

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

Judgment reserved on: 13.01.2023

% **Judgment delivered on: 15.02.2023**

+ **W.P.(C) 10442/2015**

HARSHPAL SINGH SAWHNEY & ORS Petitioners

Through: Mr. Naveen, Advocate

versus

**CENTRAL BOARD OF SECONDARY EDUCATION
& ORS** Respondents

Through: Ms. Seema Dolo, Advocate for CBSE
Mr. Gaurav Sarin, Sr. Panel Counsel
for UoI

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioners before this Court have filed this Writ Petition as a Public Interest Litigation (PIL) under Article 226 of the Constitution of India, aggrieved by the commercialization of education and corrosion of standards of education management, especially with reference to Respondent No. 5 herein, the Delhi Public School Society ("DPSS"). Accordingly, the Petitioners have sought, *inter-alia*, directions to Respondent No. 1, the Central Board of Secondary Education ("CBSE"), to

inquire into and regulate the transactions between Education Societies and Franchise Schools and, more specifically, inspect the affairs of the schools operated by DPSS.

2. The Petitioners' contention is that the Respondent No. 5, Delhi Public School Society is a Society registered under the Societies Registration Act, 1860, and the Society through its Chairman i.e. Respondent No.6 Mr. V. K. Shunglu has executed various joint venture agreements with several schools (franchisees agreements) for permitting certain other schools to use the name of Delhi Public School (DPS), its logo and motto.

3. It has been stated that large number of agreements have been executed between the Respondent Society and certain schools, and the Petitioners have given examples of certain schools. The Petitioners have stated that one such agreement has been executed with M/s Rachna Educational Society, Warangal, Andhra Pradesh, for setting up of a school at Warangal. The M/s Rachna Educational Society as per the agreement has to pay sum of Rs. 12 lakhs to the DPSS.

4. Similar agreement has been executed in respect of Delhi Public School, Kashipur, Uttarakhand for sum of Rs. 27,57,500/, and other agreements have been executed in favour of DPS, Pinjore, Haryana and DPS Allahabad, Uttar Pradesh as well.

5. The Petitioners have given examples of various franchisee agreements executed from time to time and have alleged a large number of irregularities in respect of management of DPS Society.

6. The Petitioner has prayed for the following reliefs in the Writ Petition:

“a. Issue a writ of Mandamus directing Respondent No. 1 to inquire into the nature of agreements and transactions between Education Societies and Franchisee schools and take, appropriate action against them, and

b. Issue a writ of Mandamus directing Respondent No. 1 to 3 to conduct an inquiry into the affairs of Respondent No. 5 and' other Societies and Trust, to take appropriate action against the erring members and office bearers, and

c. Issue a writ of Mandamus directing Respondent No. 2 to inspect the affairs of the schools run by Respondent No. 5 as per Rule 170 of the Delhi School Education Rules, 1973, and

d. Quash and set aside the illegal Joint Venture Agreements and Memorandum of Understandings such as entered into by Respondent No. 5 and other similarly placed Societies pertaining to granting of/operation of franchisee schools.

Pass any such further orders or directions as this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case.”

7. The Petitioners have impleaded the State Government, the Central Board of Secondary Education as well as other authorities as Respondents.

8. By filing interlocutory applications, the Petitioners have brought on record various other agreements executed by the Respondent Society as well as their balance sheets. The CBSE has filed a detailed and exhaustive reply and it has been stated that the Board, in accordance with the Affiliation By-laws, grants affiliation to the schools subject to fulfilment of the norms, and By-law 21 provides for power and functions of the School Management Committee. Affiliation By-law 21 under Chapter VI of the By-laws, reads as under:

“21. Powers and Functions of the School Management Committee

Subject to overall control of the Society/Trust/ Company Registered under Section 25 of the Companies Act, 1956 the School Managing Committee shall have the following powers/functions:

- i. It shall have the power to supervise the activities of the school for its smooth functioning.*
- ii. It will work according to the specific directions given by the Society regarding admission policy. However, admissions will be made as per merit without discretion of caste/ creed/religion and region.*
- iii. It shall look into the welfare of the teachers and employees of the school.*
- iv. It shall evolve both short-term and long-term programmes for the improvement of the school.*
- v. It shall have the powers for making appointment of teachers and non teaching staff.*
- vi. It shall exercise financial powers beyond those delegated to the Principal within the budgetary provision of the school.*
- vii. It shall have the power to take stock of academic programmes and progress of the school without jeopardising the academic freedom of Principal.*
- viii. It shall guide the Principal to maintain tone and discipline in the school.*
- ix. It shall ensure that the norms given In the Act of the State and by the CBSE regarding terms and conditions of service and other rules governing recognition/affiliation of the school are strictly adhered to,*
- x. It should ensure that the school gets Furniture, Science equipment. Library books and other teaching aids and the requisite sports material in adequate quantity and on time.*
- xi. It shall exercise powers to take disciplinary action against staff.*

- xii. It shall have powers to sanction leave to the Head of the Institution including casual leave.*
- xiii. It shall ensure that no financial irregularity is committed or any irregular procedure with regard to admission/examination is adopted.*
- xiv. It shall have the power to propose to the Society rates of tuition fees and other annual charges and also review the budget of the school presented by the Principal for forwarding the same to Society for approval.*
- xv. The Managing Committee will meet at least twice in an academic session.*

9. Affiliation By-law 7 under Chapter II of the By-laws reads as under:

“7. Financial Resources

- 1. The school must have sufficient financial resources to guarantee its continued existence. It should have permanent source of income to meet the running expenses of the school so as to maintain it at a reasonable standard of efficiency, to pay salaries to teachers and other categories of staff regularly at least at par with the corresponding categories in the State Government Schools and to undertake improvement/development of school facilities. In case of institutions which are in the receipt of grant-in-aid from the State Government/ U.T. the permanent Source of income shall include the amount of grant-in-aid also.*
- 2. No part of income from the institution shall be diverted to any individual in the Trust/ Society/# Company registered under section 25 of the companies act, 1956 School Management Committee or to any other person. The savings, if any, after meeting the recurring and non-recurring expenditure and contributions and developmental, depreciation and contingency funds may be further utilized for promoting the school. The accounts should be audited and certified by a Chartered Accountant and proper accounts statements should be prepared as per rules. A*

copy each of the Statement of Accounts should be sent to the Board every year.

3. *The channeling of funds by the management to person (s) or enterprise other than for furthering education in the school will contravene the rules governing affiliation and call for appropriate action by the Board, which may lead to dis-affiliation of the concerned institutions.”*

10. The Central Board of Secondary Education, vide its Counter Affidavit dated 11.07.2016, has stated, that as per the applicable By-laws, various Delhi Public Schools have been established under different trusts and societies having affiliation with the CBSE, and, their name, *per se*, is not DPS but they have added names like DPS Ghaziabad and DPS Madhubani Pvt. Ltd. with a different logo.

11. The Respondent CBSE has further stated that in respect of violation of affiliation By-laws, action was initiated in respect of DPS, Kashipur, Uttarakhand. However, no further action has been taken on account of interim order passed by the High Court of Uttarakhand at Nainital in that matter.

12. The Respondents have categorically stated that as and when a complaint is received, action has been initiated by them, and they shall be taking appropriate action in accordance with law, strictly in consonance with the Affiliation By-laws.

13. The CBSE has subsequently filed an affidavit dated 11.07.2017 pursuant to an Order passed by this Court dated 30.01.2017, to further inform this Court about the action taken in the matter. Relevant excerpts of the affidavit are reproduced hereunder: -

“

2. That in furtherance to the contention that Respondent No.5 is charging Franchisee fees, the Petitioner has referred the names of following schools in the present Petition:

- i) Delhi Public School, Kashipur;*
- ii) Delhi Public School, Pinjore;*
- iii) M/s Rachna Educational Society, Warangal and*
- iv) Delhi Public School, Allahabad.*

3. That it is pertinent to mention here that so far as allegations with regard to Delhi Public School, Kashipur is concerned the same has been dealt with in para 11 of the counter affidavit dated 11-07-2016 filed by CBSE, which is not being repeated here for the sake of brevity and in order to avoid repetition of the details of facts and circumstances set out therein.

4. That as regards the allegations against the remaining 3 aforesaid schools, it is submitted that CBSE has written letters/email and asked the said schools to submit their response to the following queries: -

- i) Whether the school has made any payments to DPS Society for using its name, logo, motto.*
- ii) If yes, then the school is violating rule no.19.1(ii) and (ii) (a) which states that "any franchise school making payment on account of use of name, motto and logo franchiser institution or any other non-academic activities would be termed as commercialization of institution". Hence, the school is required to furnish details of franchisee fee paid to DPS Society.*
- iii) If no, then the school is required to submit an affidavit duly notarized to the effect that the school is not paying any charges towards using name, motto, logo or any other non-academic activities to any other institution, organisation or body organisation."*

In furtherance of the responses received from the schools, appropriate action has been initiated against schools which have been found to be in violation

of extant bye-laws by the CBSE. The following has been stated by the CBSE in the affidavit dated 11.07.2017 in this regard: -

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5. That pursuant to this, it is submitted that the schools have filed their responses with CBSE. The details of the information and documents furnished by the schools are mentioned below: -

“I. DELHI PUBLIC SCHOOL, PINJORE, HARYANA.

The school, in response, vide its email dated 05-05-2017, submitted an affidavit that they have not paid any franchise fees to Delhi Public School Society with effect from 1 st April, 2016 till date. Therefore, the Board, vide letter dated 16-05-2017 again directed the school to inform whether they have made any payment to Delhi Public School Society for using its name, logo, motto before 1 st April, 2016. Copy of the letter dated 16-05-2017 of CBSE is annexed as Annexure R-1.

It is submitted that the school vide its mail letter dated 17.05.2017 submitted an affidavit stating the following:

(a) Delhi Public School Pinjore is working under the aegis of Delhi Public School Society, New Delhi.

(b) Information regarding No Objection certificate from CBSE, New Delhi and copy of new agreement was sought from DPS society, New Delhi which was never received.

(c) The school has not paid any fee to DPS Society, New Delhi since 1 st April and before that fee was paid to DPS Society, New Delhi as per the agreement.

(d) The school will not pay any fee to DPS society, New Delhi in future for the use of their name, motto and logo.

From the above facts it is apparent that the School has indulged in violation of Affiliation Bye-laws of the Board wilfully/intentionally and the aforesaid omission and commissions of the school are in violation of Rule-19.1(ii) and Rule-19.1(ii)(a) of Affiliation Bye Laws and Circulars issued by the Board. Therefore, in view of above violations and as per orders of Competent Authority of the Board, a Show Cause

Notice (SCN) dated 30-06-2017 has been issued to the school. Copy of the SCN dated 30-06- 2017 is annexed as Annexure R-2.

II. DELHI PUBLIC SCHOOL, WARANGAL, ANDHRA PRADESH.

The school management vide their email dated 05.05.2017 has forwarded an affidavit duly notarized stating that the Rachna Educational Society or Delhi Public School, Warangal is not paying any charges towards using name, motto, logo or any other non-academic activities to any other institution, organization or body organization. Copy of the said affidavit is annexed as Annexure R-3.

III. DELHI PUBLIC SCHOOL, ALLAHABAD, UTTAR PRADESH.

The school management vide their letter dated 08.05.2017 has forwarded an affidavit duly notarized stating that school is not paying any charges towards using name, motto, logo or any other non-academic activities to DPS Society, New Delhi. Copy of the Affidavit is annexed as Annexure R-4.”

14. Thereafter, CBSE filed an affidavit on 09.08.2019 pursuant to the Order dated 29.10.2018 passed by this Court wherein the Deputy Secretary furnished details of subsequent developments in respect of the action taken by CBSE in the matter. This Court was informed as under: -

“1. That the Petitioner has filed the present petition alleging commercialization persisting in the system of school education mainly in the form of ‘Franchisees’. It is the case of the Petitioner that Respondent No.5, Society, in the name of education are extracting huge royalties from the so-called franchisee schools for licensing out its brand name, logos etc.

2. That the present affidavit is being filed specifically in respect of two schools namely, a) Delhi Public School, Pinjore, Kalka (Haryana); and b) Delhi Public School, ONGC, Nazira (Assam), as directed by this Hon’ble Court vide order dated 29-01-2018.

3. That in respect of Delhi Public School, Pinjore, Kalka (Haryana), it is submitted that a Show Cause Notice (SCN) dated 30-06-2018 was issued to the School by CBSE. In compliance of the said Show Cause Notice, the Pro Vice Chairman DPS, Pinjore, vide their letter dated 29.07.2017 had informed that they have already sent an affidavit to CBSE on 17.05.2017 intimating that they have not paid any money to DPS Society after 01.04.2016. It was further informed that an email has been sent to DPS Society for the refund of franchisee fee amounting to Rs. 22,28,943/- paid for the sessions – 2013-14 2014-15 and 2015-16. Copy of the reply to SCN is annexed as Annexure R-1.

4. That in view of the above, CBSE vide letter dated 22.08/09.2017, followed by reminder dated 07.02.2018, directed the school to intimate the details of franchisee fee/any other fee paid to Delhi Public School Society on or after 21.08.2013; showing the date of payment, amount paid in rupees purpose of payment etc. Copy of the letter dated 22-08/09-2017 is annexed as Annexure R-2.

5. That in response, the school vide letter dated 22.02.2018, had informed the details of money paid as Franchisee Fee to DPS Society on or after 21.08.2013, and it also submitted a copy of the letter dated 17th May, 2017 addressed to the Chairman, Delhi Public School Society, East of Kailash, New Delhi requesting for refund of the maintenance/ Franchisee amount paid by the School to the DPS Society.

6. That since, it was not clear whether the said School had received any refund or not, CBSE had vide its letter dated 08.08.2018 directed the DPS, Pinjore, to submit a documentary proof i.e. copy of Bank account/ pass book showing the refund of above amount, if any, made by the DPS Society. The school vide its letter dated 24.08.2018, had responded that the School has not yet received any refund from chairman Delhi Public School Society New Delhi. The School ensured that it will submit the documentary proof as and when it receives the refund amount.

7. *That is further pertinent to mention here that the school has, meanwhile, vide its letter dated 18.07.2018 applied for change of name from Delhi Public School Pinjore to Shemform Futuristic School, Pinjore alongwith all the required documents. The said request was considered by the competent authority of the Board with a penalty of Rs. 1,00,000/- on the school for violation of norms of affiliation bye-laws and the school was required to remit the same within a month. It is submitted that the School has paid the aid penalty amount.*

8. *That as regards the allegations against Delhi Public School, ONGC, Nazira (Assam), it is submitted that on query from CBSE, the school has vide its letter dated 01.04.2019 and a duly notarized affidavit dated 03.04.2019, stated that the Delhi Public School, ONGC, Nazira is not paying the DPS Society any charges towards using name, motto, logo or any other non-academic activities to any other institution, organization or body organization. Copy of the letter dated 01.04.2019 is annexed as Annexure R-3. Copy of the affidavit dated 03.04.2019 is annexed as Annexure R-4.”*

15. In the considered opinion of this Court, the affidavits submitted by the CBSE reveal that it has taken stern action from time to time which includes imposition of penalty upon defaulting schools which have violated the extant affiliation bye-laws. In view of the same, no further orders are required to be passed in the present PIL.

16. The Petitioners have alleged various irregularities in respect of the DPSS, and the Petitioners shall be free to take recourse to the other remedies available under the law keeping in view the Societies Registration Act, 1860 and other statutory provisions governing the field.

17. However, CBSE is directed to conclude all proceedings which have been initiated in respect of various schools mentioned in the PIL as well as in respect of other schools which have been mentioned in the affidavits filed

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by the CBSE positively within a period of six months from the date of receipt of certified copy of this order.

18. With the aforesaid, the present PIL stands disposed of.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

FEBRUARY 15, 2023

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