

(2005) 12 DEL CK 0101
In the Delhi High Court
Case No : LPA 2477 of 2005

Central Board of Secondary Education	APPELLANT
Vs	
Tushar Welfare Society and Another	RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 141, 142, 226

Citation : (2005) 12 DEL CK 0101

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Rakesh Dwivedi, Amit Bansal and Maneesha Singh, for the Appellant; Vipin Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This Appeal has been filed against the impugned judgment of the learned Single Judge dated 08.09.2005, Annexure A1 to the appeal.

2. We have heard counsel for the parties and perused the record.

3. The respondent No. 1 in this appeal (writ petitioner No. 1) is a Society registered under the Societies Registration Act, 1860, which has opened a school under the name CSHP Public School in 1999. The respondent No. 2 is also a society under the Societies Registration Act, 1860, and is a Federation of unaided public schools/private schools in the country. The membership of the respondent No. 2 is open to public schools all over the country.

4. It is alleged in para 3 of the writ petition that the respondent in the writ petition (appellant herein), Central Board of Secondary Education (hereinafter referred to as CBSE), is a society constituted by the Central Government through a Resolution bearing No. F.115-R28 dated 01.07.1929 as amended from time to time. As per the constitution of the society, the Education Secretary in the Ministry of Human Resource Development, Government of India is the controlling

authority. The objective of the respondent is to grant affiliation and conduct examinations at the secondary and senior secondary level throughout the country. The constitution of the society is Annexure 2 to the writ petition. It is alleged that an overwhelming majority of the members of the respondent Board are Government representatives and all the members of the CBSE hold posts only at the pleasure of the Controlling Authority, who is the Secretary to the Government of India, Ministry of Human Resource Development. Hence it is alleged that CBSE is amenable to the extra ordinary writ jurisdiction of this court.

5. For the purposes of grant of affiliation of private unaided schools with the CBSE, one of the essential requirements prescribed by the CBSE is that the concerned school should obtain a No Objection Certificate (NOC) from the State / UT Government, where the school is operating.

6. In 1994, the CBSE framed the affiliation bye-laws, copy of which is Annexure 3 to the writ petition. Bye-law 3.3(i) states as under:-

The school seeking Provisional Affiliation with the Board must have formal prior recognition of the State/UT Government. Its application either should be forwarded by the State Government or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the CBSE Condition of submitting a No Objection Certificate will not be applicable to categories 3.1(i) to (iv).

7. It is alleged in para 6 of the writ petition that from the aforesaid provision in the affiliation bye-laws of CBSE, it is clear that the CBSE does not even entertain an application seeking affiliation unless it is accompanied by a No Objection Certificate from the concerned State/UT Government.

8. The writ petitioner has alleged that this requirement of No Objection Certificate from the State Government was working grave injustice since the CBSE was not acting upon the request of schools for issuance of No Objection Certificate unduly delaying the disposal of the same or rejecting the same without any rational basis. Consequently, representations were made to the Government of India, Ministry of Human Resource Development to do away with the said pre-condition for grant of affiliation by the CBSE. The Central Government considered the said issue and Controlling Authority issued a direction which was communicated to CBSE vide letter dated 01.05.2001, copy of which is Annexure 4 to the writ petition.

9. Since the writ petitioner has relied strongly on this letter, we are reproducing the same below:-

Subject Request for reconsideration of the decision taken by the CBSE regarding grant of affiliation to the Presentation Convent High School, Gandhinagar, Jammu and K.C. Public School, Akhnoor Road, Jammu.

Sir,

I am directed to refer to your letter No. CBSE/DS/AFF/7326/5425 dated 16.3.2001 on the abovementioned subject. The issue regarding grant of affiliation to the schools by the CBSE without obtaining NOC from the State Government has been considered.

Education Secretary (Controlling Authority of the CBSE) has advised that the CBSE should continue to follow its present policy regarding grant of affiliation to the schools. In case no response is received from the State Government within the three months, then after the expiry of three months, the Board should take decision on the case in an impartial manner. In case State Government specifically refuses the NOC in writing, even then CBSE should give its decision (regarding affiliation based on the merits and demerits of the case. However, in this sort of case, decision should be backed with or based on fully justified reasons to be recorded in writing and a copy of the same should also go to the State Government.

CBSE may kindly note the above advice / directions of the Controlling Authority for guidance and appropriate necessary action.

10. The petitioner has alleged that the affiliation bye-laws are in contravention of the aforesaid direction issued by the Controlling Authority vide letter dated 01.05.2001 reproduced above. It is alleged that the direction of the Controlling Authority is binding on the CBSE by virtue of Clause 10(i) and (3) of the constitution of the CBSE. It is further alleged that bye-laws 3.3(i) of the affiliation bye-laws is contrary to the decision of the Supreme Court in *St. Johns Teacher Training Institute v. Regional Director, National Council for Teacher Education and Anr.* copy of which is Annexure 5 to the writ petition.

11. The learned counsel for the petitioner submitted that in respect of government aided institutions, concurrence of the State Government is required for granting affiliation vide Clause 4 of the constitution of the CBSE. There is no such requirement prescribed in respect of private unaided institutions. However, bye-law 3.3(i) completely reversed this position by requiring No Objection Certificate from the State/UT Government in case of private unaided school as a pre-requisite for granting affiliation, while completely exempting the aided school from the said requirement.

12. It is alleged that the bye-laws are subordinate to the constitution of the CBSE which derives its authority from the said constitution and hence they go against the constitution. Hence it is alleged that the said bye-law 3.3 (i) is ultra virus the Constitution of the CBSE and is liable to be struck down.

13. The writ petitioner wrote an application dated 30.10.2002 for grant of No Objection Certificate, copy of which is Annexure 6. However, no action was taken on the same, and hence this writ petition, in which the petitioner has prayed for quashing bye-law 3.3(i) of the affiliation bye-laws.

14. A counter affidavit was filed on behalf of the CBSE in the writ petition and we

have perused the same.

15. In para 3 of the counter affidavit it is stated that the CBSE is discharging the function of conducting examinations, prescribing educational courses and generally maintaining standards of school education and advising the Government of India when called upon to do so on matters pertaining to school education. The CBSE frames its own rules and is governed by them and it has not been created under any statute. The CBSE is an autonomous and independent body, and no part of its expenses for running the organization is borne by the Government. It gets no aid, grant or subsidy from the Government and is not a State under Article 12 of the Constitution.

16. While hearing this appeal earlier we had directed the learned counsel for the appellant to file an additional affidavit annexing the certificate of registration of the CBSE under the Societies Registration Act, 1860. Hence an additional affidavit was filed stating therein that the CBSE is a society registered under the Societies Registration Act, 1860. It was registered on 02.01.1935, and the certificate of registration is Annexure A1 to the additional affidavit. True copy of the Memorandum of Association is Annexure A2 and true copy of the Regulations of CBSE is Annexure A-3 to the additional affidavit. Chapter 6 of the regulations contains the rules of affiliation which prescribe the minimum requirement of affiliation. In addition, bye-laws of affiliation have been framed which are on the record.

17. Thus, it is evident that although the CBSE was initially created by the Central Government by the Resolution dated 01.07.1929, subsequently the appellant was registered as a society registered under the Societies Registration Act, 1860. Hence after its registration on 02.01.1935 it ceased to be a limb of the Central Government and became an independent and distinct legal entity.

18. Among the objects for which the CBSE has been established as mentioned in the Memorandum of Association are:-

(1) To supervise and regulate high school, intermediate education and training of teachers in Rajputana including Ajmer Mervari, Central India and Gwalior and also to conduct examination in this area.

The other objects are mentioned in the Memorandum of Association, Annexure A-2 to the additional affidavit filed to this appeal. The officers of the CBSE are also mentioned in the said Memorandum.

19. It is stated in para 4 of the counter affidavit of CBSE that the directions issued by the Controlling Authority dated 01.05.2001 are not applicable in the case of the petitioner, and the petitioner is not entitled for consideration of its application for affiliation of the school with CBSE without the relevant No Objection Certificate from the State Government. It is stated that the No Objection Certificate is an essential requirement for consideration of the application of the school for affiliation.

20. It is stated in the counter affidavit of CBSE that since States have the concurrent power to legislate regarding matters of education, the CBSE insists for No Objection Certificate from the State Government, so that there may not be any conflict between the rules and regulations framed by the State Government regarding school education and the rules and regulation of the CBSE. It is stated that the rules regarding No Objection Certificate from the State Government prior to consideration of an application for affiliation is based on rational and reasonable criteria. At any event, the CBSE is an autonomous and independent body and is entitled to prescribe its own procedure and rules for grant of affiliation.

21. As regard the letter dated 01.05.2001, it is stated in the counter affidavit of the CBSE that the said letter was issued on account of some schools which were affiliated to the Education Board of Jammu and Kashmir and which wanted No Objection Certificate to get themselves affiliated to the CBSE. At any event, the said letter dated 01.05.2001 does not make the bye-laws ultra vires. The direction in the letter dated 01.05.2001 is not in respect of the school of the petitioner, and the petitioner cannot ask for consideration of its application without the No Objection Certificate.

22. The learned Single Judge in para 3 of the impugned judgment has observed:-
The bye-laws are thus palpably not in consonance with the CBSE Constitution.

23. In our opinion, we must remember that the CBSE has been registered as a society under the Societies Registration Act, 1860 on 02.01.1935 from which date it became a distinct legal entity and ceased to be a limb of the Central Government. Hence the CBSE constitution mentioned in the Resolution of the Central Government dated 01.07.1929 can no longer govern the CBSE. From 02.01.1935 it is the Memorandum, Regulations and Bye-laws of the CBSE which govern it.

24. In Para 06 of the impugned judgment the learned Single Judge has observed :-

So far as regulations or bye-laws vis-?-vis a statute are concerned it is firmly entrenched in our jurisprudence that a delegate would exceed the jurisdiction and the powers vested in it if it were to go beyond the provisions of the Statute which has created it.

25. There is no disputing the proposition which the learned Single Judge has referred to in the above observation. However, with due respect to the learned Judge what has not been taken into consideration by him is that there was no statute which created the CBSE but only a Resolution of the Central Government dated 01.07.1929. That Resolution is only an executive order and not a statute. Subsequently, the CBSE became a registered society under the Societies Registration Act, 1860 on 02.01.1935. Hence from 02.01.1935, the society is no longer a limb of the Central Government, but is a distinct legal entity like a

company registered under the Companies Act, 1956. Hence from 02.01.1935 the CBSE is no longer governed by the Resolution of the Central Government dated 01.07.1929. It is this vital point which has been over looked by the learned Single Judge and hence in our opinion, the said judgment cannot be sustained.

26. The learned Single Judge in para 8 of the impugned judgment has further observed:-

In this analysis, Therefore, the CBSE is adopting a retrograde practice and stand in insisting that State clearances should be taken even by Schools which are private and unaided. In the present times, control and interference of the State is consciously being minimized. It would be a progressive step if educational institutions maintain themselves and regulate their affairs without drawing upon the State funds for which there invariably are many other suppliants. Where the parents of students are unable to afford the fees of private institutions, State schools should be available, as they presently are. No further regulation of education is called for. It is this ethos which has been expressed in the Constitution of the CBSE itself. All institution which fall in the category of being private and unaided need not Therefore, obtain the concurrence and prior approval of a State Government for applying for affiliation to the CBSE.

27. With profound respect to the learned Single Judge, we are of the view that using language like retrograde practice and remarks like in the present times, control and interference of the State is consciously being minimized, are wholly irrelevant and misplaced. The court has to decide a case on legal principles and not on its own notions of what is retrograde and what is progressive.

28. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the judges preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the word of Chief Justice Neely:

I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator.

29. In our opinion judges must maintain judicial self restraint while exercising the power of judicial review of administrative or legislative decisions. In view of the complexities of modern society, wrote Justice Frankfurter, while Professor of Law at Harvard University, and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and

imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language:

It is a misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong.

30. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote:

It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest.

(see Essays on Legal History in Honour of Felix Frankfurter Edited by Morris D. Forkosch).

31. In Tata Cellular Vs. Union of India, the Supreme Court observed:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal over administrative decisions but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct an administrative decision.

If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible.

As Lord Denning observed:

This power to overturn executive decisions must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions. The courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the Court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the government and the authorities, which would be most undesirable. The courts must act very warily in this matter.

(See Judging the World by Garry Sturgess Philip Chubb).

32. Moreover, even in the Central Government Resolution dated 01.07.1929, it is stated in Regulation 16(2) (d) that the Board may make regulations for:-

The conditions under which the Board may affiliate institutions for the purposes of its examinations.

33. The CBSE has prescribed in regulation 3(i) that the school seeking Provisional Affiliation with the Board must have prior recognition of the State/UT Government.

34. In our opinion, it is entirely for the Board to lay down the rules for grant of affiliation. This is a policy matter, and it is not proper for this Court to interfere in this.

35. The learned counsel for the writ petitioner (respondent in this appeal) has invited our attention to the last sentence in the judgment of the Supreme Court in *St. Johns Teacher Training Institute v. Regional Director, National Council for Teacher Education and Anr.(supra)*, in which it is stated that the State Government shall pass the final order on the application for grant of No Objection Certificate within 4 months of presentation of a certified copy of the order, failing which, it will be deemed that No Objection Certificate has been granted.

36. The learned counsel submitted that in the present case also we should direct that if the application for No Objection Certificate has not been decided within 4 months it should be deemed to have been granted.

37. In our opinion, if we give a direction that if the application for grant of No Objection Certificate is not decided within 4 months it will be deemed to have been granted that will amount to legislation which this court cannot do. We have not been shown any statutory or other provision which states that if the application for No Objection Certificate is not decided within 4 months, it will be deemed to be allowed.

38. Of course, it is open to the Supreme Court to give such a direction as the Supreme Court has power to do so under Article 142 of the Constitution of India. However, the High Court has not been given powers similar to Article 142 of the Constitution. There are many things which the Supreme Court can do which the High Court cannot do, and one of the things which the High Court cannot do is to legislate, vide *Union of India and another Vs. Deoki Nandan Aggarwal*, ; *Union of India (UOI) Vs. Association for Democratic Reforms and Another*,

39. Moreover, every direction of the Supreme Court cannot be treated as a precedent. For instance in some decisions the Supreme Court has directed regularization of temporary or ad hoc employees but it is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. Often the Supreme Court issues direction without laying down any principle of law, in which case, it is not a precedent. For instance, the Supreme Court often directs appointment of someone or regularization of a temporary employee or payment of salary, etc. without laying down any principle of law. This is often done on humanitarian considerations, but this will not operate as a precedent binding on the High Court. For instance if the Supreme Court directs regularization of service of an employee who had put in 3 years service, this does not mean that all employees who had put in 3 years

service must be regularized. Hence such a direction is not a precedent. In *Municipal Committee, Amritsar Vs. Hazara Singh*, , the Supreme Court observed that only a statement of law in a decision is binding. In *State of Punjab Vs. Baldev Singh*, , the Supreme Court observed that everything in a decision is not a precedent. In *Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal*, , the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, , the Supreme Court observed as follows:-

The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent judge is the principle upon which the case was decided.

40. In *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, , the Supreme Court held that the directions issued by the court from time to time for regularization of ad hoc appointments are not a ratio of this decision, rather the aforesaid directions were to be treated under Article 142 of the Constitution of India. The Supreme Court ultimately held that the High Court was not right in placing reliance on the judgment as a ratio to give the direction to the Public Service Commission to consider the cases of the respondents for regularization. In that decision the Supreme Court observed:

11. This Court in *Dr A.K. Jain and Others Vs. Union of India (UOI) and Others*, , gave directions under Article 142 to regularise the services of the ad hoc doctors appointed on or before October 1, 1984. It is a direction under Article 142 on the particular facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 power is confided only to this Court. The ratio in *Dr P.P.C. Rawani and Others Vs. Union of India (UOI) and Others*, , is also not an authority under Article 141. Therein the orders issued by this Court under Article 32 of the Constitution to regularise the ad hoc appointments had become final. When contempt petition was filed for non-implementation, the Union had come forward with an application expressing its difficulty to give effect to the orders of this Court. In that behalf , while appreciating the difficulties expressed by the Union in implementation, this Court gave further direction to implement the order issued under Article 32 of the Constitution. Therefore, it is more in the nature of an execution and not a ratio under Article 141. In *Union of India (UOI) and Others Vs. Dr Gyan Prakash Singh*, this Court by a Bench of three Judges considered the effect of the order in *A.K. Jain's* case and held that the doctors appointed on ad hoc basis and taken charge after October 1, 1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In *H.C. Puttaswamy and others Vs. The Hon''ble Chief Justice of Karnataka High Court*,

Bangalore and others, , this Court while holding that the appointment to the post of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years service. It is to be noted that the recruitment was only for clerical grade (Class-III post) and it is not a ratio under Article 141. In State of Haryana and others Vs. Piara Singh and others etc. etc., , this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the ad hoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with the rules.

41. Thus, the direction in the decision of the Supreme Court in St. Johns Teacher Training Institute v. Regional Director, National Council for Teacher Education and Anr. (supra) that if No Objection Certificate application is not decided within 4 months it will be deemed to have been allowed cannot be treated as precedent binding on the High Courts. That direction was given on its own facts and does not amount to laying down a general principle of law that whenever any application is not decided within 4 months it will be deemed to have been allowed.

42. The learned Single Judge has struck down bye-law 3 (1) holding it to be inconsistent with certain decisions of the Supreme Court. We have perused those decisions, but they only pertain to subordinate legislation being ultra virus the parent legislation. As already stated above, after the CBSE became a registered society under the Societies Registration Act, 1860 it became a distinct legal entity, and was no longer a limb of the Central Government. Hence the Resolution of the Central Government is no longer binding on it, and it is open to the CBSE to adopt that Resolution in whole or in part or to reject the same in whole or in part in its discretion.

43. The CBSE may wish to utilize the machinery available with the State Government for various purposes as it has only seven Regional Centres in the country and may not be fully equipped to reach every nook and corner where institutions are working. Hence it is open to the CBSE to provide for requirement of No Objection Certificate from the State Government before granting affiliation and such a requirement has been upheld by the Supreme Court in St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher

Education and Another, .

44. The Letter of the Central Government dated 01.05.2001 also cannot bind the CBSE, since the Central Government and its officials have no authority over the CBSE which is a society under the Societies Registration Act, 1860, and hence a distinct legal entity and not a limb of the Central Government. At any event, the subject of the letter shows that it related to grant of affiliation to two schools in Jammu and Kashmir State, that is, Presentation Convent High School and K.C. Public School. The letter was not of general application and cannot further the case of the writ petitioner.

45. The bye-law 3(i) which requires a No Objection Certificate from the State Government before grant of affiliation to a school is a policy decision of the CBSE, and it is well settled that in policy matters this court should not ordinarily interfere.

46. It is well settled that in policy matters this Court has a very limited scope of interference vide Union of India (UOI) and Another Vs. International Trading Co. and Another, , State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., ; Krishnan Kakkanth Vs. Government of Kerala and others, , G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, and Federation of Railway Officers Association and Others Vs. Union of India (UOI), .

47. In Union of India v. International Trading Co. 2003 (51) ALR 598 the Supreme Court observed:

The court as observed in Union of India and others Vs. Hindustan Development Corpn. and others, are kept out of the lush field of administration policy except where the policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates, or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds the Courts view of the range of policies open under the statute or of what is unreasonable policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. As Professor Wade points out (in Administrative Law by HWR Wade, 6th Edition), there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must Therefore distinguish between proper course and improper abuse of power. Nor is the test the Courts own standard of reasonableness as it might conceive it in a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise.

48. In Tamil Nadu Education Department Ministerial and General Subordinate

Services Association and Others Vs. State of Tamil Nadu and Others, , the Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot strike down a circular/Government Order or a policy merely because there is a variation or contradiction. The Court observed:

Life is sometimes contradiction and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factors founs.

49. In that decision that court also observed:-

Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterdays becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands off policy.

50. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the Supreme Court considered the scope of judicial review in a case of policy decision and held as under:

The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the Sub-ordinate regulation making body. It may be a wise policy, which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultravires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy but is a even a foolish one, and that it will not really serve to effectuate the purpose of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is not scope for any interference by the Courts unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or it being is consistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution.

51. A similar view has been reiterated in Delhi Science Forum and others Vs. Union of India and another, ; U.P. Kattha Factories Association Vs. State of U.P. and others, ; and Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, .

52. In Netai Bag and Others Vs. The State of West Bengal and Others, , the Supreme Court observed:-

The Court cannot strike down a policy decision taken by the government merely because it feels that another decision would have been fairer or wiser or more scientific or logical.

53. The Government is entitled to make pragmatic adjustments and policy decisions which may be necessary or called for under the prevalent peculiar circumstances. While deciding the said case, the Court referred to and relied upon its earlier judgments in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, and *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , wherein the Court held that judicial interference with a policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or mala fide. A similar view has been reiterated in *Union of India and Others Vs. Dinesh Engineering Corporation and Another etc.*, .

54. In *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, , it has been held that in exercise of their powers of judicial review, the courts do not ordinarily interfere with policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. If the policy cannot be touched on any of these grounds, the mere fact that it may affect the interests of a party does not justify invalidating the policy.

55. In *State of Himachal Pradesh and Another Vs. Padam Devi and Others*, , the Supreme Court held that unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any statute or the Constitution it cannot be a subject of judicial interference under the provisions of Articles 32, 226 and 136 of the Constitution. Similar view, has been reiterated in *State of Rajasthan and Others Vs. Lata Arun*, .

56. This Court cannot ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The Court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the *Wednesbury* principle applies, that the Court should interfere, vide *Tata Cellular Vs. Union of India*, , *Om Kumar v. Union of India* 2001 (2) SCC 386. In *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, the Supreme Court observed:-

However, we cannot lose sight of the fact that the corporation is a independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its function it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decisions, however, more prudent, commercial or business like it may be, for the decision of the corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed by making the corporation liable.

57. In *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and*

Another, the Supreme Court observed:-

If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known that more than one choice is available to the administrative authorities. They have a certain amount of discretion available to them. They have a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. (per Lord Diplock in *Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside* 1977 AC 1014). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, the Court can intervene. To quote the classic passage from the judgment of Lord Greene M.R. In *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* 1947 (2) All ER 680:

It is true the discretion must be exercised reasonably. Now what does that mean Lawyer familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word unreasonable in a rather comprehensive sense. It has frequently been used and is frequently used a general discretion of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

58. In administrative matters the Court should Therefore ordinarily defer to the judgment of the administrators unless the decision is clearly illegal or shockingly arbitrary. In this connection Justice Frankfurter while Professor of Law at Harvard University wrote in *The Public and its Government* With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of government. The great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people.

59. In the same book Justice Frankfurter also wrote In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the judges who interpret it. That document has ample resources for imaginative statesmanship, if judges have imagination for statesmanship.

60. In *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*,

Khanna J. observed:

In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error.

61. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, the Supreme Court observed that there are three grounds on which administrative action is subject to control by judicial review. The first ground is illegality, the second is irrationality and the third is procedural impropriety. These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister of the Civil Service* 1984 (3) All ER 935. The Supreme Court observed that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above, like illegality, irrationality and procedural impropriety. The famous case, commonly known as the *Wednesbury* case is treated as the landmark in laying down various principles relating to judicial review of administrative or statutory discretion.

62. Lord Diplock explained irrationality as follows:

By irrationality I mean what can be now be succinctly referred to as *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

63. No doubt, in the present case, the policy decision is not of the Government but the CBSE, but that makes no difference so far as the principle enunciated above is concerned. The CBSE consists of experts in the field of education and it is not proper for this court to interfere with its functioning. The court must exercise judicial restraint in this connection.

64. It is well settled that in academic/educational matters Courts should be reluctant to interfere vide *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, , *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, , *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*,

65. The entire philosophy of judicial restraint has been laid down by the Madras High Court in *Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others*, . In that decision the relevant case law has been referred to and we fully agree with the views expressed therein.

66. For the above reason, this appeal is allowed and the impugned judgment of the learned Single Judge is set aside and the writ petition is dismissed.