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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10th March, 2023.

+ W.P.(C) 8219/2020 & CM APPLs. 26629/2020 (seeking interim directions), 10847/2023 (seeking impleadment of a group of students studying in DPS Sahibabad, UP) and 10848/2023 (seeking impleadment of CBSE)

AVIRAL EDUCATION WELFARE AND
CULTURAL SOCIETY AND ANR.

..... Petitioners

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Kamal Gupta, Mr. Sparsh
Aggarwal and Ms. Paridhi Bisht,
Advocates.

versus

DELHI PUBLIC SCHOOL SOCIETY

..... Respondent

Through: Mr. Puneet Mittal, Senior Advocate
with Ms. Sakshi Mendiratta, and Mr.
Siddharth Saxena, Advocates.
Mr. Kirti Uppal, Senior Advocate
with briefing counsel (*appearance not
given*) for Applicants in CM APPL.
10847-10848/2023.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J. (Oral):

1. The instant case revolves around a contentious termination of a Joint Venture Agreement between two educational entities, which has led to disputes over unauthorized trademarks and copyright usage and enforceability of contractual clauses. Briefly put, a Joint Venture Agreement

["JVA"], was executed between Aviral Education Welfare and Cultural Society [Petitioner No. 1 – hereinafter "AEWCS"] and Delhi Public School Society [Respondent – hereinafter "DPSS"], with the aim to establish an English Medium School in Village Teela Shahbazpur, Tehsil Loni, District Ghaziabad. Despite termination of the JVA shortly after its execution, AEWCS continues to operate the 'Delhi Public School, Sahibabad' [hereinafter "*school*"] as a DPSS affiliated school, using DPS name and logos. AEWCS, along with some students enrolled in the school [hereinafter collectively "*Petitioners*"], have invoked the writ jurisdiction of this Court to annul the termination notice on the ground of arbitrariness and to declare some of the clauses of JVA as unconstitutional. DPSS vehemently opposes petition's maintainability and have also filed a Trademark and Copyright infringement case that is being listed and heard concurrently.

FACTUAL MATRIX

2. On 10th October, 2016, AEWCS entered into a JVA with DPSS for establishing a school under the name and style of 'Delhi Public School'. It was agreed *inter se* parties that the school would be run, managed, and administered through a 'Board of Management', which comprised of persons belonging to DPSS. The right to constitute the 'Management Committee', 'Selection Committee' and 'Staff Members' vested exclusively with DPSS. AEWCS was required to incur expenditure and investment for establishing the school. On signing, AEWCS were charged INR 25 lakhs and *vide* a separate letter, INR 10 lakhs were charged from them towards education assistance to students and faculty of the school. They acquired land by taking a loan from Punjab National Bank and then constructed the

school building thereon. Recognition was granted to the school by the Government of Uttar Pradesh on 05th July, 2018. Shortly thereafter, on 31st August, 2018, AEWCS requested DPSS to constitute the Selection Committee, in order to formalise *ad hoc* appointment(s) and facilitate the process for CBSE affiliation. Subsequently, CBSE affiliation was also granted to the school. AEWCS thereafter *vide* e-mail dated 31st August, 2018 informed DPSS that 83 students were studying in the school and steps have been taken towards opening of admission for academic session 2019-20.

3. At this juncture, DPSS invoked Clause 13 of the said agreement and *vide* notice dated 24th September, 2019, terminated the JVA without assigning any reason(s).

4. Aggrieved with the abrupt termination of JVA, AEWCS invoked Section 9 of the Arbitration and Conciliation Act, 1996. In the said petition [O.M.P.(I)(COMM) 98/2019], parties were referred to mediation. Unfortunately, amicable resolution of disputes was unsuccessful. In the interregnum, on account of restricted court functioning, proceedings in Section 9 Petition were postponed. In October 2020, AEWCS, filed the instant writ petition contending that this is a more efficacious remedy for agitating their grievances. Simultaneously, they withdrew the Section 9 Petition.

5. On 21st October, 2020, notice was issued in the instant writ petition, but no interim order was passed. Relevant portion of the said order is culled

out below:

“2. Petitioner No.1 entered into a Joint Venture Agreement (*in short* ‘JVA’) with the respondent whereby the parties agreed that the school will be run under the name and style of ‘Delhi Public School’ and will be administered by a Board of Management which shall be constituted by the respondent Society. It is stated that for the school petitioner No.1 has spent large amount i.e. total project cost of Rs.44.37 crores and project land measuring 9 acres and has commenced the school. The State of U.P. also granted recognition in the name of ‘DPS Sahibabad.

3. On 24.09.2018, it is the case of petitioner No.1 that the school was fully established. He was shocked to receive a letter from the respondent seeking to abruptly terminate JVA dated 10.10.2016 w.e.f. 01.04.2019. As the JVA has a clause, petitioner No.1 has filed a petition under section 9 of the Arbitration and Conciliation Act, 1996 which petition is said to be pending.

4. On a query from the court as to how a writ petition would lie, the learned senior counsel appearing for the petitioners has relied upon judgments of the Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust And Ors. v. V.R.Rudani & Ors., 1989 (2) SCC 691* and *Ramesh Ahluwalia v. State of Punjab & Ors., 2012 (12) SCC 331* to plead that providing education to the children in the institutions throughout the country is a performance of public functions and hence a writ would lie against such institution.

5. Issue notice. Learned counsel for the respondent accepts notice.

6. Learned senior counsel for the petitioners has strenuously urged that an interim order may be passed keeping in view the fact that the status of petitioners No.2 to 4 children/students of the school, would be seriously affected, inasmuch as the said students are studying in the respondent school and they would be deprived of their rights.

7. Learned senior counsel for the respondent school states that the present petition is not maintainable.

8. For the time being, I am not inclined to pass any interim order keeping in view the fact that order of termination of agreement was passed on 24.09.2018. Further petitioner No.1 had admittedly commenced the proceedings under section 9 of the Arbitration and Conciliation Act, 1996 though it is stated that he wishes to withdraw the same. The said proceedings however commenced on 30.03.2019 and no interim order has been passed in favour of petitioner No.1 and the same is said to have been pending.”

[Underscoring supplied]

6. Shortly thereafter, DPSS filed a suit against AEWCS [CS(COMM)

580/2020] seeking, *inter alia*, restraining infringement of their registered well-known trademarks and copyrights, damages, among other ancillary reliefs. At the request of Mr. Amit Sibal, Senior Counsel for Petitioners, arguments in the writ petition were heard, concurrently with the suit. Indeed, in absence of reliefs sought in the writ petition, consequences of interim injunction in respect of violation of DPSS's trademark and copyright rights would automatically follow.

7. For the sake of completeness, it must also be noted that DPSS also filed another writ [W.P.(C) 2552/2021] praying for de-affiliation of the school run by AEWCS. The said petition was disposed of *vide* order dated 26th February, 2021, directing CBSE to hear both the parties and take appropriate decision on DPSS's representation. DPSS filed an appeal impugning the above order [LPA 114/2021], which was dismissed by Division Bench *vide* judgment dated 22nd March, 2021. Subsequently, DPSS's representation for de-affiliation of the school run by AEWCS was dismissed by CBSE on 12th October, 2021, holding that the school did not violate any pre-conditions for grant or rules or regulations of CBSE relating to affiliation. Predicated on the above circumstances, Petitioners have filed the instant petition 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.”

CONTENTIONS OF PARTIES

Of Petitioners

8. Mr. Amit Sibal, Senior Counsel for Petitioners, submits that the present petition is maintainable and makes the following submissions:

8.1. DPSS oversees and regulates more than 300 satellite schools, casting upon them a public duty, thereby making them amenable to writ jurisdiction of this Court. With such an extensive network of schools across the globe, and its extensive reach, DPSS could be viewed as an ‘instrument of the State’ if not ‘State’ itself and is thus, amenable to writ jurisdiction of this Court.

8.2. Private Unaided Schools that are run by Educational Societies are duty bound/ obligated to provide compulsory education and to ensure admissions, attendance, and completion of education, as given under provisions of the Right of Children to Free and Compulsory Education Act, 2009 [hereinafter “*RTE Act*”].

8.3. As a Standard Form Agreement, the JVA deprives signatories of any bargaining leverage and forbids amendments, which underscores its inherently unreasonable character.

8.4 JVA impacts lives of thousands of students, staff members and pertains to imparting education, which is a public and charitable function. It is not to be viewed as any other commercial contract.

8.5 DPSS, cannot be allowed to perform their functions in an arbitrary

and high-handed manner. They must be fair, reasonable, just, non-arbitrary and adhere to constitutional principles. Arbitrary decision on part of DPSS would have palpable consequences on the lives and careers of many people associated with the school.

8.6 DPSS claims exemption from payment of Income tax, asserting itself to be engaged in a “*public charitable activity of imparting education*”. This indicates the character of the institution making it answerable to the writ jurisdiction.

8.7 The impugned clauses in the JVA which give unilateral, unguided, and unbridled power to DPSS to terminate at will are clearly violative of the public policy and are thus liable to be struck down as an anathema to the rule of law.

8.8 Impugned termination notice has been issued without assigning reasons/ breach on part of AEWCS therein. It exhibits ‘take it or leave it’ attitude which is impermissible in law. This Court must thus consider whether DPSS can justify a termination of such magnitude. The authority to terminate by DPSS cannot be exercised without offering justifications and/ or granting a chance to address the purported breach, if any.

8.9 Impugned termination notice is unreasoned, arbitrary, and whimsical, being violative of Articles 14, 19, 21, 21A of the Constitution of India, 1950 [hereinafter “*the Constitution*”] and statutory rights contained in RTE Act.

8.10 There are currently about 450 students admitted in the school, owing to the reputation and goodwill of DPSS. The impugned termination notice takes away IP rights enjoyed by the school (including trademarks and copyrights) and as a result, prejudices the students as the same is detrimental to their future career prospects and 80 wholly dependent staff members

working in the school.

8.11 Under Article 226 of the Constitution, the High Court exercises plenary jurisdiction which is wide and expansive; the Constitution mentions no bar as to the jurisdiction of a High Court. There are only self-imposed fetters to entertaining certain disputes. Article 226 can be invoked for violation of not only fundamental rights but also legal/ common law rights.

8.12 Both parties have already given up the arbitration agreement and DPSS has already filed a civil suit alleging infringement and no defence of arbitration has been pleaded in the counter affidavit filed by them.

8.13 Reliance is placed on the decisions of the Supreme Court in ***Ramesh Ahluwalia v. State of Punjab***,¹ ***Andi Mukta Sadguru.. Trust and Ors. v. VR Rudani and Ors***,² ***Unitech Ltd. and Ors. v. Telangana State Industrial Infrastructure Corporation (TSIIC) and Ors***,³ ***St. Mary Education Society and Anr. v. Rajendra Prasad Bhargava and Ors***,⁴ and ***Janet Jeyapaul v. SRM University and Ors.***,⁵ as well as decisions of the High Court of Allahabad and High Court of Madhya Pradesh in ***Roychan Abraham v. State of Uttar Pradesh and Anr.***,⁶ and ***Yogendra Singh Dhakad v. Delhi Public School Society and Ors.***,⁷ respectively.

Of Respondent

9. *Per contra*, Mr. Puneet Mittal, Senior Counsel for DPSS submits that the instant writ petition concerns interpretation and implementation of

¹ (2012) 12 SCC 331.

² (1989) 2 SCC 691.

³ (2021) SCC OnLine SC 99.

⁴ 2022 SCC OnLine SC 1091.

⁵ (2015) 16 SCC 530.

⁶ 2019 SCC OnLine All 3935

⁷ 2014 SCC OnLine MP 162.

clauses of JVA, which cannot be adjudicated by this Court. The subject matter falls exclusively in the realm of private law governed by provisions of the Indian Contract Act, 1872 [hereinafter “*Contract Act*”] and thus the instant writ petition is not maintainable. Submissions made by Mr. Mittal are summarized below:

9.1 After termination of JVA, AEWCS is no longer an affiliated school of DPSS. Yet, they continue to illegally use DPSS’s trademarks and logo on their website (www.dpssahibabad.com), giving an impression to public at large that they are affiliated to DPSS. Post-termination of JVA, AEWCS use of DPSS’s trademarks *sans* any contractual right or interim protection is plainly unlawful.

9.2 AEWCS does not have any fundamental or statutory rights against DPSS that would entitle them to seek the reliefs by way of a writ petition.

9.3 Petitioners have made false statement on oath, fabricated facts which are contrary to documents placed on record by them. Petitioners’ contention that JVA is neither determinable nor terminable is plainly contrary to Clause 13 of JVA which gives right to both AEWCS as well as DPSS to terminate the agreement, giving six-month prior notice in writing to the other party. The impugned termination notice has been issued in compliance of contractual provisions and no reasons are required to be supplied to AEWCS. Reliance is placed on *Binni Ltd. and Anr. v. V. Sadasivan and Ors.*,⁸ and *State of Gujarat and Ors. v. Meghji Pethraj Shah Charitable Trust and Ors.*⁹

9.4 Judgments relied upon by Petitioners do not support the proposition

⁸ (2005) 6 SCC 657.

⁹ (1994) 3 SCC 552.

advanced by Mr. Sibal as rights *qua* Petitioners therein flow from statutes and not from private contract, in contrast to the present matter. In fact, the said judgments hold that the writ petition is not maintainable for the relief prayed for in the present petition.

9.5 Petitioners No. 2 to 6, who are students studying in the school are admittedly not parties to the JVA and thus, they have no contractual right flowing thereunder.

9.6 Considering the interest of the students who have been admitted in school run by AEWCS, a decision has been taken by DPSS that all such students who are desirous of securing admissions in any of the schools run by DPSS in Ghaziabad, would be assured admission in the academic session commencing from the year-2023. They shall be given an option to join any one of the four schools located in Ghaziabad *being* – DPS Indirapuram, Ghaziabad; DPS Rajnagar, Ghaziabad; DPS Rajnagar Extension, Ghaziabad and DPS Siddharth Vihar, Ghaziabad, if so directed by this Court.

Of Petitioners in Rejoinder

10. In rejoinder, Mr. Sibal refutes the contentions urged by Mr. Mittal and avers as under:

10.1 Under the JVA, DPSS is engaged in a public function and thus students studying in the school (*inter alia* Petitioners No. 2 to 6) are rightly arrayed as parties to the present writ petition as DPSS owes a corresponding duty towards the students studying in the school affiliated to them.

10.2 The website of the school (www.dpssahibabad.com) has not undergone any change. As per understanding between the parties, AEWCS/ school was given the right to display the logo and trademarks of DPSS.

10.3 The school run by AEWCS cannot be closed *sans* permission from concerned statutory authorities. The impugned termination notice, for all intents and purposes, compels closure of the school.

ANALYSIS

11. Undoubtedly, under Article 226 of the Constitution of India, the High Court enjoys wide, expansive, and extensive jurisdiction and an alternate civil remedy is not an absolute bar to entertaining a writ petition. Nevertheless, in general, writ petitions are filed to seek relief for violations of legal or constitutional rights. When it comes to disputes stemming solely from contractual matters within the realm of private law, devoid of any statutory aspect, it is more appropriate to seek resolution by the forum that the parties have agreed to or through the civil court.

12. DPSS is not a statutory body, but purely a private society registered in the year 1948 under the Societies Registration Act, 1860. It has no governmental interference or control either financially, functionally, or administratively, as is evident from its Memorandum of Constitution. Thus, DPSS thus does not have a ‘public character’ for being accepted as an agent or extension of the ‘State’. However, even non-State actors can be amenable to the writ jurisdiction of this Court under Article 12 of the Constitution. They can take the colour of ‘State’ if they perform a public function which would typically be performed by the ‘State’. The Apex Court has recognized the State action doctrine in several cases and has held that private parties can be held accountable for violations of fundamental rights if they are performing a public function. In *Unni Krishnan, J.P. and Ors. v. State of*

A.P. and Ors.,¹⁰ Supreme Court held that private educational institutions which perform public function of imparting education, should not be allowed to contravene Article 14 of the Constitution. Thus, the reach of Article 12 has been enlarged to include vital public functions such as education. To that extent, the Court agrees with Mr. Sibal that since DPSS is performing an essential public function of imparting education, it can be covered under the concept of ‘instrumentality’ or ‘agency’ of the State within the meaning of Article 12 of the Constitution. However, that by itself would not render the petition maintainable because mere involvement in activities of public importance or providing public services, does not automatically subject a private entity to writ jurisdiction. An educational institution performs innumerable functions touching upon various facets of public life and not all are amenable to the writ jurisdiction. To entertain a writ petition against a private party, the Court must establish that the decision or action in question possesses a ‘public character’ and is not purely a matter of private law.

13. We, therefore, now proceed to determine whether the complained action meets the above criteria for entertaining the instant writ petition. The scope of the writ petition is gathered from pleaded cause of action and the reliefs, which manifest that Petitioners’ primary grievance arises from termination of the JVA and construction and interpretation of the terms of the JVA. Since the JVA allows termination without assigning reasons, Petitioners contend that contract clauses are void or unenforceable being unreasonable, arbitrary, and violative of Articles 14, 19, 21 and 21A of the

¹⁰ (1993) 4 SCC 111.

Constitution and RTE Act, 2009. Petitioners argue that DPSS cannot whimsically terminate the JVA and must adhere to constitutional principles, considering the impact of termination on students' career and others associated with the school.

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.

xx .. xx .. xx

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.”

16. In addition to the aforementioned clauses, parties had also agreed upon the exit clause (Clause 13) which confers rights on both parties to terminate the JVA by issuing a six-months prior notice. The same is reproduced as under:

- “13. 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.”

17. Effect of termination of JVA is provided under Clause 14 of the agreement, as follows:

- “14. On termination of this Agreement and consequent closure of the School all moveable and immovable properties of the school will be returned to AEWCS after settlement of all liabilities owing by the school. On the dissolution of the Agreement AEWCS shall be solely liable for all liabilities or claims against the erstwhile School or its Board of Management or DPSS in the matter of the Management of the School. DPSS will in no way be liable for any such claim.”

18. On a plain reading of the aforementioned clauses which outline the rights

and obligations of both parties, it manifests that DPSS provided AEWCS the right to use its trademarks ‘Delhi Public School’, ‘DPS’ and logo as well as copyright [hereinafter “*IP rights of DPSS*”], as a purely commercial venture. DPSS desired to establish an affiliate in Sahibabad to expand its reach while maintaining its brand reputation. They expected affiliate schools to uphold quality, consistency, and provide adequate infrastructure and resources. In return, DPSS agreed to support and monitor AEWCS’s performance, ensuring compliance with their established guidelines and norms. This collaboration involved DPSS granting AEWCS the use of its intellectual property, including its name and logo. Petitioners’ grievance primarily revolves around DPSS withdrawing the license to use the trademarks, copyrights and other IP rights belonging to DPSS and nothing more. Petitioners’ contentions that Clause 13 of JVA is contrary to the public policy of India and thus, violative of Section 23 of the Contract Act, is plainly far-fetched and has no legal merit. Courts may deem contractual clauses that infringe upon legal, constitutional norms or social values as against public policy and morality, but this is assessed on an individual case-to-case basis. AEWCS was aware of the implications under JVA, including termination. At this juncture the termination clause cannot be assailed on the anvil of constitutional provisions, to exempt from the consequences. Pleadings in the writ petition attempt to give a semblance of a dispute arising from public law, however, the same is not discernible by reading the terms and conditions of JVA. The direct and inevitable consequence of the impugned action must be weighed to determine whether or not it offends fundamental rights of an individual or legal entity.¹¹ On that score, AEWCS

¹¹ See: *Maneka Gandhi v. Union of India and Ors*, (1978) 1 SCC 248.

is unable to demonstrate violation of fundamental rights or a public law element. As noted above, the school is fully functional without any legal impediment *insofar* as CBSE is concerned. At the time of signing the agreement, AEWCS never objected to clauses *qua* termination and effect thereof, till such time, DPSS invoked the same. Moreover, even if Petitioners challenge the legality of specific clauses, seeking a declaration that they are null, void, and non-binding between parties, such issues cannot be resolved in the current writ proceedings. This is a matter which is purely governed by the contractual understanding between the parties and Petitioners cannot invoke writ jurisdiction to challenge the terms contained in the JVA, selectively.

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.

20. Mr. Sibal laboured on the aspect of maintainability of the instant writ petition relying on several judgments mentioned above. However, the said case laws do not support the proposition canvassed by him. They are wholly inapplicable to the facts of the present case, although the proposition made therein cannot be disputed. The factual matrix of some of the said decisions relied on are discussed hereinbelow:

20.1 In **Ramesh Ahluwalia** (*supra*),¹² Appellant therein was an administrative officer working in a private unaided school, who was aggrieved by removal from service pursuant to disciplinary proceedings which were initiated due to allegations of misconduct on his part. Drawing strength from Bye-law 49 of the CBSE Affiliation Bye-Laws, Appellant submitted an appeal before the Disciplinary Committee challenging the order of the Disciplinary Authority. On rejection of the appeal by the Committee, a writ petition was filed before the High Court of Punjab and Haryana impugning the same, however, the same was dismissed *in limine* holding that a private unaided school managed by the society cannot be said to be an instrument of the State. The appeal before the Division Bench was also dismissed and thereafter, Appellant approached the Apex Court. In the facts of the case therein, the Court held that a writ petition would be maintainable if a private educational institution discharges public functions,

¹² (2012) 12 SCC 331.

especially imparting education. Even while holding so, the Apex Court declined to extend any benefits to the Appellant therein as the case involved disputed questions of fact.

20.2 The case *Andi Mukta Sadguru (supra)*,¹³ relates to retrenchment of teachers pursuant to closure of a private aided college run by a trust and affiliated to Gujarat University and is distinguishable.

20.3 Likewise, case of *Unitech Limited (supra)*,¹⁴ was rendered in context of a contract between APIIC and Unitech for the purpose of a township project for which land was allotted Unitech.

20.4 In *Janet Jeyapaul (supra)*,¹⁵ Appellant therein had filed a writ before the High Court of Judicature at Madras impugning the notice whereby she was relieved from her services pursuant to disciplinary action taken against her. The Respondent No. 1 therein being a “Deemed University” under Section 3 of University Grants Commission Act, 1956 [hereinafter “UGC Act”] was governed by the provisions contained in the UGC Act.

20.5 In *Roychan Abraham (supra)*,¹⁶ Petitioner therein was a teacher whose services came to be terminated by Saint Francis School, a minority Christian School affiliated to Council of ICSE, New Delhi (*i.e.*, former employer). He approached the High Court of Allahabad challenging his termination being violative of the service conditions of the institution. In paragraph No. 38 of the said judgment, the Full Bench of the High Court of Allahabad observed as under:

“38. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have direct nexus with the discharge of

¹³ (1989) 2 SCC 691.

¹⁴ (2021) SCC OnLine SC 99.

¹⁵ (2015) 16 SCC 530.

¹⁶ 2019 SCC OnLine All 3935.

public duty. It is undisputedly a public law action which confers a right upon the aggrieved to invoke extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by statutory provisions or the employer had the status of 'State' within the expansive definition under Article 12 or it was found that the action complained of has public law element."

[Underscoring supplied]

20.6 In the facts of the case in *Yogendra Singh Dhakad (supra)*,¹⁷ High Court of Madhya Pradesh held that a private institution, which was fully controlled and run by National Fertilizer Limited, a government company, is obligated to follow the bye-laws and rules of CBSE and in imparting education as such an institution was performing a public function.

20.7 Finally the decision of the Apex Court in *St. Mary Education (supra)*,¹⁸ does not advance the case canvassed by Mr. Sibal. On the contrary the holding of the said judgment, as is evident from a reasoning given in paragraph No. 55 to 69, is against the Petitioners.

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.

22. Keeping the question of maintainability aside, even if the Court were to examine the dispute keeping the interest of students in mind, which has been espoused by Mr. Sibal and Mr. Uppal, the Court is still unable to find

¹⁷ 2014 SCC OnLine MP 162.

¹⁸ 2022 SCC OnLine SC 1091.

any scope to issue the directions that they seek. The public law element again, swings against AEWCS. It is undisputed that JVA stands terminated and as a consequence of such termination, obligations which were to be fulfilled by DPSS are no longer in force. Before the Court, Mr. Sibal, on instructions, has confirmed that post termination, DPSS has not provided any support as envisaged under the JVA. DPSS is no longer part of the Board of Management or Selection Committee. Since termination, AEWCS has made no payments to DPSS, under JVA. In effect, the school does not remain to be an affiliate of DPSS. The quality of education and assurance, which is attached with being an affiliate of DPSS, no longer subsists. The school can continue in its own right. However, AEWCS cannot continue to represent itself to be part of DPSS by using IP rights of DPSS, declaring to public at large the school is affiliated to DPSS. The school continues to misrepresent the public at large as is evident from the screenshots of the website of the school, reproduced below:







23. Pictures of the Chairman and Vice Chairman of DPSS on their website (www.dpssahibabad.com), are bound to confuse the public at large. The school's admission offer is plainly a false advertisement. In fact, for last three years, AEWCS/ school has admitted students without declaring that the underlying contract with DPSS (JVA), which gives them the right to use the name/ mark 'Delhi Public School' and logo (IP rights of DPSS), no longer subsist. Students already enrolled in the school are under misimpression that they are studying in a school affiliated to DPSS. This cannot be permitted any longer and it must be ensured that there remains no ambiguity, commencing from academic year April 2023. The true and correct picture must be put-forth to the public. This decision has been rendered keeping the above in mind, before the commencement of the next academic session.

24. In light of the assurance and the statement made by Mr. Mittal and keeping the larger interest of the students in mind, it is directed that within two weeks from the date of release of this judgment, DPSS shall issue

publications in all leading newspapers which have circulation in the area where the school ('DPS Sahibabad') is located, informing all concerned that students studying at the school would be entitled to admissions in any of the four schools in the Ghaziabad region, details whereof are noted in paragraph No. 9.6 above. The above direction has been issued after affording an opportunity to the school to voluntarily discontinue false claim of their association with DPSS, which they have declined.

25. The Court also finds no merit in Mr. Sibal's contention that the impugned termination notice is arbitrary as it does not disclose any reasons. Under the JVA, both parties opted to exit from the agreement without assigning any reasons. Such a clause, negotiated by parties, in the opinion of the Court, is binding on them and is not contrary to any provision of the Indian Contract Act or violative of Constitution of India. In the present proceedings, Petitioners cannot insist that reasons must be assigned for termination. Termination is neither quasi-judicial, executive nor an administrative act on part of DPSS. It is well-settled that a matter governed by a contract/ agreement *inter se* parties must be governed by such contract/ agreement.¹⁹ For this reason, as well, the Court does not find any merit in the present petition.

26. Dismissed, along with pending applications.

SANJEEV NARULA, J

MARCH 10, 2023/nk

(Corrected and released on 20th March, 2023ⁱ)

¹⁹ See: *Meghji Pethraj Shah Charitable Trust* (*supra*), (1994) 3 SCC 552, ¶¶22.

ⁱ The operative part of the order was dictated in open court, reasoning has been supplied by the undersigned in-chamber.