



2024:DHC:5575



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 27 May 2024
Pronounced on: 30 July 2024

+ W.P.(C) 3971/2022 and CM APPL. 11830-31/2022 and 39443/2022

ALL INDIA DRDO LABS SCHOOLS STAFF
ASSOCIATION

..... Petitioner

Through: Mr. Venkita Subramaniam TR,
Ms. M. Subramaniam and Mr. Rahat Bansal,
Advs

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Ripu Daman Bhardwaj,
Adv. Mr. Kushagra Kumar and Mr. Abhinav
Bhardwaj, Advs. for UOI

+ W.P.(C) 7362/2022 and CM APPL. 22515-16/2022, 14588/2023 and 19809/2023

NATIONAL ASSOCIATION FOR PARENTS AND
STUDENTS RIGHTS (NAPSR) AND ORS.

..... Petitioners

Through: Mr. R. Sathish and Mr. Rajesh
Kumar, Advocates.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with
Mr. Zubin Singh, Mr. Akash Mishra and
Mr. Yash Yadav, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

29.07.2024

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Page 1 of 39

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2024:DHC:5575



The *lis*

1. The focus of controversy, in both these writ petitions, is a communication dated 21 December 2021 issued by the Defence Research and Development Organisation (DRDO), which communicates, to the Educational Societies managing the affairs of four schools, the decision of the Competent Authority that, come 2022-2023, there would be no new admissions in any class in the said schools. The four schools named in the impugned communication are the R & DE (E) English Medium School, Pune¹, the ITM School, Mussoorie, the Ballistics Vidyalaya, Chandigarh and the Raksha Anusandhan Vidyalaya, Dehradun². Of these, the ITM School, Mussoorie was subsequently closed down, and no dispute, therefore, survives with respect to that school. The operative portion of the impugned letter may, for the sake of the record, be thus reproduced:

“The Competent Authority has decided that there shall be **no new admissions** in the entry level classes as well as in all other classes for the next Academic Session i.e., 2022-23 in the following schools: –

- (a) R & DE (E) English Medium School, Pune
- (b) ITM School, Mussoorie
- (c) Ballistics Vidyalaya, Chandigarh
- (d) Raksha Anusandhan Vidyalaya, Dehradun³

This is for your information and further necessary action please.”

(Emphasis as in the original document)

¹ “the Pune school” hereinafter

² Cumulatively referred to as the “subject schools”, for the sake of convenience

³ “the Dehradun School” hereinafter



2024:DHC:5575



2. On the heels of the above letter, the following communications were addressed by the Management Committees governing the affairs of the Dehradun School and the Ballistics Vidyalaya:

(i) On 14 January 2022, the Defence Research Educational Society, Dehradun ⁴, which was managing the affairs of the Dehradun School wrote to the Principal of the School, intimating that, as per the letter dated 21 December 2021 *supra* of the DRDO, there would be no admissions in any classes in the Dehradun School for the 2022-2023 Academic Session.

(ii) Following a meeting of the Management Committee of the DRDO Educational Society, Ramgarh, which manages the affairs of the Ballistics Vidyalaya, the following Circular was issued with respect to the Academic Session 2022-23:

“Subject: Regarding Academic Session 2022-23”

In addition to the instructions given vide S. No. (iv) above, you are requested to implement the following

1. **Ballistics Preparatory Centre is closed.**
2. **Class IX is closed for academic session 2022-23.**
3. **All students of Class VIII (session 2021-22) to be compulsorily given TCs**
4. Issue notice to students and parents regarding starting of school w.e.f. 18 April 2022.
5. Only tuition fees and annual charges to be taken for the session. Fees to be collected w.e.f. 18 April 2022.



2024:DHC:5575



Annual charges of only three months to be taken during admissions. Instructions for rest about will be issued later.

6. Annual charges to be submitted to DRDO Educational Society Fee Account No. 65017688256

7. Fees to be submitted within 20-28 April 2022.

8. Below activities to be followed at the time of admission:

a. Issue suitable advisory (enclosed) to every parent/guardian of students from Class I-VIII and Class X.

b. Take undertaking from every parent/guardian from Class I-VIII and Class X as attached before issuing fee booklet.

9. All advisories an undertaking is to be put up in school website.

10. Strict compliance to the above to be ensured. Fee booklet an undertaking is to be handed over to undersigned by **06 May 2022**. In case you are unable to do so, please provide adequate justification.

11. This has the approval of President, DRDO Educational Society.”

(Emphasis in original)

3. Also as a sequel to the impugned letter dated 21 December 2021 of the DRDO, the Colonel, Paryojana Prabandhak, Sena, Vayu Raksha Radar III, Bangalore addressed the following communication to the Station Commander, Station HQ, Bangalore, on 8 February 2022:

“08 Feb 2022

The Stn Cdr,
Stn HQ, Bengaluru

ADMISSION OF WARDS OF DEF PERS POSTED WITH
VIDYALAYA/ARMY PUBLIC SCHOOLS

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W.P.(C) 3971/2022 & cont. matters

Page 4 of 39

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HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



1. It is intimated that a policy decision was promulgated in FY 2020-2021 to terminate the central funding of DRDO run project schools. An effort was made over the last one year to hand over the running of DRDO aided schools to Kendriya Vidyalaya Sangathan (KVS), but the mtg of the Committee constituted to formulate roadmap and timelines for deciding the future of DRDO aided schools, held in New Delhi on 13 Jan 22, it was decided that:

(a) No central funding for running the DRDO aided schools will be released by HQ DRDO after 31 Mar 22, and

(b) All the formalities with regard to closure of schools/transfer of mgt to any local edn society shall be completed by 31 Dec 22.

2. KV, DRDO, CV Raman Nagar, Bengaluru is one such DRDO aided school, which is likely to see a change in mgt from KVS to some other private edn society after 31 Mar 22. There are quite a few wards of Service pers studying in the school, as the service pers are posted on tenure with the various DRDO labs in Bengaluru. It is certain that a few students will seek transfer for the next academic session to continue to be under the aegis of KVS/AWES.

3. It is requested that the mgt of the APSI KV in the AOR of the Stn HQ, Bengaluru be advised to accept such intra-city transfers in the academic session 2022-23.

4. It is also requested that this issue be included as an agenda in the forthcoming Stn Conf pl.

SD/-THUMP

Copy to
The Principal
KV, CV Raman Nagar
Bengaluru-560093"

Prayers in the writ petitions

4. The prayer clauses in these writ petitions read thus:

(i) In WP (C) 3971/2022

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Signing Date: 08.08.2024
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HARI SHANKAR
Signing Date: 08.08.2024
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2024:DHC:5575



In view of the aforesaid facts and circumstances and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:

(a) Issue a writ of certiorari or other appropriate writ and quash the order dated 21.12.2021 issued by the Ministry of Defence, Government of India directing the for educational societies not to take admission after 31.03.2022;

(b) Issue a Writ of certiorari or other appropriate Writ to quash and set aside the decision of the Respondent to stop the grant in aid which is evident from the communication dated 8.2.2022 of the Colonel, Paryojaya Prabandhak Sena, Vayu Raksha Radar III, Bangalore;

(c) Issue a Writ of certiorari or other appropriate Writ to quash and set aside the communication dated 14th January, 2022 issued by the Defence Research and Educational Society, Dehradun not to admit students for the academic year 2022-2023;

(d) Issue a writ of mandamus or other appropriate writ directing the Respondents to grant all the benefits to the teachers of the Petitioner Association as is given to the teachers of Kendriya Vidyalayas on the basis of equality as enshrined in Article 14 of the Constitution of India;

(e) Issue a writ of mandamus or other appropriate writ directing the Respondents not to take any steps for closure of the DRDO schools in the final decision is taken after hearing all the stakeholders; and

(f) Pass any other order or orders or writ or direction that this Hon'ble Court may deem fit and proper in the circumstances of the case."

(ii) In WP (C) 7362/2022

"In view of the aforesaid facts and circumstances and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:

(a) Issue a writ of certiorari or other appropriate writ or direction calling for the records leading to the issuance of the order dated 21.12.2021 issued by the 4th Resp. Directorate of Management Service, Ministry of Defence, Government of India,

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
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HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



directing the for educational societies not to take new admission in the entry level classes as well as in all other classes for the next academic session 2022-2023 and to quash the same being violative of Art. 14, Art. 21-A of the Constitution of India;

(b) Issue a writ of mandamus or other appropriate writ to quash ION dt. 12.4.2022 (Annexure P-2) issued by the Ballistic Vidyalaya Management Committee to close down the preparatory centre, class IX or academic session 2022-2023 and further direction to issue compulsorily transfer certificate to class VIII students studying in Session 2021-2022 as being violative of Art. 14 & Art. 21A of the Constitution; and

(c) Pass any other order or orders or writ or direction that this Hon'ble Court may deem fit and proper in the circumstances of the case.”

5. WP (C) 3971/2022 has been filed by the All India DRDO Labs Schools Staff Association, which purports to be an association of the members of the staff of schools set up by the DRDO, which include the schools forming subject matter of the impugned communication dated 21 December 2021. WP (C) 7362/2022 is filed by the National Association for Parents and Students Rights (NAPSR), a registered trust which seeks to espouse the rights of students and their parents.

6. While both the writ petitions assail, essentially, the same acts of the respondents, there is, therefore, a fundamental difference in the grievance and, therefore, the cause of action is espoused in the writ petitions. This would become apparent from the recital which follows.

Rival Stands in the writ petitions

WP (C) 3971/2022

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W.P.(C) 3971/2022 & cont. matters

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HARI SHANKAR
Signing Date: 08.08.2024
14:21:49

Page 7 of 39



2024:DHC:5575



Case of the petitioners in WP (C) 3971/2022

7. The petitioners in WP (C) 3971/2022 submit thus:

(i) The DRDO provides grant in aid to the educational societies which manage the affairs of the subject schools.

(ii) The Ministry of Defence (MoD), *vide* letter dated 28 February 1992 conveyed the sanction of the President of India for adopting uniform terms and conditions for teachers and staff of DRDO aided schools, further stating that they would be the same as were applicable to teachers and staff in Kendriya Vidyalayas⁵ except for the teachers and staff of the Pune School.

(iii) The MoD further, *vide* letter dated 9 December 1992, addressed to the Directors of various defence establishments, required DRDO aided schools to be managed through educational societies established for the said purpose. Following the said directive, each DRDO aided school is managed by an Educational Society, which is headed by a Senior Scientist of that DRDO lab.

(iv) The Director, Directorate of Management Services⁶, MoD issued guidelines for DRDO aided schools on 10 March

⁵ “KVs”, hereinafter

⁶ “DMS”, hereinafter



2024:DHC:5575



1999, which stated, *inter alia*, that the main rationale for running DRDO aided schools was the establishment of labs in areas where normal educational facilities were not available. These guidelines, once again, reiterated the entitlement of the teachers and staff of DRDO aided schools to parity with the conditions applicable to similar employees in KVs.

(v) Teachers and staff of the subject schools were appointed on the basis of advertisements by the concerned Educational Societies, which clearly stated that they would be entitled to the same terms and conditions as were applicable to teachers and staff in KVs.

(vi) The VII Pay Commission recommendations were, in fact, implemented in respect of teachers and staff of the subject schools *vide* letter dated 30 December 1997. At all point of time, therefore, the teachers and staff of the subject schools were at par with the teachers and staff of KVs.

(vii) The DRDO, *vide* letter dated 12 December 2011 conveyed the sanction of the President of India for incurring of revenue expenditure of ₹ 11.36 crores for grant of financial support to the Educational Societies for pay revision and arrears to the teachers and staff of the subject schools for the period 1 January 2006 to 31 March 2012.

(viii) The High Court of Andhra Pradesh, in judgment dated 1 February 2002 in *Nalini Sashikant Mulay v. Defence*

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
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HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



Laboratories Schools and Junior College, held that, the Educational Societies as well as DRDO were “State” within the meaning of Article 12 of the Constitution of India. This decision was never challenged, and has attained finality. It is, therefore, binding on the respondents.

(ix) The faculty and staff of the subject schools are, therefore, entitled to continued parity with faculty and staff of KVs.

(x) The subject schools are audited by the Director, Audit, Defence Services, Central Command. This also indicated that all activities of the subject schools were being handled by the MoD.

(xi) The Director, Management Services, on behalf of the DRDO, issued guidelines dated 11 May 2018 for the subject schools in which it was stated that the Educational Societies/Management Committees of the schools would not recruit teaching or non-teaching staff on regular basis in future and that, for the future, appointments were to be made on contract basis. This indicated that the appointments of the teachers and staff of the subject schools made prior to the said communication dated 11 May 2018 were on regular basis.

(xii) A Committee was constituted under the Chairmanship of the Director General, DRDO with the approval of the Defence Minister to look into utilization of the funds and provide recommendations relating to DRDO aided schools. The

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Signing Date: 08.08.2024
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HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



Committee recommended that DRDO aided schools could not be closed and that efforts be made by the Directorate, Management Services to handover their management to the reputed educational institutions on mutually agreed terms, retaining admission to entry level classes. This recommendation was approved by the Chairman, DRDO as communicated by the Directorate, Management Services. The MoD, Department of Defence Research and Development wrote to the Chairman, DRDO in March 2020, for grant of financial upgradation to regular employees of seven DRDO aided schools with effect from 1 March 2020.

(xiii) The Department of Defence Research and Development wrote to the Chairman, DRDO on 22 October 2021 regarding release of Annual Financial Assistance to the Defence Research and Educational Society, Dehradun (managing the affairs of the Dehradun schools) for the FY 2021-2022.

(xiv) The entire salary of the staff of the subject schools was paid by the Department of Defence Research and Development, MoD as grant in aid, under Major Head No. 2080, Minor Head No. 800, which deals with “other expenditure”. The Education Societies were, therefore, “State” within the meaning of Article 12. The schools themselves generate almost 40% of the total revenue incurred by the grant as grant-in-aid. The total expenses incurred by the MoD amount to 0.002 to 0.003% of the total budget allotted to the DRDO and is paid from the consolidated fund of India.

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
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By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



(xv) The subject schools are all recognized by the CBSE and affiliated to the CBSE as Government or Government aided schools. The applicable regulations of the CBSE do not permit the school to be closed without the approval of the CBSE.

(xvi) The faculty and staff of the subject schools, who are members of the petitioner association, have served the schools for over three decades. Many of them have become over-age for seeking any other employment.

(xvii) Without considering these facts and without discussing the matter with the members of the petitioner association, the DRDO, Headquarters, *vide* the impugned letter dated 21 December 2021, ordered that no admission would be made to any class in the subject schools, for the academic session 2022-2023. It is with this communication that the petitioner is principally aggrieved.

(xviii) On 1 February 2022, the Defence Research Educational Society⁷, which was managing the Dehradun school, wrote to the Director, Directorate of Management System, pointing out that the teachers in the DRDO schools had served the schools for a long time and were mostly over-age, so that they would not be able to obtain employment elsewhere. A request was made, therefore, to provide the guidelines for functioning of the schools.



2024:DHC:5575



(xix) On 14 January 2022, the DRES Dehradun wrote to the Principal of the Dehradun school, stating that, as per the impugned letter dated 21 December 2011, there would be no new admission in any class in the Dehradun school with effect from the 2022-2023 academic session.

(xx) On 8 February 2022, the Colonel Radar III LRDE Bangalore wrote to the Station Commander, Station Headquarter, stating that, in the FY 2020-2021, policy decision had been taken to terminate central funding of DRDO run schools with effect from 31 March 2022. However, in its written submissions, the petitioner has stated that the DRDO has, later, issued a circular that admission from Class IX onwards may be given to students in the DRDO schools, Ramgarh.

8. It is on the basis of these averments and assertions that the petitioner has prayed that the communications dated 21 December 2021 of the MoD, 8 February 2022 of the Colonel, Radar III and 14 January 2022 of the DRDO Dehradun, be quashed and set aside and that the teachers of the subject schools be granted all benefits, which are made available to the teachers of the KVs.

Counter affidavit in WP(C) 3971/2022

9. The respondents have filed a common counter affidavit, in which it is averred thus:

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W.P.(C) 3971/2022 & cont. matters

Page 13 of 39

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



(i) The DRDO was providing financial assistance to eleven schools located at different parts of the country. These schools had been set up three to four decades ago for fulfilling the educational needs of wards of DRDO employees as the DRDO labs were located in remote and isolated areas, where normally educational facilities were not available, and where the State Governments were reluctant to open schools. Of these eleven schools, eight schools were run by Educational Societies, two schools were run by the KVs through a Memorandum of Understanding⁸ between the KVs and DRDO and one school, namely, the Bhavan's Varuna Vidyalaya at Kochi is run by the Bhartiya Vidya Bhawan⁹, as per the MoU signed by the BVB and the DRDO.

(ii) A policy decision had been taken by the Government that the DRDO should concentrate on defence research and development and exit from running and management of schools. Accordingly, a High Level Committee was constituted under the Chairmanship of the Director General (Human Resource), DRDO, Headquarters in August 2021 to formulate a roadmap and timelines for exiting running of all eleven schools aided by the DRDO. Among other options which were being explored was the option of engaging with other educational institutions, such as the KVs. Four meetings had been conducted by the Committee. The proposed plan of

⁸ "MoU", hereinafter

⁹ "BVB", hereinafter



2024:DHC:5575



action was first to make efforts to transfer the schools to reputed educational institutions and, in case the said efforts failed, to close down the schools and provide reasonable compensation to the staff.

(iii) This decision was taken in line with the order passed by the Supreme Court on 1 September 2017 in *UOI v. Central Administrative Tribunal*¹⁰. The particulars of that case may be set out thus:

(a) The case related to a school run by the Combat Vehicles Research and Development Establishment¹¹, Chennai since 1978. The school was closed in August 2001, as it was considered unviable. The CVRDE had been established in 1978 with an initial grant of ₹ 63,000/- provided by the DRDO for educating wards of the CVRDE as a welfare measure. No child other than ward of the CVRDE employees was admitted in the school. The teachers and staff of the CVRDE schools were appointed as per service rules framed by the management of the school. Their pay, allowances and other service conditions were also framed by the Management Committee of the school. As per these terms and conditions, though they were entitled to pay at par with employees of the KVs, they could be terminated at any time by giving one month's notice. Employees of

¹⁰ SLP (C) 19307/2012

¹¹ CVRDE, hereinafter



2024:DHC:5575



the CVRDE school approached the Madras Bench of the Central Administrative Tribunal¹² *vide* OA 592/1990, seeking regularization of their service. The OA was dismissed by the CAT on 26 April 1991.

(b) On 28 March 2001, a notice was issued for closing the CVRDE school as it become unviable. This was followed by notices of termination issued to the teachers and staff of the school. Their services came to be terminated thereafter on various dates. Aggrieved thereby, the employees of the CVRDE school re-approached the CAT by way of OA 436/2001. The OA was dismissed by the CAT *vide* a common order dated 26 September 2001, directing the CVRDE school to pay reasonable compensation to the employees. The employees challenged the said decision before the High Court by way of WP 20179/2001. The High Court disposed of the writ petition on 13 March 2003 with the direction to the employees to represent to the Director, Department of Personnel and Training¹³ and a direction to the DoPT to dispose of the representation in accordance with the scheme framed under the Central Civil Services (Redeployment of Surplus Staff) Rules, 1990¹⁴. The employees represented to the DoPT. The representations were rejected on 13 February 2004, 19 March 2004 and 1 April 2004 on the ground that the

¹² CAT, hereinafter

¹³ DoPT, hereinafter

¹⁴ Surplus Staff Rules, hereinafter



2024:DHC:5575



Surplus Staff Rules did not apply to employees of CVRDE school. The employees thereupon re-approached the CAT by way of OAs 397-410/2004. By order dated 25 January 2005, the CAT allowed the OAs and directed the CVRDE school to consider the claim of the applicants and included their names in the surplus schools for redeployment in Government establishments or provide them alternative employment or transfer them to any offices under the respondents in terms of the Surplus Staff Rules. This issue was carried till the Supreme Court, which, *vide* order dated 1 September 2017 (*supra*), approved the compensation, which was offered to the employees, as reasonable.

(iv) The petitioner's assertion that the DRDO was providing grant in aid to the educational institutions which were running the schools, was denied. The DRDO was only providing annual financial aid, which is not the same as grant in aid. Though no final decision had been taken to stop grant of annual financial aid to the educational institutions, a policy decision had been taken by the Government that the DRDO should focus on its core areas of defence research and development and exit the activity of running and management of schools.

(v) The teachers of the subject schools of the DRDO were neither employees of the DRDO nor employees of the Central Government. They were only granted certain benefits at par



2024:DHC:5575



with KVs, so as to take care of their genuine aspirations and ensure that they would serve the schools with full devotion.

(vi) The rationale for setting up of the schools, three to four decades earlier, no longer survived. The areas in which the schools were set up are no longer remote. Many of them have been urbanized. There is no dearth of good schools in the nearby areas. These factors, along with the consideration that the DRDO should focus on its core area of defence research, justified the impugned decision dated 21 December 2021.

(vii) The faculty and staff of the subject DRDO aided schools are being paid at par with the faculty and staff of the KVs.

(viii) The contention that the entire salary of the teaching and non-teaching staff of the subject DRDO aided schools was being paid by the DRDO as grant in aid, was denied. The schools were financed only to the extent of the deficit in revenue generation and expenditure as anticipated by the Educational Societies, which were running the schools. A large portion of the salary of teaching and non-teaching staff of the schools was financed through tuition fees collected from the students. The funding provided by the DRDO is only financial aid and not a grant in aid as the petitioner sought to contend. Thus, it could not be said that the overall control over the schools vested in DRDO, which merely funded the school Educational Societies to the extent of deficit and finances. The plea that CBSE permission had to be taken before the schools

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W.P.(C) 3971/2022 & cont. matters
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Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



are closed was premature. This aspect would be taken care of before closure of the schools. No final decision to close the schools had yet been taken.

(ix) The decision not to provide financial assistance to the erstwhile DRDO aided schools is a matter of financial policy, with which judicial interference would not be appropriate. It had been taken at the highest level, so as to promote defence research activities of the DRDO.

For all these reasons, the counter affidavit prays that the writ petitions be dismissed.

Rejoinder by the petitioner

10. The petitioner, in the rejoinder to the counter affidavit of the respondents, seeks to analogize the present case with the judgment of the Supreme Court in *All India Sainik School Employees Association v. Sainik School Society*¹⁵ and to contend, on the basis of the said decision, that the Educational Societies which were running the schools were “State” within the meaning of Article 12 of the Constitution of India. Also, reference is once again made to the case of the CVRDE school, which culminated in the order dated 1 September 2017 of the Supreme Court in *U.O.I v. Central Administrative Tribunal*. The petitioner reiterates that, in the said order, the Supreme Court, even while disposing of the SLP with the direction to grant reasonable compensation of the employees, did so



2024:DHC:5575



only because of a concession by the Union of India to that effect. The Supreme Court did not disturb the directions of the CAT to redeploy the employees in terms of the Surplus Staff Rules. The said direction, therefore, it is contended, is binding on the respondent in the present case.

11. The respondents' contention, that they were providing only financial assistance and not a grant in aid, is also refuted and in this context, reliance is placed on letter dated 30 August 1978 from the MoD to the Director General, DRD, titled "grant-in-aid to Defence Laboratories Primary School, Kanchanbagh, Hyderabad.

12. The petitioner has also invoked the principle of legitimate expectation, stating that, while joining as employees of the subject schools, the members of the petitioner association were under the "pristine belief" that they were regular employees, who would be given the same benefits as were provided to similar employees in KVs. They had worked for over three decades in that belief. Reliance is placed on the judgment of the Supreme Court in *U.O.I. v. Hindustan Development Corporation*¹⁶.

13. The *bona fides* of the decision to close the subject schools is also called into question in the rejoinder. The petitioner has relied on a press statement by the Defence Minister in January 2022, in which it was stated that 100 new Sainik Schools were being set up to provide opportunity to girls to join armed forces etc. In that view of the matter, it is submitted that the respondents cannot seek to justify the



2024:DHC:5575



closure of the subject schools on the premise that a policy decision had been taken for DRDO to exit the sphere of education.

14. The rejoinder further contends that the closure of the subject schools would be contrary to Section 6¹⁷ of the Right of Children to Free and Compulsory Education Act, 2009¹⁸.

15. The petitioner further disputes the respondents' contention that the ground situation has changed and that there were now several schools in the vicinity of the DRDO labs. It is sought to be pointed out that there were no schools within 2 kms of the Kanchan Bagh DRDO school and no schools within 2 kms of the RCI Lab School at Hyderabad and no neighbourhood school near the DRDO at Balasore Odisha.

¹⁷ 6. Area or limits of neighbourhood.

- (1) The area or limits of neighbourhood within which a school has to be established by the appropriate Government or the local authority shall be
 - (a) in respect of children in classes from I to V, a school shall be established within a walking distance of one km of the neighbourhood;
 - (b) in respect of children in classes from VI to VIII, a school shall be established within a walking distance of three km of the neighbourhood;
- (2) Wherever required the appropriate Government of the local authority shall upgrade existing schools with classes from I to V to include classes from VI to VIII and in respect of schools which start from class VI onwards, the appropriate Government or the local authority shall endeavour to add classes from I to V, wherever required.
- (3) In places with difficult terrain, risk of landslides, floods, lack of roads and in general, danger for young children in the approach from their homes to the school, the appropriate Government or the local authority shall locate the school in such a manner as to avoid such dangers, by reducing the area or limits specified under sub-rule (1).
- (4) For children from small hamlets, as identified by the appropriate Government or the local authority, where no school exists within the area or limits of neighbourhood specified under sub-rule (1), the appropriate Government or the local authority shall make adequate arrangements, such as free transportation and residential facilities, for providing elementary education in a school, in relaxation of the area or limits specified in the said rule.
- (5) In places with high population density, the appropriate Government or the local authority may consider establishment of more than one neighbourhood school having regard to the number of children in the age group of 6-14 years in such places.
- (6) The local authority shall identify the neighbourhood school(s) where children can be admitted and make such information public for each habitation.
- (7) In respect of children with disability, which prevent them from accessing the school, the appropriate Government or the local authority shall endeavour to make appropriate and safe transportation arrangements to enable them to attend school and complete elementary education.
- (8) The appropriate Government or the local authority shall ensure that access of children to the school is not hindered on account of social and cultural factors.



2024:DHC:5575



16. It is further contended that the Committee set up by the respondents in 1999 recommended continuation of the DRDO aided schools and this recommendation was reiterated by the Committee, which was set up in 2019. The respondents, therefore, it is contended that could not refuse to continue the schools merely on the ground that they had decided by not providing budgetary support. In the process, the members of the petitioner association had been left in lurch.

Case of the petitioner in WP(C) 7362/2022

17. Besides reiterating the contentions advanced by learned Counsel for the petitioner in WP (C) 3971/2022, the petitioner in WP (C) 7362/2022 submits as under:

- (i) The subject schools were initially categorized as “specified category” schools on 15 January 2013, within the meaning of Section 2(p)¹⁹ of the RTE Act, similar to KVs, Navodaya Vidyalayas and Sainik Schools. Thereafter, they were re-categorized as Government/Government aided schools at par with KVs. Consequently, the subject schools are imparting education as schools established, owned and controlled by the appropriate Government within the meaning of Section 2(n)(i)²⁰ of the RTE Act.

¹⁹ (p) “specified category”, in relation to a school, means a school known as Kendriya Vidyalaya, Novodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government;

²⁰ (n) “school” means any recognised school imparting elementary education and includes—

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Signing Date: 08.08.2024
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W.P.(C) 3971/2022 & cont. matters

Page 22 of 39

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



(ii) The impugned decision dated 21 December 2021 has been taken without considering the interest of the children who are studying in the subject schools. Their constitutionally guaranteed right to education of the children stands jeopardized thereby.

(iii) In the Ballistics Vidyalaya, the Management Committee had already issued several Transfer Certificates to the students of Class VIII progressing to Class IX, facilitating closure of the schools. Notices were also issued to the parents of the children studying in the schools, that they were continuing to educate their wards at their own risk. The parents were also required to subscribe to an undertaking that admission of their wards for academic session 2022-2023 was being done with informed consent and knowledge of the existing scenario. In the absence of such an undertaking, the wards were not permitted to continue in the schools.

(iv) The affiliation bye-laws of the CBSE do not permit closure of the schools affiliated to the CBSE on any ground whatsoever, without obtaining prior permission from the CBSE and from the concerned stakeholders.

(v) The decision to discontinue admission to all classes in the subject schools, as contained in the impugned communication

(i) a school established, owned or controlled by the appropriate Government or a local authority;

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Signing Date: 08.08.2024
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W.P.(C) 3971/2022 & cont. matters

Page 23 of 39

Signature Not Verified

Digitally Signed
By: CHANDRASEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



dated 21 December 2021, abrogates the fundamental rights of the petitioner under Article 21A²¹ of the Constitution of India.

(vi) Transfer of the subject schools to a private management would result in increase of fees, which many of the parents would be unable to bear.

(vii) The MoD could not have decided to discontinue grant in aid to DRDO run schools even before the Committee, constituted to look into the issue, had submitted its recommendations. Besides, the parents of the children studying in the schools, who are vitally affected, have not been consulted in the process.

(viii) The Expression of Interest (EOI) to third parties to enter into a Leasehold Agreement, which has been done in the case of Ballistics Vidyalaya without involving the parents of the children studying in the school, is violative of Article 299 of the Constitution of India.

Additional affidavit filed by the petitioner

18. During the course of proceedings, an additional affidavit dated 17 November 2023 was filed by the petitioner. It has been pointed out in the said additional affidavit that the Ballistics Vidyalaya Managing Committee had initially issued a press advertisement on 5 May 2022, calling for EOI from interested parties to take over the management of

²¹ **21-A. Right to education.** – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.



2024:DHC:5575



the Ballistics Vidyalaya on lease agreement basis. Concomitantly, notice was issued to the parents of the children studying in Classes I to VII of the Ballistics Vidyalaya, granting them liberty to retain their wards in the school for the academic session 2023-2024 in larger public interest, as the management of the school was in the process of being handed over to another society. The said notice reads thus:

“Ballistics Vidyalaya

(Under the aegis of DRDO Educational Society, Ramgarh)

Notice

(Attention-Parents of Class I to VII students)

1. As per instructions issued by HQ DRDO, MoD, the management of Ballistics Vidyalaya is likely to change wherein participation of DRDO officials would not be there.
2. **It is brought to your notice that the school is in the process of handing over to another educational society. The process of handing over the school is in process at HQ DRDO.**
3. In case the school is taken up by another society, it will be managed as per the fees structure and conditions of the new society
4. If the school is not taken up by another society, the school may be closed and intimation will be given to relevant authorities.
5. In view of the above parents can collect transfer certificates for getting admission of their wards in another school.
6. Parents at their own risk may choose to keep their wards in Ballistics Vidyalaya. You are, therefore requested to provide undertaking that admissions of your ward(s) in Ballistics Vidyalaya for academic session 2023-24 is being done with your willingness and knowledge of the current scenario and DRDO Educational Society/ Ballistics Vidyalaya Management Committee will not be held responsible for any future consequences.
7. **In absence of the submission of Undertaking, the ward will not be allowed to continue in Ballistics Vidyalaya.**

Sd.
Secretary

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

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By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575

**Ballistics Vidyalaya Management Committee**

To

The Principal, BV- For necessary action please”

19. Thereafter, on 2 February 2023, the Managing Committee of the Ballistics Vidyalaya directed the Principal of the Ballistics Vidyalaya to stop new admissions. The said notice reads thus:

“DRDO EDUCATIONAL SOCIETY, RAMGARH
(Ballistics Vidyalaya Management Committee)

Subject: Regarding Academic session 2023-24

1. As you are aware, DRDO has decided to exit from DRDO-aided schools and instructed all societies to submit a roadmap for transferring the management to other reputed facilities, in this regard, the process of handing over BV is in process at HQ DRDO.
2. As per instructions issued by HQ DRDO, MoD; the management of Ballistics Vidyalaya, is likely to change wherein participation of DRDO officials would not be there,
3. HQ DRDO had issued directives to stop new admissions in Ballistics Vidyalaya in the academic session 2022-23 which is also applicable for the current session 2023-24. Accordingly, Ballistics Vidyalaya Management Committee has decided to stop new admissions in Ballistics Vidyalaya.
4. You are directed to comply with the following directives:
 - a) No new admission will be done in any class for the academic session 2023-24.
 - b) Admission of promotees from classes I to VII to higher classes in Ballistics Vidyalaya to be continued with co-advisory to all the students & parents.
 - c) No admission of the students of class VIII promoted to class IX will be done at BV as school will be running classes I to VIII till the handing over is completed.

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W.P.(C) 3971/2022 & cont. matters

Page 26 of 39

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



d) Issue transfer certificates to students of Class VIII (Session 2022-23). The students of all classes desirous to take TCs be provided accordingly.

e) Distribute the attached advisories to respective students and their parents/guardians.

f) Inform the students and parents of all classes about the decision of the management.

5. This is for the information of all teaching and non-teaching staff.

Sd.
Secretary BVMC"

20. The additional affidavit further alleges that hostile discrimination is being practiced with the subject schools vis-à-vis other schools for which the proposal to shift the management of the schools and invite EOI have been withdrawn, to wit, in the case of the the Defence Laboratory School, Kanchan Bagh, the Range School, Chandipur and the Ramnath Secondary School, Vishakhapatnam.

Written submissions dated 15 May 2024 filed by the petitioner

21. On 15 May 2024, the petitioner filed written submissions, stating that the DRDO Educational Society Ramgarh (in charge of the Dehradun School) had allowed Class VIII students to be promoted to Class IX for the academic year 2024-2025 and that Classes had also commenced on 5 April 2024.

Counter affidavit of respondents

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Digitally Signed By: A. H. KUMAR
W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

Signature Not Verified

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By: CHANDRASEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



22. In their counter affidavit, the respondents have, while reiterating the averments contained in the counter affidavit in WP(C) 3971/2022, additionally submitted that the Educational Societies managing DRDO aided schools are independent societies and registered under the Societies Registration Act 1860, which have their own by-laws, rules and regulations. Generally, no instructions to these societies are issued by the DRDO regarding the running of the schools.

23. The contention that the subject schools fall within the definition of schools “owned and controlled by the appropriate Government” within the meaning of Section 2(n)(i) of the RTE Act is emphatically denied. The CBSE affiliation itself indicates that the schools are independent. The change of category by the CBSE, it is submitted, does not apply to the subject schools.

24. It is further pointed out that the impugned letter dated 21 December 2021 does not direct closure of the subject schools. It merely requests the schools to hold in abeyance admission to all classes in the academic session 2022-2023.

25. The recommendations of the Committee, which was constituted in 2019, it is submitted, were based on the facts and circumstances then obtaining. Since then, circumstances had changed, and a *bona fide* policy decision has been taken by the DRDO that the DRDO would exit from the sphere of education so as to concentrate on its core activities of Defence Research and Development. This decision, it is submitted, is not amenable to judicial interference.

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Signing Date: 08.08.2024
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W.P.(C) 3971/2022 & cont. matters

Page 28 of 39

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



26. Similarly, the respondents contend that the decision not to make new admissions does not, in any manner, impact the constitutional rights of the petitioner. The counter affidavit further assures that, while transferring the schools to other educational institutions, all applicable statutory rules and regulations would be complied with. The school, it is pointed out, are not yet being closed and sincere efforts are being made to transfer the management of the school to other reputed educational institutions.

Analysis

27. The genesis of the controversy, in both the writ petitions, is undisputedly the policy decision of the respondents that the DRDO should exit the activity of education and concentrate on its core function of defence research and development. It goes without saying that such a policy decision is completely impervious from judicial interference. Two other factors which, according to the counter-affidavit filed by the respondents, fueled this decision, were the fact that the number of students of DRDO staff who were attending the school had dwindled, and that the areas where the schools had been set up and which, at that time, few educational opportunities, had become rapidly urbanized, with other schools being established in the vicinity. These facts, as averred by the respondent on oath, are not in dispute.

28. The decision to dissociate DRDO from the activity of education is purely one of policy. It is motivated by the consideration of

Signature Not Verified

Digitally Signed By: A. J. KUMAR
W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

Signature Not Verified

Digitally Signed
By: CHANDRASEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



allowing the DRDO to concentrate on its core activities of defence research and development, and distance itself from other endeavours. This consideration, even by itself, would be sufficient to insulate the decision from judicial interference, though it is also pointed out that the number of DRDO employees' students who are taking admission in the schools is dwindling, and that other schools have, in the meanwhile, been established in the vicinity.

29. The Court cannot second guess the policy of the executive in such matters. Especially so when the matter relates to defence, any such attempt on the part of the Court would be a total misadventure, and fraught with the possibility of adverse impact on national interests. As the policy decision is obviously in national interest, I do not deem it necessary to burden this judgment with any reference to judicial precedents which advocate reticence in the matter of interference with executive policy, though they are many and well known.

30. Most of the decisions under challenge in these writ petitions are a sequitur to the said policy decision. The respondents have come on affidavit to say that there is no decision presently to close the schools, and that any such decision, if taken would be strictly in accordance with the law and applicable statutes. The record reveals that, presently, the matter is still under discussion, and, even if it is found that the DRDO cannot run these schools, the first effort would be to hand over their administration to reputed organizations such as the KVS and that it is only if these efforts prove futile that other avenues would be explored. There is, therefore, no imminent threat of the

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Digitally Signed By: A. J. KUMAR
W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



schools being closed. In view of the respondents' assurance that, in the event of any such decision having to be taken, the procedure established by law in that regard would be followed, no interdictory orders can be passed by the Court.

31. The facts relating to the CVRDE school are also relevant. The judgment of the High Court of Madras in *U.O.I. v. Central Administrative Tribunal*²² sets out the facts. They are largely similar to the case at hand. The CVRDE school was set up in 1978 with an initial grant of ₹ 63,000/- provided by the DRDO, for educating employees of the CVRDE. No child other than the award of the CVRDE was allowed admission in the school. The litigation was initiated by 14 contractual employees²³, employed with the CVRDE school. Their payscales and service conditions were at par with employees of KVs. Except for the fact that they were contract employees, therefore, they were situated identically to the members of the petitioner-association in WP (C) 3971/2022.

32. On 8 March 2001, a notice was issued for closing the CVRDE school as it had become financially unviable. Consequent thereon, the 14 employees were issued notices of termination, whereafter their services were terminated. Aggrieved thereby, the 14 employees petitioned the CAT, seeking regularisation of their services. DOA was dismissed by the CAT. However, the CVRDE School was directed to pay reasonable compensation to the 14 employees. The 14 employees petitioned the High Court which, on 13 March 2003, disposed of the

²² MANU/TN/2814/2012

²³ "the 14 employees", hereinafter



2024:DHC:5575



writ petition with a direction to the employees to represent to the DoPT, which was directed to consider the representation in accordance with the scheme framed under the Surplus Staff Rules. The DOPT rejected the 14 employees' representations, stating that their case was not covered by the Surplus Staff Rules. The 14 employees reapproached the CAT which, by a common order dated 25 January 2005, allowed their OAs and directed the respondents to include the names of the 14 employees in the surplus school and consider them for redeployment in Government establishments or provide an alternative employment in terms of the Surplus Staff Rules. The respondents approached the High Court against the said decision. The High Court, by judgment dated 21 March 2012, dismissed the writ petition of the respondents and directed them to comply with the judgment of the CAT.

33. The Union of India challenged the judgment of the High Court before the Supreme Court by way of SLP. Before the Supreme Court, the respondents filed an affidavit, offering compensation to the 14 employees. The Supreme Court disposed of the SLP by the following order passed on 1 September 2017:

“In pursuance of order of this Court dated 1st December, 2015, affidavit dated 28th January, 2016 has been filed on behalf of the Union of India. We are satisfied that the compensation offered in terms of the said affidavit is reasonable. The same may accordingly be paid to the respondents within 3 months from today.

The special leave petition is accordingly disposed of.”

34. The respondents have, in the present petition, stated that, as of now, the members of the petitioner-Association are not being

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



terminated. Attempts are being made to transfer the administration of the subject schools to educational institutions such as the KVS. In the event that the said attempt is not fruitful, there is also a plan to invite private players to manage the subject schools. It is only after exploring all other possible avenues that, if there is no other alternative, the schools may be closed.

35. In that event, no doubt, the respondents have tentatively contemplated compensating the teachers and staff of the schools on the same terms as were applied to the 14 employees of the CVRDE school.

36. I do not deem it necessary, or even appropriate, to pronounce on the entitlement of the members of the petitioner-Association, were such a situation to come to pass. As of today, no decision, prejudicial to the members of the petitioner-Association, has been taken by the respondents. In the event that they are faced with an imminent threat of termination of their services, it would be for the members of the petitioner-Association to, at that stage, ventilate their rights in accordance with law. This Court cannot provide an advance ruling in that regard, forestalling the rival contentions that may be urged in such a case. Suffice it, therefore, to state that, if such a situation arises, the members of the petitioner-Association would be at liberty to take up the issue in any manner known to the law.

37. The petitioners have sought to project a picture of the subject schools being entirely funded and managed by the DRDO, or the Ministry of Defence. That this is not the position is apparent from the

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

Signature Not Verified

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By: CHANDRASEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



letter dated 28 February 1992 of the Department of Defence Research and Development, MOD, on which the petitioner itself places reliance. The said letter may be reproduced, *in extenso*, thus:

“No. DRDO/Admn-1/2001/SP
Government of India
Ministry of Defence
Dept. of Def. Research & Development
New Delhi, the 09 December 1992

The Director,

CVRDE, DLRL, NSTL, R & DE, P & EE

Subject: FORMATION OF EDUCATIONAL SOCIETY

Reference letter No. DRDO/Adm-1/827/D (R & D) dated 28 February 1992.

2. As per the Government letter referred above, the teachers and staff of DRDO Aided Schools are eligible for pay scales, DA, CCA, HRA, Teaching Allowance, Employees Provident Fund, gratuity and leave as applicable to the teachers and staff of Kendriya Vidyalaya Sangathan. The Government letter also provides for Group Insurance & Scheme/Deposit Linked Scheme, LTC, within the State once in 4 years and medical reimbursement up to maximum of ₹ 600/- per annum to those employees whose spouses are not eligible for any LTC or medical facilities.

3. *Though the teachers and staff of the schools are not employees of DRDO/Central Government, certain facilities at par with KVS employees have been given to them.* This should take care of the genuine aspirations of the teachers and staff of these schools and they should be able to devote their full time and energy to the smooth and efficient functioning of the schools.

4. The DRDO aided schools are to be managed through Educational Societies formed for the purposes. These Societies should be registered with the concerned State Government. It is also imperative that the rules and regulations to govern these schools should be formulated in line with the Government later referred above.

5. A set of rules and regulations formulated and adopted by the Educational Society of CVRDE School, Madras, is enclosed for your reference and guidance. These rules and regulations have already been cleared by the Ministry of Law. We would appreciate

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Digitally Signed By: A. H. KUMAR
W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



if the rules and regulations in the case of all DRDO aided schools are an identical pattern but for any deviations which are essential.

6. You are requested to formulate the rules and regulations in respect of your school and forward a copy of the same to us by 15 January 1992.
7. Please acknowledge.

CSAA Zaidi J
Brigadier
Director Management Services
For DGR&D”

Thus, it is clear that the subject schools are merely provided aid by the DRDO, and that their employees and staff are not employees, or staff, of the DRDO or of the Central Government. Certain facilities, at par with employees of the KVS, have been provided to afford a level of comfort to the employees and staff of the subject schools and enable them to discharge their duties efficiently. The management of the subject schools is entirely with the concerned Societies, which functioned as per their own by laws, rules and regulations.

38. For this reason, too, the Court cannot issue a mandamus to the MOD or to the DRDO to continue to provide aid or financial assistance to the subject schools. The respondents have also stated on affidavit to state that, though a tentative decision to discontinue providing of financial aid to the subject schools was taken, the matter is still under consideration, and no final decision in that regard has been arrived at. Para 2.35 of the counter-affidavit filed by the respondents in WP (C) 3971/2022 specifically avers thus:

“2.35 That in reply to the contents of Para 2.35 of the petition it is submitted that the aspect of taking permission from the CBSE will

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Digitally Signed By: A. H. KUMAR
W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
14:22:26

Signature Not Verified

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By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



be taken care of before the closure of schools *for which no final decision has been taken till now.*”

(Emphasis supplied)

At the highest, therefore, all that can be done is to direct that, in the event that the DRDO does decide to discontinue providing aid to the subject schools, and it becomes impossible to transfer the management of the schools to any other institution, or otherwise accommodate the members of the petitioner Association, any decision that is taken in that regard would be in accordance with the law. The Court cannot predict every difficulty that the petitioners may face in future and provide succour in advance. It is only when a sustainable cause of action arises that the Court can step in with remedial measures. That stage, insofar as the petitioners are concerned, is yet to arise. If and when it does, the right of the petitioners to seek legal remedies shall remain reserved.

39. The attempt of the petitioners to analogise their case with the 100 Sainik Schools which the MOD is opening, is *ex facie* futile. In the first place, the Sainik Schools are not aided by the DRDO, but are directly run by the MOD. Besides, it is the petitioners’ own case that the Sainik Schools are being run so as to encourage girls to join the Armed Forces. They, therefore, serve an entirely different public purpose, as compared to the purpose which was served by the subject schools. The subject schools had been opened essentially to cater to the wards of DRDO employees, as there was a dearth of good schools in the vicinity of DRDO labs. There may still be individual cases of insufficiency of schools but, by and large, the assertion of the respondents in their counter-affidavit that, over the past two decades

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
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By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 08.08.2024
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2024:DHC:5575



since the subject schools were established, the areas in which they were set up have rapidly become urbanised and other viable educational options have emerged, resulting, in fact, in a substantial reduction of the number of wards of DRDO employees who are seeking admission in the subject schools, merits serious consideration. These are all factors which are relevant to the impugned decision, and this Court cannot substitute its subjective view in that regard.

40. It has also been sought to be contended that the impugned decision violates Section 6 of the RTE Act. The contention is obviously one of desperation, and has merely to be urged to be rejected. Section 6 casts a duty on the executive administration to ensure the availability of schools in the neighbourhood. No compulsion on the DRDO to continue providing of financial aid to the subject schools can, by any stretch of imagination, be read into Section 6 of the RTE Act. Nor does Section 6 contain any proscription against closing of schools, should such an eventuality arise.

41. Equally, the contention that, before taking a decision to discontinue financial aid to the subject schools, the DRDO ought to have consulted the members of the petitioner-Association, is also completely misconceived. There is no requirement, in the law, to consult the faculty or staff of the subject schools before a decision is taken to discontinue financial aid, to the said schools, by the DRDO. No decision, prejudicial to the members of the petitioner-Association, has been taken as on date. Even otherwise, providing of financial aid is an administrative decision, and, inasmuch as it does not directly

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
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Digitally Signed By: CHANDRASHEKHARAN HARI SHANKAR
Signing Date: 08.08.2024
14:21:49



2024:DHC:5575



impact the members of the petitioner-Association, no requirement, in law, for their being consulted before such a decision is taken, can be said to exist.

42. Insofar as the petitioner in WP (C) 3971/2022 is concerned, therefore, the petition is essentially premature, and is more in the nature of a knee-jerk panic reaction to the decision of the DRDO to discontinue providing financial aid to the subject schools. That decision, being purely one of financial and defence policy, is impervious to judicial interference. Should, at any point of time, the members of the petitioner-Association face any threat of adverse consequences on their service conditions, their right to agitate their legitimate claims, in that regard, would stand reserved. Nothing, beyond this, can be granted by the Court.

43. Adverting, now, WP (C) 7362/2022, the petition is obviously devoid of any sustainable cause of action. The decision to discontinue admissions, as per the respondents in the counter-affidavit, was only for fresh admissions, with which the members of the petitioner-Association in the writ petition cannot be concerned. Admissions to higher classes are taking place, and students are being promoted. If, given the situation of flux regarding providing of financial aid to the subject schools, the DRDO decided to suspend fresh admissions for a period of time, no illegality exists in such a decision.

44. As already noted, as of today, no final decision to close the subject schools has been taken. The attempt is, in the event of the DRDO unable to continue providing financial aid to the schools, to

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W.P.(C) 3971/2022 & cont. matters
Signing Date: 08.08.2024
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2024:DHC:5575



transfer the administration to the KVS or some other such educational institution. It is only if all other attempts fail that any decision to close the schools would be taken. If, at that stage, the wards of the members of the petitioner-Association, who are studying in the subject schools, face prejudice, it shall be open to the said students, or their parents, to seek their remedies in accordance with law.

Conclusion

45. Both the writ petitions are, therefore, disposed of by dismissing the challenge to the proposed decision of the DRDO to discontinue providing financial aid to the subject schools, while preserving the right of the members of the petitioner-Associations in both the writ petitions to avail legal remedies, in the event of any cause of action arising in that regard, in accordance with the observations made hereinabove.

C. HARI SHANKAR, J

JULY 30, 2024

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W.P.(C) 3971/2022 & cont. matters

Page 39 of 39

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