



2024:DHC:5789-DB



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

+ **LPA 568/2024 & C.M.Nos.38388-38389/2024**

CENTRAL BOARD OF SECONDARY EDUCATION

.....Appellant

Through: Mr.Sanjay Jain, Sr.Advocate with
Ms.Manisha Singh and Mr.Nishank
Tripathi, Advocates.

versus

MOUNT COLUMBUS SCHOOL AND ORS

.....Respondents

Through: Mr.Kamal Gupta with Ms.Tripti
Gupta, Mr.Sparsh Aggarwal,
Mr.Karan Chaudhary and Ms.Yosha
Dutt, Advocates.

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Date of Decision: 16th July, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed by the Appellant challenging the order dated 10th April, 2024 passed by the learned Single Judge of this Court in WP(C) 2956/2020, whereby the order dated 16th March, 2020 passed by the Appellant-CBSE was set aside.

2. Learned senior counsel for the Appellant states that the learned Single Judge has erroneously relied upon the judgement of the Apex Court in *Swadeshi Cotton Mills versus Union of India, (1981)1 SCC 664* and held

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that the order withdrawing provisional affiliation could not have been passed by the Appellant without affording a personal hearing to the Respondent-School. He states that no such hearing was sought by the Respondent itself and the withdrawal order was passed only after issuance of a show cause notice to the Respondent, who had also filed its reply to the same.

3. He submits that the learned Single Judge has erred in holding, in particular, in paragraphs 54 and 66 that even though the Respondent had never sought any personal hearing from the Appellant before passing of the final order, the Appellant was obligated to grant the same. He further states that no prejudice is caused to the person complaining of the breach of natural justice when such person itself does not dispute the case against it.

4. *Per contra*, learned counsel for the Respondent-School, who appears on advance notice, states that the defects and deficiencies pointed out to the show cause notice as well as in the inspection report had been cured/removed/rectified, to the maximum extent possible, prior to filing of the underlying writ petition. He points out that the Respondent-School has been functional during the pendency of proceedings as there was an interim order in favour of the Respondent. He states that, as of now, approximately 1400 students are studying in the Respondent-School.

5. Having heard learned counsel for the parties, this Court is of the view that the Court cannot insist that under all circumstances and in all cases personal hearings have to be afforded to the persons concerned.

6. When principle of natural justice requires an opportunity to be heard before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such authority



who is expected to apply its judicial mind to the issues involved.

7. The Supreme Court in *Shiv Sagar Tiwari vs. Union of India & Ors.*, (1997) 1 SCC 444 has held that natural justice is after all “no unruly horse, no lurking land mine” as characteristically stated by Krishna Iyer, J. in *Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee* (1977) 2 SCC 256.

8. Keeping in view the aforesaid mandate of law, this Court is of the view that the observation/finding of the learned Single Judge that the compliance with the *audi alteram partem* requirement is non-negotiable and any order which has civil consequence has to be preceded by an oral hearing is not correct in the facts of the present case.

9. However, keeping in view the fact that the initial show cause notice had been issued in the year 2017 and according to learned counsel for the Respondent-School, all the defects and deficiencies pointed out by the Appellant had been cured/rectified, this Court set aside the withdrawal of the provisional affiliation order dated 16th March, 2020 with liberty to the Appellant to re-inspect the Respondent-School premises after four weeks. If the Appellant finds any defects/deficiencies, the same shall be communicated to the Respondent-School, who in turn, shall endeavour to remove the defects/deficiencies within a further period of one month. Thereafter, the Appellant shall be at liberty to pass a fresh order in accordance with law. This Court clarifies that approach of both the Appellant and the Respondent-School has to be to ensure conformity with the rules and regulations rather than to close down the School. However, it shall be open to the Appellant to take action of de-affiliation and closure of the School, if there is no other option.



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10. With the aforesaid directions, present appeal along with the applications stands disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 16, 2024
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