable to resolve the inter se dispute between AEWCS and DPSS. While we do not intend to render any definitive opinion on whether the students would have had a right to sue DPSS, we deem it apposite to observe that we are principally concerned with the reliefs that were claimed in the writ petition and which were confined to the disputes which arose between AEWCS and DPSS from the JVA. That agreement did not confer any protection or guarantee upon the students. The fact that the interests of the students came to be allegedly affected would not be sufficient in law to hold that the JVA could be made the subject matter of an action under Article 226 of the Constitution.

17. Mr. Narayan further urged that even after the termination of the JVA, AEWCS continued to represent itself to be part of DPSS by



using IP rights of DPSS, thus misrepresenting the students as well as the public at large. If that be true, the same would at best constitute a cause of action that the students may have claimed against AEWCS. These and other allied issues which were addressed would have no bearing on the question of maintainability.

18. We further note that the learned Single Judge endeavored to safeguard the interest of the students who had been admitted in the school run by AEWCS by directing that within two weeks from the release of the impugned judgement dated 10.03.2023, DPSS shall issue publications in all leading newspapers which have circulation in the area where the school is located, informing all concerned that the students studying at DPS Sahibabad would be entitled to admission in any of the four DPSS school in the Ghaziabad region i.e. DPS Indirapuram, Ghaziabad; DPS Rajnagar, Ghaziabad; DPS Rajnagar Extension, Ghaziabad and DPS Siddharth Vihar, Ghaziabad. This was to ensure that no difficulty is faced by the students for the new academic session beginning from April 2023. We thus find that the learned Single Judge had duly taken into consideration the interests of the students and framed appropriate measures to ensure that their pursuit of education is not disrupted.

19. Further, although FAO(OS)(COMM) 69/2023 was tagged with the aforementioned two LPAs, no submissions were addressed on the said appeal by learned counsels. Notwithstanding the above and having gone through the impugned order dated 10 March 2023, we find that the learned Single Judge had on due consideration of the material placed on the record come to the definitive conclusion that the right of AEWCS to use the name/logo “*Delhi Public School*”/“*DPS*” rested



solely on the provisions contained in the JVA and which enabled DPSS to terminate the JVA at any time. The learned Single Judge has held that once the aforesaid termination came into effect, AEWCS stood denuded of any right or authority to use the aforesaid names or logos. It was in the aforesaid backdrop that the learned Single Judge came to conclude that the action of AEWCS amounted to infringement and passing off. The view as expressed by the learned Single Judge in this respect is clearly unexceptionable and merits no interference.

20. Accordingly, and for all the aforesaid reasons both the LPAs as well as the First Appeal shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

SEPTEMBER 21, 2023
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