



2024:DHC:2989



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

+ W.P.(C) 2956/2020 and CM 11347/2020

MOUNT COLUMBUS SCHOOL & ORS Petitioner

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

versus

CENTRAL BOARD OF SECONDARY
EDUCATION

..... Respondent

Through: Ms. Manisha Singh, Advocate

CORAM:**HON'BLE MR. JUSTICE C.HARI SHANKAR****J U D G M E N T (O R A L)****10.04.2024**

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1. The Petitioner School is before this Court assailing order dated 16 March 2020 whereby the Central Board of Secondary Education (CBSE) has withdrawn the provisional affiliation, granted to the petitioner initially *vide* letter dated 23 January 2004 for the period 1 April 2003 to 31 March 2006 and, thereafter, periodically renewed.

2. The impugned order claims to be the culmination of an exercise which commenced, in so far as the petitioner is concerned, with the issuance to it, of a show cause notice dated 5 October 2017. The show cause notice purported to rely on the report of an Enquiry Committee constituted by the CBSE, which visited the petitioner school on 12 July 2016. The relevant passages from the show cause notice, which sets out the basis for proposing withdrawal of the provisional

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affiliation granted to the petitioner may be reproduced as under:

“AND WHEREAS, on receipt of various complaints from Sh. Naresh Kumar Choudhary against the School, an inquiry Committee was constituted by the Board. The Inquiry Committee conducted an inquiry on the spot by surprisingly visiting the school on 12.07.2016 and reported that the school is violating the provisions of Affiliation and Examination Bye laws of the Board as given below:-

1. The school management i.e. Sivananda Vidya Bhawan Society running the school has been proprietary in character till the part of 2015 and the control has vested with the family members of Shri Rishi Choudhary, who is the President of the Society which is not as per norms.
2. The School authorities has not appointed any Principal as per provisions of Affiliation Bye Laws and Smt. Babita Choudhary, daughter-in-law of Shri Rishi Choudhary, though shown as vice Principal in the records is in fact working as the Principal for all practical purposes.
3. Smt. Parul Sharma, who is working as TGT(English) is also stated that to be acting as Manager-cum-Headmistress of the School. She is not shown to be on the staff roll of the school, Neither her service book is maintained by the school, however, she continues to draw the salary as TGT (English).
4. The school do not possess adequate infrastructure and facilities w.r.t. classrooms, furniture and science laboratory.
5. The school do not possess building safety certificate from Govt. of Delhi.
6. The school could not produce all the relevant records for inspection.

WHEREAS, the school is found violating the provisions of Affiliation Bye-laws of the Board willfully and the aforesaid omissions and commissions of the school are in violation of Rules 5.1, 8, 10, 19.1(1), 20, 22, 23 and 53 of Affiliation Bye Laws and attracts penal provisions under Rule 17 of Affiliation Bye Laws of the Board.

Therefore, the Manager, Mount Columbus School, C- Block,

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Dakshin Puri New Delhi-110062 (Affiliation No.- 2730386) is served with a Notice to Show Cause as to why Provisional Affiliation granted to the school for Secondary Level may not be withdrawn may not be withdrawn for willfull violation of the provisions of the Affiliation Bye-laws of the Board. His/Her reply to this notice should reach to the undersigned within 30 days from the date of issue of this Notice failing which it will be assumed that School Authorities have nothing to represent in the matter and ex-parte decision shall be taken as per rules of the Affiliation Bye-laws of the Board.”

3. Withdrawal of provisional affiliation was at the time of issuance of the aforementioned show cause notice, governed by Clause 17 in Chapter V of the pre-amended CBSE Affiliation Bye-Laws (which were subsequently amended in 2018), which may be reproduced thus:

“17. Withdrawal of Affiliation Provisionally Affiliated Schools

1. Affiliation may be withdrawn by the Board either in a particular subject or in all subjects. Institution may be disaffiliated if the Board is satisfied that the school concerned is not fit to enjoy continuing affiliation to the Board.

2 a. Proceedings for withdrawal of affiliation may be initiated by the Board in case the schools are found guilty of following after reasonable notices:

i) Not paying salaries and allowances to teachers and other employees, at least at par with those obtaining in State/Union Territory institutions; default or delay in payment of salaries and allowances.

ii) Financial irregularities including channelling of funds for purposes other than those provided for in these Bye-laws.

iii) Engagement in activities prejudicial to the interest of the State, inculcating or promoting feelings of disloyalty or disaffection against the Government established by law.

iv) Encouraging or tolerating disharmony/hatred

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between different sections of the Society.

v) Non-fulfillments of conditions laid down regarding deficiencies to be removed, even after due notice.

vi) Disregard of rules and conditions of affiliation even after receiving warning letters.

vii) Hindrance in the smooth functioning of the school on account of dispute between rivalries within the school management

viii) Absence of approved terms and conditions of service, or frequent dismissal of teachers from service.

ix) Poor academic performance of the school for three consecutive years in not being able to keep at least 50 per cent of passes of the general pass percentage.

x) Non-availability of proper equipment/space/staff for teaching a particular subject

xi) Any other misconduct in connection with the admissions/examinations/any other area which in the opinion of the Board warrants immediate disaffiliation of the school.

xii) In case of transfer of property/sale of school by one Society/Trust/ # Company Registered under section 25 of the Companies Act, 1956/Management to another Society/Trust/# Company Registered under section 25 of the Companies Act, 1956/Management through agreement/Sale deed.

xiii) Any violation of the norms that have been prescribed by the Hon'ble Supreme Court of India in the writ petition (Criminal) nos. 666-70 of 1992 Vishaka and others V/s State of Rajasthan and others delivered on 13-8-1997 for protection of women from sexual harassment at the work place if established would attract strict action against the institution which may even lead to disaffiliation.

xiv) Violation of provision of sub-clause 3.3 (f) of Chapter II.

xv) Violation of Item 20.2 (vii) of Chapter VI.

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b. Once Provisional/Regular/Permanent Affiliation granted to the school is withdrawn by the Board on establishment of serious irregularities which amount to cheating the Board/causing embarrassment to it, the Board may Black List such a school to debar it from seeking re-affiliation in future.

3. The Board shall provide adequate time and opportunity to the Management of the school served with a 'Show Cause Notice', upto a maximum of one year for adequate compliance/ removal of defects failing which the Board may declare the institution disaffiliated. Such decision by the Board shall be final and binding.

The maximum period of 'Show Cause Notice' due to clause 17 (2)(xi) may not exceed one month.

4. In case a school seeks legal redressal from the Court against the decision of the Board, the jurisdiction of the court of Law shall be Union Territory of Delhi only and not any other place."

4. The petitioner, on 31 October 2017, submitted its response to the show cause notice dated 5 October 2017 (*supra*). The reply is brief and may be reproduced thus :

"MOUNT COLUMBUS SCHOOL

Ref.No. MCS/2017-18/10/185

Date: 31.10.2017

To
The Deputy Secretary (Affiliation)
Central Board of Secondary Education
Shiksha Kendra, 2, Community Centre
Preet Vihar, Delhi-110092

SUB: Show Cause Notice

Sir,

At the outset of your Show Cause Notice bearing no. CBSE/Aff/2730386/2017/1306609 dated 05.10.2017, it is submitted point wise as below:-

01. As per Delhi School Education Act and Rules 1973, the

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school is run by Managing Committee and not by the society. The Society is registered with registrar of Societies Act 1860. The Society is not looking day-to-day affairs of the school. It is looked after by the Managing Committee through its Manger. It is also to mention that at present Mr. Rishi Choudhary neither President of the Society nor Chairman of Managing Committee of the school. Mr. M. M. Goyal is Manager of the school.

02. The School is recognized upto secondary level. As per Post Fixation Norms Vice Principal is Head of the School for Secondary Level. At present Ms. Babita is no more attached with this school. Ms. Aditi Roy is looking after the school as on date.

03. It is fact that Ms. Parul Sharma is working as Teacher in this school Ms. Parul Sharma was made officiating Manager and Head Mistress as a stopgap arrangement. She has been reverted back to her original post. It is wrong to say that her name is not shown on the staff roll. She is very much there. Her service book is also maintained.

04. This school has 41 class rooms and strength of each class room is according to norms of DSEAR 1973 i.e. 10 sq. ft. per child. All the class rooms are equipped with furnitures. Being the school is upto secondary level, we have one composite science lab. All practicals are undertaken there.

05. The school possesses 'Structural Stability Certificate' from Registered architect authorized by MCD (copy enclosed).

06. It is wrong to say that school could not produce all relevant records. Whatever records were asked for and was available on the spot, were produced. In case any other document is needed, it would definitely be provided whenever asked for.

Keeping in view of the above, it is prayed that Show Cause Notice may please be dropped.

Thanking you,

Yours truly,
Sd
(MANAGER)''

5. The petitioner had, in the meanwhile, also applied on 26 May 2016 for extension of the provisional affiliation granted to it beyond

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31 March 2017. In that context, the following communication was addressed by the CBSE to the Petitioner on 2 August 2019:

“CENTRAL BOARD OF SECONDARY EDUCATION

No. CBSE/AFF/2730386/EX-00798-1718/2019/1506213

Dated: 02.08.2019

The Manager
Mount Columbus School
Block-C, Dakshinpuri,
New Delhi-110062.

Sub.: Request of the School for extension of general affiliation beyond 31.03.2017-reg.

Sir/Madam,

This is with reference to your application bearing registration no. EX-00798-1718 dated 26.05.2016 on the subject cited above.

Besides, Periodical Inspection Committee as per details given below has been constituted and inspection of school be completed within 03 months of receipt of this letter by any one of the members.

A Show Cause Notice dated 05.10.2017 (copy enclosed) issued to the school against various irregularities, committee is requested to ask point wise for reply/compliance from the school with documentary evidences duly signed by Principal and Manager and submit the recommendations whether this Show Cause Notice may be settled. Committee is also requested for the periodical inspection of the school for extension of affiliation beyond 31.03.2017 and submit the report with the recommendations.

1. Shri Sanjay Sachdeva Assistant Secretary, Central Board of Secondary Education, Shiksha Kendrya, 2. Community Centre, Preet Vihar, Delhi-110092, Mobile No. 9013689561, Email: sachdeva412@hotmail.com.

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2. Sunita Panwar Principal Delhi Jain Public School, 12 Rly Road Palam, New Delhi, SWB, Delhi-110045, Principal Email: delhijainschool@gmail.com, Principal Mobile No: 9958292025, School Email: delhijainschool@gmail.com, School Contact No: 11-25367262.

The school authorities are requested to contact the member of the inspection committee for an early inspection

However regularization of general affiliation from 01.04.2017 for a period of 05 years will be subject to the outcome of the inspection report and specific compliance of the above deficiencies by the school.

Sd
DEPUTY SECRETARY (AFF)”

6. There is no dispute about the fact that the Committee, the constitution of which was intimated to the petitioner by the CBSE, *vide* the above communication dated 2 August 2019, never visited the Petitioner School.

7. The petitioner addressed communications to the CBSE, drawing attention to its reply to the show cause notice and after the receipt of the communication dated 2 August 2019 from the CBSE informing the petitioner of the constitution of a fresh Committee to visit the petitioner, on 22 February 2018, 20 July 2018, 28 September 2018, 31 January 2019, 11 March 2019, 16 August 2019, 3 October 2019 and 16 January 2020. None of these communications, however, elicited any response.

8. Without further prelude or preface, or any communication from the CBSE to the petitioner, and without the petitioner being granted

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any opportunity of hearing in respect of the show cause notice dated 31 October 2017, the impugned order dated 16 March 2020 came to be passed whereby the provisional affiliation granted to the petitioner was withdrawn. The order merits reproduction *in extenso* thus:

“CENTRAL BOARD OF SECONDARY EDUCATION

No. CBSE/AFF/2730386/2020/ 1568770 Dated: 16.03.2020

ORDER

WHEREAS, the Manager, Mount Columbus School, C-Block, Dakshin Puri New Delhi- 110062 (previously known as Sivananda Vidya Bhawan) is informed that the school was granted adhoc affiliation for Secondary level on year to year basis, prior to grant of composite Provisional Affiliation for Secondary level w.e.f. 01/04/2003 to 31/03/2006 vide letter No.CBSE/Aff/2730386/2004/1035-38 dated 23/01/2004, the school was further granted extension of Provisional Affiliation w.e.f. 01/04/2006 to 31/03/2011 vide letter No. CBSE/Aff/2730386/2006-07/534481 dated 09/05/2006 and was granted subsequent re- affiliation Secondary level with effect from 01/04/2014 to 31/03/2017 vide letter No. CBSE/Aff/2730388/2015/945091 dated 06/10/2015, on the basis of restoration of recognition from Office of the Deputy Director of Education, Delhi vide letter no. F.DE 50/3/02/Zone 23/Restoration/14/473-79 dated 10.06.2014, subject to the conditions that the school shall abide by the provisions of the Affiliation/ Examinations Bye-Laws and instructions issued from time to time.

AND WHEREAS, based on various complaints against the school an Inquiry Committee was constituted by the Board. The Committee conducted Inspection of the school on 12.07.2016 and reported that the school is violating the provisions of Affiliation Examination Bye-laws of the Board as per details given below:-

1. The school management i.e. Sivananda Vidya Bhawan Society running the school is proprietary in character and the control has been vested with the family members of Shri Rishi Choudhary, President of the Society which is against the norms of Affiliation.

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2. The School authority has not appointed any Principal as per provisions of Affiliation Bye Laws. Further, Smt. Babita Choudhary, daughter-in-law of Shri Rishi Choudhary, has been shown as Vice Principal in the school records.
3. Smt. Parul Sharma, TGT (English) during inspection mentioned that she is acting as Manager-cum-Headmistress of the School. However, the detail of Smt. Parul Sharma was not in the service book maintained by the school. Further, as per salary record, it is observed that she is drawing salary as TGT (English)
4. The school does not possess adequate infrastructure and facilities w.r.t classrooms, furniture and science laboratory as per norms of Affiliation.
5. The school does not possess building safety certificate issued by Competent Govt Authority.
6. The school was not able to show and produce all relevant records at the time of Inspection.

AND WHEREAS, on the basis of the committee report, the Board has issued show cause notice dated 05.10.2017 to the school in order to afford fair opportunity of representation to the school so as to facilitate the school to put forth its point of view in the matter under reference.

AND WHEREAS, the school vide letter dated 31.10.2017 has replied to the show cause notice issued by the Board. However, the same was not found satisfactory.

AND WHEREAS, with regard to non-proprietary character of the society/Trust, It is established fact that the school has violated clause 2.3.2 of Affiliation Bye Laws which stipulates that the society trust running the school should be having non-proprietary character and not vesting control in a single individual or members of a family, conforming to the extant laws and rules.

AND WHEREAS, with regard to appoint of Principal in the school, it is established fact that the school has violated **clause 9.2** read with clause 9.2.2 of Affiliation Bye Laws.

AND WHEREAS, with regard to availability of Manager in the school who can act as link between the school and society. The school does not have manager in the school and this act of the school has violated clause 9.3 of Affiliation Bye Laws.

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AND WHEREAS, with regard to availability of adequate infrastructure, the school is not in possession of adequate infrastructure as per norms of Affiliation Bye-Laws and violated clause 4.1 read with clause 4.2 and 4.7.3 of Affiliation Bye Laws related to school infrastructure.

AND WHEREAS, as per clause 12.1 read with 12.1.9 of Affiliation Bye-Laws, the Board may withdraw general affiliation on disclosure of any short coming in the essential requirements for affiliation laid down in the affiliation Bye-Laws detected at any stage.

AND WHEREAS, the reply submitted by the school vide letter dated 31.10.2017 has been examined at length and the same is not found satisfactory as the school is lacking in essential condition of continuation of affiliation in light of the fact that the school is not in possession of adequate infrastructure and teaching staff.

AND WHEREAS, in the given facts and circumstances and on examination of inquiry report submitted by the inspection committee and reply of the school dated 31.10.2017, the competent authority of the Board, is of the considered opinion that act of the school attracts the penal provisions under clause 12.1.9 of Affiliation Bye-Laws.

Therefore, the Provisional/General Affiliation upto Secondary level granted to Mount Columbus School, C Block, Dakshin Puri, New Delhi-110062 stands withdrawn with immediate effect

However, keeping in view the academic interests of the students, the registered bonafide students of class X (for session 2019-20) are allowed to appear in Board's Examination conducted in the year 2020. The registered bonafide students of class IX shall be shifted to nearby affiliated school(s) of the Board, to be decided by the Regional Officer, Delhi. The school shall not admit any student from Class IX onwards.

This issues with the approval of the Competent Authority of the Board.

DEPUTY SECRETARY (AFF.)

**The Manager,
Mount Columbus School,
C-Block, Dakshin Puri,**

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New Delhi-110062”

9. Aggrieved by the aforesaid order, the petitioner has approached this Court by means of the present writ petition, seeking issuance of a writ of certiorari quashing the order of withdrawal of disaffiliation.

10. Counter-affidavit has been filed by the CBSE. The petitioner has filed a rejoinder thereto.

11. Paras 1.8, 1.10, 1.14, 1.15 and 1.16 of the counter-affidavit are relevant and may be reproduced thus :

“1.8 That the reply dated 31.10.2017 submitted by the Petitioner No. 1 School was duly examined in the Affiliation Branch of respondent organization, with reference to the inquiry/investigation report of the one man committee and the facts emerged during the investigation as also the documents collected by the Committee from the school during the investigation and other documents available in the records of the respondent organization. However, the reply submitted by the school authorities vide letter dated 31.10.2017 was not found satisfactory.

1.10 That in view of the above submissions of the Petitioner School No. 1 the matter was referred to the Directorate of Education, Govt. of NCT of Delhi vide letter dated 04.04.2018, giving specific reference of various provisions of Delhi School Education Act and Rules, 1973 which had been found to be violated by the one-man Investigating Committee. The Directorate of Education was requested to conduct further investigation and to take suitable action against the school in terms of the provisions of Delhi School Education Act, 1973, under intimation to the Respondent Organization. Copy of the said letter is annexed herewith as **Annexure R-3**.

1.14 That for the purposes of processing the application for grant of extension of provisional affiliation by Petitioner no.1 school, an inspection committee was constituted for periodical inspection of the petitioner No. 1 School vide letter No. CBSE/AFF./2730386/EX-00798-718/2019/1506213 dated 02.08.2019 Copy of the letter dated 2-08-2019 is annexed herewith

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as **Annexure R-6.**

1.15 It may be relevant to mention here that the punitive action against the Petitioner No. 1 School for violation of various provisions of CBSE Affiliation Byelaws, Examination Byelaws and provisions of Delhi Education Act and Rules , 1973, and the process of extension of provisional affiliation of the school beyond 31.03.2017 are two separate procedures which were being processed independent of each other but was under progress concurrently in the instant case. Therefore, a Committee for periodical inspection of the school was constituted vide order dated 02.08.2019 to consider the case of extension of provisional affiliation of the school beyond 31.03.2017. The said inspection had no bearing or connection with the process of punitive action contemplated against the school as reported in the one-man inquiry committee report dated 24.10.2016.

1.16 That since no communication was received from the Directorate of Education, Govt. of NCT of Delhi regarding further investigation in the matter against the Petitioner No. 1 School has requested by the Respondent Organization vide letter dated 04.04.2018 followed by reminder dated 07.01.2019, it was decided in the Respondent Organization to withdraw the provisional affiliation of the Petitioner No. 1 School on basis of the conclusive findings reported by the One Man Committee in its report dated 24.10.2016 supported with the documentary evidences along with the said report. Moreover, from the point-wise reply submitted by the Petitioner No. 1 school vide letter dated 31.10.2017 in response to the show cause notice dated 05.10.2017, it may be observed that the Petitioner No. 1 school has not denied the allegations/contents and rather implicitly and indirectly admitted the allegations as evident from the following and to regularize their violations and malfunctions, the school took the corrective steps which are also evident from the following reply of the school:

S.No.	Allegations communicated to the School in the show cause notice dated 05.10.2017	Point wise reply to the allegations submitted by the school authorities.
1.	The school management i.e. Sivanada Vidya Bhawan Society running the school has been proprietary in character till the part of 2015 and the control has vested with the family members of Shri Rishi	As per Delhi School Education Act and Rules 1973, the school is run by Managing Committee and not by the society. The society is registered with registrar of societies Act 1860. The Society is not

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	Choudhary, who is the President of the Society which is not as per norms.	looking day-to-day affairs of the school. It is looked after by the Managing Committee through its Manager. It is also to mention that at present Mr. Rishi Choudhary is neither President of the Society nor Chairman of Managing Committee of the school. Mr. M.M. Goyal is Manager of the school.
2.	The school authorities have not appointed any Principal as per provisions of Affiliation Bye Laws and Smt. Babita Choudhary, daughter-in-law of Shri Rishi Choudhary, though shown as vice Principal in the records is in fact working as the principal for all practical purposes.	The school is recognized upto secondary level. As per Post Fixation Norms Vice Principal is Head of the School for Secondary Level. At present Ms. Babita is no more attached with this school. Ms. Aditi Roy is looking after the school as on date.
3.	Smt. Parul Sharma who is working as TGT (English) is also stated that to be acting as Manager-cum-Headmistress of the School. She is not shown to be on the staff roll of the school, Neither her service book is maintained by the school, however, she continues to draw the salary as TGT (English).	It is fact that Ms. Parul Sharma is working as Teacher in this school. Ms. Parul Sharma was made officiating Manager and Head Mistress as a stopgap arrangement. She has been reverted back to her original post. It is wrong to say that her name is not shown on the staff roll. She is very much there. Her service book is also maintained.
4.	The school do not possess adequate infrastructure and facilities w.r.t. classrooms, furniture and science laboratory.	This School has 41 class rooms and strength of each class room is according to norms of DSEAR 1973 i.e. 10 sq. ft. per child. All the class rooms are equipped with furniture's Being the School is upto secondary level, we have one composite science lab. All

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		practicals are undertaken there.
5.	The school do not possess building safety certificate from Govt. of Delhi.	The school possesses Structural Stability Certificate from Registered architect authorized by MCD (copy enclosed).
6.	The school could not produce all the relevant records for inspection.	It is wrong to say that school could not produce all relevant records. Whatever records were asked for and was available on the spot, were produced. In case any other document is needed, it would definitely be provided whenever asked for.

12. While issuing notice in this writ petition, on 9 April 2020, this Court stayed the operation of the impugned order dated 16 March 2020.

Rival Contentions

Submissions of Mr. Kamal Gupta for the petitioner

13. I have heard learned Counsel in detail. The school was represented by Mr. Kamal Gupta and the CBSE was represented by Ms. Manisha Singh.

14. Mr. Gupta submits that the impugned order is a mere reproduction of the show cause notice, which does not deal in any manner with the reply filed by the petitioner or with the contentions

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advanced therein. The order is moreover in the teeth of Bye-Laws 17(3) of the pre-amended Affiliation Byelaws, which were in force at the time of issuance of the show cause notice. He points out that Bye-Law 17(3) requires a cure period of one year to be provided to a school to whom a show cause notice is issued, to cure the defects and deficiencies alleged in the show cause notice. In the present case, no such cure period was provided.

15. That apart, the deficiencies alleged in the show cause notice were rectified by the petitioner, and this fact also found mention in the reply dated 31 October 2017, submitted by the petitioner by way of response to the show cause notice.

16. The impugned order of disaffiliation does not consider these facts at all.

17. Besides Mr. Gupta points out that, having constituted the Committee to look into the situation prevalent in the Petitioner School as communicated by the CBSE to the petitioner on 2 August 2019 and the remit of the Committee having included the assessment of whether the deficiencies and defects pointed out in the show cause notice dated 5 October 2017 stood rectified, the CBSE could not have proceeded to act on the show cause notice and disaffiliate the petitioner School without the Committee having inspected the School prior thereto. He also draws the attention to the fact that, though several communications had been addressed by the petitioner to the CBSE in that regard, they all fell on deaf ears.



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18. Mr. Gupta also submits that the impugned order has been passed in violation of the principles of natural justice as no prior opportunity of hearing was granted to the petitioner before passing the impugned order of dis-affiliation. In this context, Mr. Gupta relies on the judgment of the Supreme Court in the case of *Swadeshi Cotton Mills v. U.O.I.*¹

Submissions of Ms. Manisha Singh for the CBSE

19. Ms. Manisha Singh, appearing for the CBSE, submits that, even though the impugned order may not be too happily worded, it cannot be said that there is no application of mind to the petitioner's submissions or to the reply submitted by the petitioner by way of response to the show cause notice. She has drawn my attention to various paragraphs from the impugned order, which have specifically noted that the reply to the show cause notice was not found satisfactory. She also points out that in the concluding paragraphs, the justification for withdrawing the affiliation was stated to be "the facts and circumstances of the case, examination of the Enquiry Report submitted by the Inspection Committee and the reply of the petitioner to the show cause notice dated 31 October 2017". As such, she submits that all relevant circumstances have been holistically examined by the CBSE before proceeding to disaffiliate the petitioner.

20. She further submits that disaffiliation of the petitioner is one of

¹ (1981) 1 SCC 664



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the punishments, which can be imposed by the CBSE, where gross violations of the applicable rules and Bye-Laws are found to have taken place. She seeks to point out that the petitioner, in its reply to the show cause notice, did not specifically deny any of the allegations in the show cause notice but merely sought to submit that the defects and deficiencies stood cured at a later point of time. Such subsequent curing of the violations alleged in the show cause notice cannot, she submits, exonerate the petitioner of the violations which had been committed in the first place, nor, she submits do the Bye-Laws envisage subsequent curing of the violations as a relevant circumstance to be taken into consideration while deciding on the punishment to be awarded.

21. Apropos Clause 17(3) of the pre-amended Affiliation Bye-Laws, Ms. Singh submits that the said clause applies only where the allegations relate to defects or deficiencies in the school and not where there are gross violations of the applicable Bye-Laws. She has placed reliance in this context on clause (xi) of Bye-Law 17(2a) which envisages “any other misconduct in connection with the admissions/examinations/any other area which in the opinion of the Board warrants immediate disaffiliation of the school” as one of the circumstances in which provisional affiliation granted to a school can be withdrawn. In a case falling under this clause – which, in her submission, could justifiably be invoked in the present case – there can be no question of any curial period of one year being provided, as the clause caters to a situation in which immediate dis-affiliation is required. She submits that Bye-Law 17(3) cannot be regarded as



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applicable across the Board in all situations, and its applicability would by implication stand excluded in a case where, in the opinion of the CBSE, the provisional affiliation granted to the School has to be immediately withdrawn.

22. She submits that the violations alleged against the school were so serious that CBSE cannot be faulted in having decided to immediately disaffiliate the school.

23. She further submits that the Affiliation Bye-Laws do not envisage grant of any opportunity of personal hearing between the issuance of a show cause notice and passing of the order of disaffiliation. Were the petitioner-school to have asked for an opportunity of hearing, she submits, such a hearing would have been granted. However, the School, in its reply to the show cause notice, never sought any opportunity of hearing and, inasmuch as the decision was taken after a comprehensive examination of the contentions in the reply, she submits that the impugned decision cannot be said to be vitiated merely because no prior opportunity of personal hearing was granted to the petitioner.

24. Ms. Singh also sought to rely on Bye-Law 12.1 of the Affiliation Bye-Laws as amended with effect from 18 October 2018 (“the amended Affiliation Bye-Laws” hereinafter) as these were the Bye-Laws which were in force at the time when the impugned order came to be passed. These Bye-Laws, she points out, do not contain any provision for providing a curial period of one year for a



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delinquent school to rectify the deficiencies of defects, much less violations which are alleged in the show cause notice. For ready reference, Bye-Law 12.1 of the amended Affiliation Bye-Laws may be reproduced thus:

“12. Penalties

12.1 If a School is found violating the provisions of the Affiliation Bye Laws/Examinations Bye Laws of the Board or does not abide by the directions of the Board, the Board shall have powers to impose the following penalties:

12.1.1 Written warning

12.1.2 Imposing fine up to Rs. 5,00,000/-

12.1.3 Downgrading school from Senior Secondary Level to Secondary Level.

12.1.4 Restricting number of sections in the school.

12.1.5 Debaring the school from sponsoring students in Board's examinations up to a period of two years.

12.1.6 Suspension of Affiliation for a definite period.

12.1.7 Debarring the school from applying for affiliation or restoration of affiliation up to a period of five years.

12.1.8 Withdrawal of Affiliation in a particular subject(s) or stream(s).

12.1.9 Withdrawal of Affiliation.

12.1.10 Any other penalty deemed appropriate by the Board.”

Analysis

25. Having heard learned counsel for both sides and applied myself to the facts of the applicable Bye-Laws, I am of the opinion that the

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impugned order of disaffiliation cannot sustain for a variety of reasons.

The pre-amended Affiliation Bye-Laws would be applicable

26. Firstly, the Bye-laws which would apply in the present case would be the pre-amended Affiliation Byelaws and not the amended Affiliation Bye Laws which were introduced on 18 October 2018. The show cause notice was issued on 5 October 2017. Obviously, therefore, the show cause notice was issued in terms of the pre-2018 Affiliation Bye Laws. It goes without saying that a show cause notice has to be adjudicated in terms of the provisions which were in force at the time of its issuance and, therefore, in terms of which it came to be issued. The submission of Ms. Singh that the amended 2018 Affiliation Bye-Laws would apply cannot, therefore, be accepted.

Bye-Law 17 of the pre-amended Affiliation Bye-Laws

27. Applying Bye-Laws 17 of the erstwhile byelaws, Clause (3) thereof mandates that the CBSE provides adequate time and opportunity to a school served with a show cause notice upto a maximum of one year, to comply/remove defects, failing which the CBSE has the authority to disaffiliate the School. The clause uses the expression “shall”. The expression “shall” is ordinarily to be treated as mandatory, especially where it is used in a beneficial provision or a provision incorporated in public interest. Inasmuch as Bye-Law 17(3) is a beneficial and curial provision, the word “shall” as used in the



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provision has to be regarded as conferring, on the provision, mandatory character. The requirement of providing adequate time and opportunity to the school served with the show cause notice, upto a maximum of one year, for complying and removing of the defects indicated in the show cause notice is, therefore, an absolute imperative before the CBSE proceeds to declare the institution as disaffiliated.

28. Ms. Singh sought to contend that clause (3) does not apply where the misconduct is such as would justify invocation of Clause 17(2a)(xi).

29. Clause 17(2a)(xi) has not even been invoked in the show cause notice issued to the petitioner.

30. Ms. Singh then sought to contend that, even if the Clause 17(2a)(xi) may not have been specifically cited or quoted, its ingredients stand incorporated in the concluding paragraph of the show cause notice dated 5 October 2017, which read thus :

“Therefore, the Manager, **Mount Columbus School, C- Block, Dakshin Puri New Delhi-110062 (Affiliation No.- 2730386)** is served with a Notice to Show Cause as to why Provisional Affiliation granted to the school for Secondary Level **may not be withdrawn willful violation of the provisions of the Affiliation Bye-laws of the Board.** His/Her reply to this notice should reach to the undersigned within 30 days from the date of issue of this Notice failing which it will be assumed that School Authorities have nothing to represent in the matter and ex-parte decision shall be taken as per rules of the Affiliation Bye-laws of the Board.”

31. The sentence on which Ms. Singh relies merely envisages withdrawal of the provisional affiliation granted to the petitioner



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school. There is no reference to any immediate withdrawal or immediate disaffiliation.

32. I do not, therefore, find, from the afore-extracted sentence from the concluding paragraph of the show cause notice dated 5 October 2017, that it incorporates, in any manner of speaking whatsoever, the ingredients of Clause 17(2a)(xi) of the pre-amended Affiliation Bye-Laws. Clause 17(2a)(xi) envisages commission, by a school, of a misconduct which in the opinion of the CBSE warrants immediate disaffiliation. The show cause notice does not, expressly or by necessary implication, give voice to any opinion of the CBSE that the perceived deficiencies in the petitioner school were such as it warrants immediate disaffiliation. Indeed, no proposal to immediately disaffiliate the school is at all apparent from the show cause notice dated 31 October 2017. It cannot, therefore, be said that, even by implication, the ingredients of Clause 17(2a)(xi) stood incorporated in the show cause notice.

33. If the proposal of the CBSE were to invoke clause 17(2a)(xi) and immediately disaffiliate the petitioner-school, the show cause notice had necessarily to so allege. Ideally, the clause itself would have had to be mentioned in the show cause notice. Even if the clause number were not to figure in the show cause notice, the show cause notice would nonetheless have had to allege that the misconduct conducted by the school was such as, in the opinion of the CBSE, warranted immediate disaffiliation. Adequate justification for the view would also have to be apparent from the show cause notice, so that the

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petitioner-school would have a meaningful opportunity to respond. Nothing short of that would suffice.

34. Inasmuch as there is no such allegation in the show cause notice, it is clear that, at the time of issuance of the show cause notice, the CBSE never intended to immediately disaffiliate the school. The reliance by Ms. Singh on Clause 17(2a)(xi) of the pre-amended Affiliation Bye-Laws is therefore misplaced.

35. Ms. Singh further sought to submit that Bye-Laws 17(3) refers to defects and deficiencies whereas the allegations against the petitioner were of *violations* of the Byelaws and not deficiencies or defects. There is, in her submission, a difference between “violations” and deficiencies and defects.

36. This submission is also not justified by the words used either in clause 17(2a) or clause 17(3). Clause 17(2a) of the pre-amended Affiliation Bye-Laws, in its opening words, uses neither the expression “violation” nor the expression “deficiencies” or “defects”. It states: “Proceedings for withdrawal of affiliation may be initiated by the Board in case the schools are found guilty *of the following*, after reasonable notices”.

37. In the clauses which follow thereafter, the reference to violations is to be found only in clauses xii, xiv and xv. None of these clauses have been invoked in the show cause notice issued to the petitioner. As such, the submission that the allegation against the



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petitioner is not of deficiencies or defects having been found in its institution but of violations having been committed, is also without substance.

38. Even if, *arguendo*, it were to be presumed that the allegation against the petitioner is of its having committed “violations”, Clause 17(3) is clearly an omnibus provision covering all instances where a show cause notice is issued to the petitioner. Irrespective of the specific clause of clause 17(2) which may be invoked in a given case, therefore, clause 17(3) applies with full force. *Every case* in which a school is served with a show cause notice proposing disaffiliation, would be covered by Clause 17(3).

39. The providing of a curial period of one year to rectify the deficiencies/defects/violations is, therefore, a statutory mandate under Clause 17(3) of the pre-amended Affiliation Bye-Laws. Undisputedly, no such curial period was provided to the petitioner.

40. That, where a statute envisages a particular act as having to be done in a particular manner, that act has to be done in that manner or not done at all, and that all other alternate methods of doing that act stand impliedly forbidden, is the law which prevails since *Taylor v. Taylor*², through *Nazir Ahmed v. King Emperor*³ and a veritable plethora of decisions of the Supreme Court of which the most often quoted is *State of UP v. Singhara Singh*⁴. This principle is by now,

² (1876) 1 Ch D 426

³ AIR 1936 PC 253

⁴ AIR 1964 SC 358



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fossilized in the law.

41. Clause 17(3) being an essential ingredient of the protocol to be followed before a school is disaffiliated, failure to conform to the said clause vitiates, in its entirety, the decision to disaffiliate the school.

Assuming the amended 2018 Affiliation Bye-Laws were to apply

42. Assuming, for the sake of argument, that the amended 2018 Affiliation Byelaws were to apply, clause 12.1 empowers the CBSE, in a case in which a school is found violating the provisions of the Affiliation or Examination Bye-Laws, to impose any one of the ten penalties which follow thereafter in clauses 12.1.1 to 12.1.10, of which withdrawal of affiliation is envisaged in clause 12.1.9. It is a well-settled principle of administrative law that where an authority competent to impose a punishment is provided discretion, by the applicable statute, to impose any one of the various punishments which vary in degree, the order imposing punishment has necessarily to indicate the reason, and justification, for choosing that particular punishment for imposition, especially where the punishment being imposed is the most severe, or akin thereto. As such, if clause 12.1 were to be invoked, there would have had to be conscious application of mind by the CBSE to the various punishments which *could* be imposed on a school, *and* a conscious decision, *as part of a reasoned and speaking order*, that the *only* punishment that the indiscretions of the school could visit on it was the punishment of disaffiliation and nothing lesser. No such conscious application of mind is reflected



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either in the show cause notice or in the impugned order dated 16 March 2020. Even for this reason, assuming the 2018 Bye-laws could at all be applied, the decision to disaffiliate the petitioner would not be sustainable in law.

Importance of curing of defects/deficiencies

43. Moreover, as there is a graded list of punishments which can be imposed on a school by clause 12.1 of the amended 2018 Affiliation Bye-Laws, the fact of curing by the school of the defects noted in the show cause notice acquires relevance. Expressed otherwise, if the school took steps to correct the deficiencies or defects pointed out in the show cause notice, that would certainly be a mitigating factor which the CBSE would have to take into account while deciding on the punishment to be imposed on the school. If all the deficiencies stand cured, the CBSE may well decide, in a given case, not to take any punitive action against the school whatsoever. The curing of the alleged defects in the show cause notice was, therefore, an important factor to be borne in mind while deciding on the action to be taken consequent on the show cause notice, whether one were to apply the pre-amended, or the amended, Affiliation Bye-Laws.

44. The impugned decision having failed to make any reference to the submissions contained in the reply dated 31 October 2017 filed by the petitioner to the show cause notice and having failed to take into consideration the petitioner's submissions that any deficiencies which were in existence stood remedied and removed, the decision to



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disaffiliate the petitioner would stand vitiated on that score as well.

Para 1.16 of counter-affidavit – pre-determined exercise

45. In para 1.16 of its counter affidavit, the CBSE has specifically stated that it was decided by it, “to withdraw the provisional affiliation of the petitioner no.1 school on basis of *the conclusive findings* reported by the one man committee in its report dated 24 October 2016, supported with the documentary evidences along with the said report”.

46. If the findings in the one-man committee report dated 24 October 2016 were *conclusive*, the opportunity to show cause thereagainst is *ipso facto* rendered illusory. This, in fact, reflects the position which emerges from the record as well. The CBSE appears to have all along treated the report dated 24 October 2016, and the material on which that report relied, as by itself sufficient to warrant disaffiliation of the petitioner institution. The reference to the said one man committee report dated 24 October 2016 as “conclusive” is, therefore, by itself sufficient to vitiate the entire exercise that took place thereafter, starting with the show cause notice dated 5 October 2017. If the one-man committee report dated 24 October 2016 and the findings in that report were to be regarded as conclusive, the providing of an opportunity to the petitioner by way of the show cause notice dated 5 October 2017 was merely illusory, and nothing more than that.

47. This impression stands fortified by the fact that there was no

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communication whatsoever from the CBSE to the school, apropos the show cause notice dated 5 October 2017 till the impugned order came to be passed on 16 March 2020. Nearly two and a half years elapsed in the interregnum. The CBSE, however, never even deemed it appropriate to grant the petitioner an opportunity of personal hearing. Neither, therefore, does the impugned order reflect any application of mind to the contentions in the reply submitted by the petitioner to the show cause notice, nor was the petitioner granted an opportunity of hearing before the order came to be passed.

Audi alteram partem

48. The submission of Ms. Manisha Singh that the law did not require an opportunity of personal hearing to be granted to the petitioner is obviously unacceptable. The decision to disaffiliate an educational institution is an extreme decision. It amounts to civil death. It results in serious prejudice not only to the institution, its officers and employees, but to the multitude of students who are being educated within its portals. It is a decision to be taken, therefore, in the most extreme of cases, and after rigorous and scrupulous adherence not only to the procedure stipulated in that regard, but also independently with the principles of natural justice and fair play, which would include, needless to say, compliance with *audi alteram partem*.

49. Moreover, in the present case, it has to be borne in mind that the petitioner is an institution which was affiliated as far back as in 2003



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In such a circumstance, any decision to disaffiliate the petitioner could not have been taken without affording the petitioner an opportunity of personal hearing in the matter.

50. Even otherwise, it is well settled in administrative law that a decision which entails serious civil consequences has to be preceded by compliance with the principle of *audi alterum partem*, even if the statutory provision does not expressly so required. That the requirement of grant of an opportunity of hearing in such cases has necessarily to be read into the statute, is the law which follows from a long line of decisions. A Division Bench of the High Court of Orissa felicitously expressed the principle thus, in *Narayan Chandra Jena v. State Transport Authority*⁵:

“It is true that Sec. 50⁶ in terms does not provide for granting an opportunity to be heard. But the audi alteram partem rule is of universal application and law is well settled that when a statute is silent regarding observance of the principles of natural justice, the rule shall be read into the statute as an inbuilt provision. The rule must be held to be a necessary postulate in all cases where a decision is to be taken affecting a person's rights or interest unless such rule is specifically excluded by the relevant statute. It is also well settled that failure to observe natural justice cannot be justified merely because the authority vested with the powers to decide is of the opinion that granting of such opportunity would be an exercise in futility since the person to be condemned can have nothing more to add. Non-observance of natural justice is itself a prejudice and independent proof of prejudice due to denial of natural justice is unnecessary.”

⁵ AIR 1987 Ori 163

⁶ Reference is to Section 50 of the erstwhile Motor Vehicles Act, 1939, which reads:

“50. **Procedure of Regional Transport Authority in considering application for contract carriage permit.** – A Regional Transport Authority shall, in considering an application for a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest ; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.



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This, and several other pronouncements to the said effect, were relied upon by a Division Bench of the High Court of Punjab & Haryana (speaking through Swatanter Kumar, J., as he then was) in ***Ram Niwas Bansal v. State Bank of Patiala***⁷, to hold that the requirement of compliance with *audi alteram partem* is to be read into every provision, the enforcement of which entails civil consequences, even if the provision is itself silent in that regard, unless the statute provides otherwise.

51. *J.T. (India) Exports v. U.O.I.*⁸, rendered by a Full Bench of this Court, is also relevant. Division Benches of this Court were divergent on the issue of whether the third proviso to Section 4-M of the Imports & Exports (Control) Act, 1947 required grant of an opportunity of personal hearing before deciding whether to waive penalty in full or in part. Significantly, the Full Bench noted, at the very outset, the earlier decision of the Supreme Court in ***U.O.I. v. Jesus Sales Corporation***⁹ which, dealing with the same provision, held that, in every case, in could not be held that failure to grant personal hearing was fatal. Nonetheless, the Full Bench proceeded, in paras 13 and 15 of its judgment, to hold thus, apropos that the requirement of grant of an opportunity of hearing; thus:

“13. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and

⁷ (1999) II LLJ 126 (P & H)

⁸ 94 (2001) DLT 301 (FB)

⁹ (1996) 4 SCC 69



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administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is *nemo judex in causa sua* or *nemo debet esse judex in propria causa sua* as stated in (1605) 12 C R 114, that is, 'no man shall be a judge in his own cause'. Coke used the form '*aliquis non debet esse judex in propria causa quia non potest esse judex at pars*' (Co. Litt. 1418), that is, 'no man ought to be a judge in his own cause, because he cannot act as Judge and at the same time be a party;'. The form '*nemo potest esse simul actor et judex*', that is, 'no one can be at once suitor and judge' is also at times used. The second rule and that is the rule with which we are concerned in this case is '*audi alteram partem*', that is, 'hear the other side'. At times and particularly in continental countries, the form '*audietur at alteram pars*' is used, meaning very much the same thing, A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely '*qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit*' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See **Bosewell' case**¹⁰): or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'.

14. *Even if grant of an opportunity is not specifically provided for it has to be read into the unoccupied interstices and unless specifically excluded principles of natural justice have to be applied. Even if a statute is silent and there are no positive words in the Act or Rules spelling out the need to hear the party whose rights and interests are likely to be affected, the requirement to follow the fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise. Reference is accordingly disposed of."*

(Emphasis supplied)

52. The fact that the impugned order was passed with no opportunity of hearing granted to the petitioner, is, therefore, an additional circumstance which would justify its evisceration.

53. *Swadeshi Cotton Mills*, cited by Mr. Gupta, crystallizes this

¹⁰ (1605) 6 C R 48



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position. Para 18 of the report noted the point that arose for consideration, thus:

“18. Thus, the first point for consideration is whether, as a matter of law, it is necessary, in accordance with the rules of natural justice, to give a hearing to the owner of an undertaking before issuing a notified order, or enforcing a decision of its take-over under Section 18-AA¹¹.”

The Supreme Court held:

“25. Before dealing with the contentions advanced on both sides, it will be useful to have a general idea of the concept of “natural justice” and the broad principles governing its application or exclusion in the construction or administration of statutes and the exercise of judicial or administrative powers by an authority or tribunal constituted thereunder.

26. Well then, what is “natural justice”? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, “natural justice” has been used in a way “which implies the existence of moral principles of self-evident and unarguable truth”. [Paul Jackson : Natural Justice, 2nd Edn., p 1] In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to “equity and good conscience”. Legal experts of earlier generations did not draw any distinction between “natural justice” and “natural law”. “Natural justice” was considered as “that part of natural law which relates to the administration of justice”. Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

27. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are: (i) *audi alteram partem* and (ii) *nemo iudex in re sua*. For the purpose of the question posed above, we are primarily concerned with the *first*. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred

¹¹ Section 18-AA of the Industries (Development & Regulation) Act, 1951



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in Medea¹² that it is unjust to reach a decision without a full hearing. In **Maneka Gandhi**¹³ case, Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

28. During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in **Ridge v. Baldwin**¹⁴ it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in **Dr Bina Pani Dei**¹⁵; wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in **Dr Bina Pani Dei**, was further rubbed out to a vanishing point in **A.K. Kraipak v. Union of India**¹⁶, thus:

“If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries.... Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.”

29. In **A.K. Kraipak**, the court also quoted with approval the observations of Lord Parker from the Queen's Bench decision in **In re H.K. (Infants)**¹⁷; which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the

¹² Regarded as the strongest play by Seneca the Younger, written around 50 CE

¹³ **Maneka Gandhi v. U.O.I.**, (1978) 1 SCC 248

¹⁴ 1964 AC 40

¹⁵ **State of Orissa v. Dr Bina Pani Dei**, AIR 1967 SC 1269

¹⁶ (1969) 2 SCC 262

¹⁷ 1965 AC 201



problem, but *acting fairly*. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

30. In the language of V.R. Krishna Iyer, J. (vide ***Mohinder Singh Gill***¹⁸ : “... subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play ... Its essence is good conscience in a given situation; nothing more — but nothing less.”

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in ***A.K. Kraipak***). If a statutory provision *either specifically or by inevitable implication* excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see ***Union of India v. Col. J.N. Sinha***¹⁹)

32. The maxim *audi alteram partem* has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is “a duty lying upon everyone who decides something”, in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, “convenience and justice” — as Lord Atkin felicitously put it — “are often not on speaking terms [***General Medical Council v. Spackman***²⁰] ”.

33. The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by *express language* exclude its application. Such cases do not present any difficulty.

¹⁸ ***Mohinder Singh Gill v. Election Commissioner of India***, (1978) 1 SCC 405

¹⁹ (1970) 2 SCC 458

²⁰ 1943 AC 627, 638



However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought *by implication* due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word “immediate” in Section 18-AA(1). *Audi alteram partem* rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the Magistrates specified therein to make an *ex parte* conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.

34. Be that as it may, the fact remains that there is no consensus of judicial opinion on whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice. In *Durayappah v. Fernando*²¹ Lord Upjohn observed that “while urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable.

35. These observations of Lord Upjohn in *Durayappah* were quoted with approval by this Court in *Mohinder Singh Gill*. It is therefore, proposed to notice the same here.

36. In *Mohinder Singh Gill* the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election, at the instance of the respondent, violence broke out and the Returning Officer was forced to postpone declaration of the result. The Returning Officer reported the happening to the Chief Election Commissioner. An officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commission was

²¹ (1967) 2 AC 337



satisfied that the poll had been vitiated, and therefore in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair hearing and all that he had was a vacuous meeting where nothing was disclosed. The Election Commission contended that a prior hearing had, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of elections with speed, that unless civil consequences ensued, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which had found favour with the High Court, was negated by this Court. Delivering the judgment of the Court, V.R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso:

“Once we understand the soul of the rule as fair play in action — and it is so — we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more — but nothing less. The ‘exceptions’ to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case.”

37. After referring to several decisions, including the observations of Lord Upjohn in *Durayappah v. Fernando*, the court explained that mere invocation or existence of urgency does not exclude the duty of giving a fair hearing to the person affected:

“It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the



least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient obligation. The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness....

We may not be taken to ... say that situational modifications to notice and hearing are altogether impermissible.... The glory of the law is not that sweeping rules are laid down but that it tailors principles to practical needs, doctors remedies to suit the patient, promotes, not freezes, life's processes, if we may mix metaphors....”

38. The court further emphasised the necessity of striking pragmatic balance between the competing requirements of acting urgently and fairly, thus:

“Should the cardinal principle of ‘hearing’ as condition for decision-making be martyred for the cause of administrative immediacy? We think not. The full panoply may not be there but a manageable minimum may make-do.

In *Wiseman v. Borneman*²² there was a hint of the competitive claims of hurry and hearing. Lord Reid said: “Even where the decision has to be reached by a body acting judicially, *there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him.*”

(emphasis added)

We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances.”

The court further pointed out that the competing claims of hurry and hearing can be reconciled by making situational modifications in the audi alteram partem rule:

²² 1971 AC 297



“(Lord Denning M.R., in *Howard v. Borneman*, summarised the observations of the Law Lords in this form.) *No doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case.* After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. If all that is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards that the Election Commission, if pressed by circumstances may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under way he could have afforded an opportunity of hearing the parties, and revoke the earlier directions.... All that we need emphasize is that the *content of natural justice is a dependent variable, not an easy casualty.*

Civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. *In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence.*”

(emphasis added)

39. In *Maneka Gandhi*, it was laid down that where in an emergent situation, requiring immediate action, it is not practicable to give prior notice or opportunity to be heard, the preliminary action should be soon followed by a full remedial hearing.

40. The High Court of Australia in *Commissioner of Police v. Tanos*²³ held that some urgency, or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures.

²³ (1958) 98 CLR 383



In *Heatley v. Tasmanian Racing & Gaming Commission*²⁴ the same High Court held that without the use of unmistakable language in a statute, one would not attribute to Parliament an intention to authorise the commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the commission to issue a warning-off notice without notice or stated grounds but limited to a particular meeting, coupled with a notice that the commission proposed to make a long-term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the commission and show why the proposed long-term order be not made.

41. As pointed out in *Mohinder Singh Gill v. Chief Election Commissioner* and in *Maneka Gandhi v. Union of India* such cases where owing to the compulsion of the fact-situation or the necessity of taking speedy action, no pre-decisional hearing is given but the action is followed soon by a full post-decisional hearing to the person affected, do not, in reality, constitute an “exception” to the audi alteram partem rule. To call such cases an “exception” is a misnomer because they do not exclude “fair play in action”, but adapt it to the urgency of the situation by balancing the competing claims of hurry and hearing.

42. “The necessity for speed”, writes Paul Jackson: “may justify immediate action, it will, however, normally allow for a hearing at a later stage”. The possibility of such a hearing — and the adequacy of any later remedy should the initial action prove to have been unjustified — are considerations to be borne in mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however, the need to act swiftly may modify or limit what natural justice requires, it must not be thought “that because rough, swift or imperfect justice only is available that there ought to be no justice”: *Pratt v. Wanganui Education Board*.

43. Prof. de Smith, the renowned author of *Judicial Review* (3rd Edn.) has at p. 170, expressed his views on this aspect of the subject, thus: “Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto? A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits

²⁴ 14 Aus LR 519



are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings.”

44. In short, the general principle – as distinguished from an absolute rule of uniform application – seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play “must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands”. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

(Italics in original; underscoring supplied)

54. Compliance with the *audi alteram partem* requirement is, therefore, non-negotiable. In rare cases, and where administrative exigencies or considerations of expedience absolutely proscribe grant of a pre-decisional hearing, an immediate post-decisional hearing may suffice. That, however, is clearly the exception, and cannot be used as an escape route to avoid granting a pre-decisional hearing. Where, therefore, the situation is not so emergent as would justify the hearing



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to be deferred to the post-decisional stage, the decision, if it entails civil consequences and has not been *preceded* by a hearing, is vitiated in its entirety. The only exception is where the statute *expressly* excludes the requirement of grant of a hearing.

Communication dated 2 August 2019

55. Mr. Gupta has also placed reliance, as already noted, on the communication dated 2 August 2019 addressed by the CBSE to the petitioner. In this context, the counter affidavit filed by the CBSE seeks to state - this submission was echoed by Ms. Manisha Singh during oral arguments – that the exercise of extension of provisional affiliation is entirely distinct from the exercise of taking of punitive measures against a school owing to deficiencies in terms of the Affiliation Bye-laws. The Committee that was constituted, as stated in the communication dated 2 August 2019, she submits, was apropos the petitioner's request for extension of provisional affiliation. It had nothing to do with the proceedings relatable to the show cause notice, proposing disaffiliation of the petitioner's institution.

56. This submission, too, cannot be accepted. The communication dated 2 August 2019 specifically includes, in the remit of the committee to which the communication makes reference, the direction to visit the school and ask, from the school “point wise for reply/compliance.... with documentary evidence” of the various deficiencies to which the show cause notice dated 5 October 2017 made reference. The CBSE thereby, itself dovetailed the exercise of

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curing of the deficiencies in the show cause notice with the exercise of extension of provisional affiliation.

57. Even otherwise, it is obvious that these two proceedings cannot be entirely divorced from one another. The Committee that was constituted as per letter dated 2 August 2019 was following the petitioner's request for extension of its provisional affiliation. Among the factors which the Committee was required to take into consideration was the issue of whether the defects in the show cause notice dated 5 October 2017 had or had not been rectified. If the Committee was to find that the defects had been rectified, therefore, this was a relevant circumstance to be considered while examining the petitioner's request for extension of its provisional affiliation. It would be paradoxical, therefore, to hold that, on the one hand, curing of the defects in the show cause notice dated 5 October 2017 was a relevant circumstance, to be borne in mind while examining the petitioner's request for extension of provisional affiliation and, on the other, that despite the defects having been cured, the petitioner could nonetheless be disaffiliated.

58. The passing of the impugned order even before the Committee, to which the letter dated 2 August 2019 alludes, ever visited the petitioner school is, therefore, yet another infirmity in the impugned order.

Want of adequate reasons

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59. Finally, the impugned order dated 16 March 2020, if read, can be sub-divided into various Sections. The first paragraph of the order merely refers to grant of affiliation to the petitioner school and the conditions of such grant. The next paragraph is a verbatim reproduction of the show cause notice dated 5 October 2017, and refers to the various alleged deficiencies or defects in the petitioner's school as per the Inspection Report dated 12 July 2016 of the one man Committee which had been constituted prior thereto. The next paragraph refers to the fact that, on the basis of the said report, the petitioner school had been issued a show cause notice and the succeeding para refers to the fact that the petitioner filed a reply to the show cause notice dated 31 October 2017. The next four paragraphs merely reiterate the allegations in the show cause notice which, according to the impugned order, amounted to violation of the Affiliation Bye laws. The next paragraph asserts that the reply filed by the School on 31 October 2017 have been examined at length and was "not found satisfactory and as the school is lacking in essential condition of continuation of affiliation *in light of the fact that the school is not in possession of adequate infrastructure and teaching staff*".

60. As such, the only reason why the reply dated 31 October 2017 was not found satisfactory, as per the impugned order, was the fact that the petitioner-school was not in possession of adequate infrastructure and teaching staff.

61. There is no allegation, in the show cause notice, dated 5

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October 2017 of the petitioner school not being in possession of adequate teaching staff. This finding in the impugned order, therefore, being in excess of the allegations in the show cause notice dated 5 October 2017, has straightaway to be held as illegal. The petitioner was never given an opportunity to show cause against want of adequate teaching staff in the show cause notice dated 5 October 2017 or at any time thereafter. The decision to dis-affiliate could not, therefore, have been taken on the ground that the petitioner school did not have adequate teaching staff.

62. In so far as lack of adequate infrastructure is concerned, the only allegation in the show cause notice dated 5 October 2017 is that the school did not “possess adequate infrastructure and facilities with respect to class rooms, furniture and Science Laboratory”. No specifics in that regard are to be found in the show cause notice dated 5 October 2017. In its reply dated 31 October 2017, the School had specifically stated with respect to this allegations thus:

“04. This School has 41 class rooms and strength of each class room is according to norms of DSEAR 1973 i.e. 10 sq. ft. per child. All the class rooms are equipped with furniture. Being the school is upto secondary level, we have one composite science lab. All practicals are undertaken there.”

63. Thus the school, had, in its response to the show cause notice specifically disputed the allegation that it did not possess adequate infrastructure. It was stated that it had 41 class rooms and that the strength of each class room was in accordance with the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973,



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which required 10 sq. ft. per child. It was also submitted that the class rooms were equipped with furniture and that as the school was functioning upto the secondary level, it was required to have one Science Laboratory, which it had, and where all practicals were undertaken.

64. The impugned order does not reflect any application of mind to these assertions in the reply dated 31 October 2017. It merely repeats, *mantra* like, the allegation in the show cause notice that the school did not have adequate infrastructure.

65. Ms. Singh sought to submit that the succeeding paragraph which states that the order was being passed “in the given facts and circumstances and on examination of Inquiry Report submitted by the Inspection Committee and reply of the School dated 31.10.2017” included, within its sweep, all allegations in the show cause notice and all material that was available with the CBSE, cannot be accepted. The preceding paragraph specifically states that the only ground on which the reply dated 31 October 2017 was found unsatisfactory was because the school did not have adequate infrastructure and teaching staff.

66. In any event, even if the submission of Ms. Manish Singh were to be accepted, the impugned order is nonetheless non-speaking. It merely repeats the allegations in the show cause notice dated 5 October 2017. It reflects no application of mind to the reply dated 31 October 2017 submitted by the petitioner-school. It does not take into



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consideration the issue of whether the defects which were in the noted in the show cause notice dated 5 October 2017 were subsequently cured or not cured. The CBSE did not even provide the school the requisite one year curial period to cure the alleged defects. The impugned order has also been passed in abject violation of the principles of natural justice as no prior opportunity of hearing was granted to the petitioner.

67. Viewed any which way, therefore, the impugned order cannot sustain either on facts or in law.

Conclusion

68. The order dated 16 March 2020 is therefore, quashed and set aside. The interim order dated 9 April 2020 by which the operation of the impugned order was stayed is confirmed and made absolute.

69. The writ petition stands allowed in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

APRIL 10, 2024

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[Click here to check corrigendum, if any](#)