

(2000) 02 CAL CK 0020
In the Calcutta High Court

Case No : Writ Petition No. 17845 (W) of 1999 with W.P. No. 18209 (W) of 1999

C.F. Andrews Memorial Education Society and Others APPELLANT
Vs

Council for Indian School Certificate Examination, New Delhi, RESPONDENT
and Others

Date of Decision : 14-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : 105 CWN 147

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : S.N. Bhattacharjee, T.K. Mukhopadhyay, T. Chakraborty, A. Chandra, J.P. Gupta, Kishore Mukherjee and Sudesna Roy Banerjee, for the Appellant; Utpal Bose and Sanjoy Baid, for the Respondent

Final Decision : Dismissed

Judgement

Samaresh Banerjea, J.—Both the writ petitions having been heard analogously will be governed by the same judgment. In W.P. No. 17845(W) of 1999, C.F. Andrews Memorial Society, a society registered under West Bengal Societies Registration Act, 1961, C.F. Andrews Memorial School sponsored by the said society have challenged the letter dated 30th March, 1999 issued by the Council for Indian School Certificate Examination being the respondent No. 1, (hereinafter referred to as the said Council) intimating the principal of the said about the deficiencies of the School in the matter of affiliation about gross mismanagement for which the provisional affiliation was not being extended (Annexure "L" to the writ petition) as also the letter dated 18th February, 1998 being annexure "M1" to the writ petition written by the Council to the said school intimating that the deficiency pointed out in the inspection report indicate that the school had not made any effort to meet the requirement for grant of school of affiliation as also the letter dated September, 16, 1999 written by the Council to the said school intimating the school inter alia, that the said school is not affiliated to the Council.

2. The petitioners have prayed for issue of a writ in the nature of Mandamus directing the respondent to extend provisional affiliation immediately with effect from 1st of April, 1998 for the further period of 3 years during the pendency of the writ application and further directing them to grant permanent affiliation and not to give any further effect to the aforesaid notices being annexures L, M and R to the writ petition.

3. In W.P. No. 1809(W) of 1999, five petitioners who are guardians/ parents of students studying in the said school have prayed for issue of a writ in the nature of Mandamus directing the respondent to forbear from giving effect to the memorandum dated 16th September, 1999 and 21st September, 1999 issued by the Deputy Secretary of the said Council. Prayers have also been made for a declaration that the refusal to extend the provisional affiliation of the school is violative of the provision of the Constitution of India.

4. A prayer for mandatory interim order has also been made directing the said Council to accept the registration fees of the petitioners' children and to allow them to appear in the ensuing Indian School Certificate Examination (hereinafter referred to as the ("ICSE")) scheduled to be held in March, 2000.

5. In W.P. 18209(W) of 1999 the main contentions of the school that is the first writ petitioner are that the respondent Council acted illegally and arbitrarily in not extending the period of provisional affiliation to the school and in not granting permanent affiliation. It is also the contention of the petitioner that even before the expiry of the provisional affiliation which was granted to the school by the said Council, the school has been delisted which really amounted to cancellation of the provisional affiliation and such action therefore was in gross violation of principle of natural justice as no hearing was given to the school before such cancellation of the provisional affiliation.

6. It has also been contended inter alia that deficiencies which were pointed out in respect of the school for which the respondent Council declined to extend provisional affiliation or to grant permanent affiliation are malafide and arbitrary as such deficiencies really do not exist and the respondent at different stages of enquiry pointed out different types of deficiencies as a result whereof the same was impossible of compliance and particularly when some of the deficiencies having been pointed out only two months before the expiry of the provisional affiliation, it was impossible for the school to remove the same within the remaining period of two months only and therefore extension of provisional affiliation should have been granted.

7. So far as the second writ petition moved by five guardians/parents of the students of the said school is concerned, the petitioners therein also have contended that the action of the respondent Council in not extending the provisional affiliation is arbitrary and illegal and has further contended that in view of the matter the students who are innocent third parties cannot be made to suffer for the laches, if any, on the part of the school and therefore they must

be allowed to appear in the ensuing ICSE examination, but for which their career will be jeopardised.

8. It has been further contended that the respondent Council having permitted the students of said ICSE examination held in the year 1999 to appear in the said examination and also having published their results, their action now to refuse to extend the same benefit to the present students is wholly arbitrary and discriminatory. Further contention of the said petitioners is that education upto Secondary level now having been recognised as a fundamental right, in the matter of imparting such education the Council cannot act arbitrarily and in a manner which will jeopardise the career of such students and they should be permitted to appear in the ensuing examination and they should not be made to suffer for the laches of the school, if any.

9. Before going into the merits of the respective submissions of the parties in both the writ applications, it is necessary to record certain admitted facts.

10. Admittedly, the school seeking affiliation to said Council for its examinations will have to obtain a "No Objection" Certificate from the Department of Education concerned as per clause II of the guideline for affiliation of the said council.

11. Admittedly the Government of West Bengal Education Department, Secondary Branch, by order dated 9th September, 1992, granted a "No Objection" certificate to the said school for affiliation to the said Council subject to the following conditions:

(i) The school shall not apply to the State Government for any financial assistance, in any form, at present or in future.

(ii) The school shall not enhance the tuition fees for the students without prior permission from the State Government in writing.

(iii) The salaries paid to the teachers and non-teaching staff of the school shall not be lower than that what have been paid to the teachers and non-teaching staff of the Government aided school.

Admittedly the said school was granted provisional affiliation for a period of three years on certain conditions.

12. By a letter dated 28th September, 1994 the Principal of the school was informed by the said Council that the provisional affiliation granted to the school inter alia, is on the conditions that the salaries of the staffs Would not be below that of the State Government, the school would provide adequate facilities in the science laboratory and the library. In the said letter it was absolutely made clear that the provisional affiliation so granted entitled the school to present the candidates of the year 1996-1997 and 1998 and the provisional affiliation certificate would expire on 31th march 1998 unless renewed in writing by the secretary of the council period to the said date. It was also specially pointed out in paragraph 5 of the letter that it is for the principle of the school to ensure that

the provisional affiliation is extended if required and the Council shall not be liable for any consequences in case the provisional affiliation is not extended or the school is not granted permanent affiliation.

13. It is not disputed such provisional affiliation was accepted by the school on the aforesaid conditions. That because of imposition of such conditions as aforesaid in the matter of grant of provisional affiliation there cannot be any doubt that the school was required to ensure that the salaries of the staffs would not be below the State Government and it would provide adequate facilities in the Science, laboratory and the library.

14. Admittedly on 22nd and 23rd January, 1997 an inspection of school was carried out by the representative of the Council and in the report submitted after such inspection by a letter dated 13th January, 1998 the following deficiencies were pointed out to the school.

1. The laboratories are located in a separate building. The laboratories do not have suitable and adequate equipment and apparatus.
2. The furniture in classrooms and the staff-room lay out and facilities are inadequate.
3. There are 15 untrained teachers in the school.
4. Teachers are not paid as per the norms of the no Objection Certificate.
5. Facilities/benefits like Group Insurance Scheme, Pension Scheme/Gratuity are not extended to the Staff members.
6. In the residential section the beds, lockers, and cupboards are not adequate.
7. The accommodation provided is not according to the requirement of boarders.
8. Security arrangement at the residential section is not adequate.

After pointing out of the said deficiencies in the said letter was clearly stated therein by the Council that it would be necessary for the school to rectify the appropriate deficiencies before the Council can consider application for permanent affiliation.

15. It appears from the affidavit-in-opposition of the respondent Council that after receipt of the aforesaid letter pointing out such deficiencies the same was replied to the school by a letter dated 14th February 1998. (annexure "D" to the said affidavit-in-opposition) wherein the school really admitted such deficiencies and after explaining the reason therefore prayed for time for, removal of such deficiencies and to fulfill the requisite conditions for affiliation.

16. Unfortunately the said letter dated 14th February, 1998 has not been disclosed at all by the school in its writ petition.

17. It further appears from the affidavit-in-opposition that the aforesaid letter

dated 14th February, 198 of the school was replied to by the Project Officer of the Council by its letter dated 18th February, 1998 whereupon the school in reply to the aforesaid letter of the Council wrote another letter dated 25th February, 1998 to the Secretary of the Council wherefrom it appeal again that the deficiencies pointed out earlier were admitted and in the said letter the school really pointed out how they are trying to make good such deficiencies. The other prayer of the school was for extension of the provisional affiliation and to send an inspection team within six months.

18. The aforesaid letter unfortunately has also not been disclosed by the school in their writ petition.

19. It is also pertinent to record that in the letter dated 18th of February, 1998 written by the Council in reply to the letter dated 14th February, 1998 of the school (Annexure "K" to the affidavit-in-opposition filed in the case of Pranab Kumar Mahapatra and others) it was clearly pointed out inter alia to the school that the provisional affiliation was granted for a period of three years the deficiencies pointed out in the inspection report indicate the said school had not made any effort to meet the requirement for grant of affiliation and the Council after considering such deficiencies pointed out in their letter dated 18th January, 1998 that on expiry of provisional affiliation, the school will stand delisted from the records of the council.

20. Both the petitioners in both the writ petitions have contended that the aforesaid action of the respondent to delist the school in the manner aforesaid amounted to cancellation of the provisional affiliation even before its expiry and the same therefore was in gross violation of the principle of natural justice. It has been further argued that class V of the aforesaid guidelines for affiliation clearly provides that although the Council have the power to withdraw affiliation of the school or temporarily suspend the same, if the Council is satisfied that the school concerned is not fit to continue as an affiliated school, in such case it is mandatory on the part of the Chief Executive and Secretary of the Council to initiate disaffiliation proceedings against the school for all or any of the reasons indicated thereunder and for the aforesaid purpose it is also mandatory to give a hearing to the school authority by issuing a show cause notice and giving them an opportunity to reply to the same. It has been submitted the same not having been done, the action of the respondent being in violation of the aforesaid guideline and principle of natural justice such order for delisting of the school is vitiated and is liable to be set aside.

21. Before going into the merits of such submission it is however, necessary to record further admitted facts for the sake of convenience.

22. It appears that thereafter the school challenged the aforesaid action of the respondent Council in not extending the affiliation as also the aforesaid letter dated 18th February, 1998 in a writ application being W.P. No. 58699(W) of 1998, moved on earlier occasion.

23. In the said writ application the petitioner inter alia prayed for issue of writ in the nature of Mandamus for cancellation of the aforesaid letter dated 13th January, 1998 as also the aforesaid letter dated 18th February, 1998 and also for further direction upon the respondent to grant permanent affiliation to the school on fulfilment of the conditions made in clause I and II of the letter dated 28th September, 1994 wherefrom provisional affiliation was granted. An interim order was also prayed for extending the provisional affiliation.

24. The aforesaid writ application after contested hearing was disposed of by an order and judgment dated 27th of January, 1999 by Justice Ansari. The said writ petition was initially dismissed on the ground of lack territorial Jurisdiction by a learned single Judge of this court, but on appeal being MAT No. 2763 of 1998. the judgment of the trial court was set aside and the matter was sent back to the trial court for decision on merit whereupon the writ application was ultimately heard and disposed of by Justice Ansari.

25. In the said judgment and order His Lordship was pleased to record that pursuant to a direction passed on 13th April, 1998 by Justice Pinaki Chandra Ghosh, the school made an application before the Council and the Council pursuant to the order of the court after hearing the school passed a reasoned order and that from the order it appears that the shortcoming referred to in the said judgment continued to operate in the school. In the said judgment His Lordship after recording the view of the Supreme Court as expressed in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., held that none has the fundamental right to affiliation and the Council has its own norms and rules for according recognition and or affiliation. His Lordship however accepted the submissions of the learned Counsel appearing for the school that the Council has not furnished the petitioner the inspection report nor specified the deficiencies which were required to be rectified by the school In details and disposed of the writ application by directing the Council to supply a copy of the inspection report based on which affiliation was denied to the school and also to specify in detail the deficiencies which were required to be removed. It was further directed by His Lordship that upon receipt of the same the school will reply to the same pointing out the steps to be taken for rectifying such defects. It was further directed that based upon such representation the council will make a fresh inspection as to the compliance with the norms and thereafter furnish a copy of the inspection report to the school and after affording an opportunity of hearing to the school the respondent shall pass appropriate order in accordance with law as to whether the school will be entitled to grant of permanent affiliation or extension of provisional affiliation as to the respondent Board may seem appropriate.

26. It appears from the judgment and order of Justice Ansari no relief was granted to the petitioner by issuing any mandate either for extending of the provisional affiliation or for grant of permanent affiliation as prayed for by the school in the said writ petition. It was not even held by His Lordship that non-

extension of the provisional affiliation or grant of permanent affiliation was illegal. Such prayers for extension of provisional affiliation and grant of permanent affiliation were impliedly overruled.

27. By the said judgment and order the petitioner merely was given another opportunity to make good any deficiencies after the Council clearly points out the same to the school with further direction to the Council to take the decision in respect thereof after giving hearing to the School.

28. What is most important however in the concluding portion of the judgment His Lordship specifically recorded that His Lordship was not inclined to grant any interim direction either for admission of the students by the petitioner pending consideration of the request of the petitioners for permanent affiliation or permitting the students appear at the ensuing examination as the school had been delisted effect of which is the school does not enjoy affiliation and therefore is not permitted either to send up students for examination to be held shortly or to enroll the students in anticipation of grant of affiliation.

29. It will thus appear from the aforesaid judgment that since admittedly at that point of time the school was not affiliated any further to the Council. His Lordship declined to pass any order permitting the students to appear in the ensuing examination for March, 1989.

30. Admittedly against the said judgment and order both the school as well as certain parents of students seeking to appear in the ensuing examination for March, 1999 moved the appeal court whereupon the Appeal Court granted an interim order permitting the students who are due to appear in the ensuing ICSE examination scheduled to be held from March, 1999 to appear in the said examination. It was further directed that the result of such students shall not be published without the leave of the Court. Ultimately the Division Bench by a judgment and order disposed of both the appeals by judgment and order dated April 16, 1999.

31. It will appear from the said judgement and order that in course of hearing of such appeal the appeal court requested the learned Counsel appearing for the said Council to take instruction as to whether keeping in view the peculiar facts and circumstances of the said case, the Council is inclined to publish the result of the students who appeared at the examination pursuant to such interim order granted by the Appeal Court whereupon the Council informed the Division Bench through a written instruction to their learned Advocate that the Council had accepted the suggestion of the court to publish the result of the students from the said school who appeared in ICSE examination March, 1999 without any further concession for grant of affiliation of the school for extension towards the same. (emphasis supplied)

32. After recording the aforesaid submission of the Council the Appeal Court did not decide anything on merit and did not examine the judgment of Justice Ansari which was appealed. The said judgement was in facts never set aside.

33. It was merely defected by the appeal Court after recording the facts that the Council had rejected the school's application for grant of further extension that the school authorities if are aggrieved by any order which has been passed during the pendency of the said appeals or the writ petition it will be open to them to question the validity or legality thereof. It was further made clear by the Division Bench that in the event the Managing Committee of the school had filed any application for grant of permanent affiliation the same may be considered on its own merit but if such application had not been filed, the same may be filed and as and when the same is done the respondent Council shall consider the same on its merit. But it was further recorded that the said order passed by the Appeal Court disposing the appeal in the manner aforesaid shall not prevent the Council to grant extension of affiliation of the school or condone their deficiencies, if any.

34. It will appear from the judgement of the Division Bench that the Appeal Court also did not decide at all whether the action of the respondent in refusing to grant extension of affiliation were at all illegal or arbitrary; it merely directed consideration of application for permanent affiliation if made on merit. That apart the school was granted liberty by the Appeal Court to question any order passed during the pendency of the writ petition and the Appeal only and not any order passed before the writ petition. The refusal to extend provisional affiliation was made before moving the earlier petition which in fact was challenged in the earlier writ petition.

35. In the present writ petition, it is therefore not even open for the school to challenge refusal to grant extension of affiliation.

36. It is also necessary to record in this connection that it will clearly appear from the aforesaid judgement of Justice Ansari as also the aforesaid judgement of the Division Bench that while disposing of the writ petition and the appeal in the manner aforesaid both the trial court and the Appeal Court had only to consider the question whether notwithstanding the admitted fact that after 31st March, 1998 the school was not affiliated to the Council, the students for the ensuing ICSE examination for March, 1999 should be allowed to appear in the examination. It will appear from the said judgment that at no stage of such proceedings either before the trial court or the appeal court either the school or the present petitioners did ever pray even before the court that the student who were due to appear in the ICSE examination for March, 2000 should also be allowed to appear for said examination. In fact, it will appear from the judgement of the appeal court that under the peculiar facts and circumstances of the particular case the appeal court merely permitted the students to appear in ICSE examination of 1999 and requested the Council ultimately to publish their results and the Council in difference to the Court's request did publish result of such students without agreeing to make any further concession.

37. On the face of such admitted facts as aforesaid it is now for this court to consider in the writ petition of the school as to whether the provisional affiliation

of the school was cancelled without giving any hearing to the school and whether the action of the Council in refusing to extend provisional affiliation or to grant permanent affiliation is illegal or arbitrary.

38. So far as the second writ petition moved by the five parents of the students is concerned, it has fallen for determination of this court notwithstanding the fact the school is not affiliated any more to the Council on expiry of 31st March, 1998, whether the sons of the present petitioners can or should be permitted to appear in the ensuing ICSE examination scheduled to be held in March, 2000 legally or on humanitarian grounds.

39. So far as the question of non-extension of provisional affiliation is concerned, the same is not really open to challenge by the school for the reason stated hereinbefore. But since the parents of the students have also challenged the same in the second writ petition, I am inclined to decide such question.

40. After considering the respective submissions of the parties and considering the entire materials on record I do not find any merit in the submission made on behalf of the petitioners that the provisional affiliation of the school was cancelled by the Council without giving any hearing to the school in violation of principle of natural justice and in violation of the guidelines of the said Council for affiliation.

41. Paragraph V of aforesaid procedure for affiliation, which deals with withdrawal of affiliation, no doubt, provides for initiation of dis-affiliation proceeding on the grounds indicated thereunder before withdrawal of affiliation of a school for temporary suspension thereof. There cannot be any doubt after going through the aforesaid guidelines that in case of such withdrawal of affiliation or suspension thereof, the same cannot be done without initiating a proceeding for disaffiliation where the concerned school must be given reasonable opportunity to represent its case, by issuing a show cause notice stating the reason for proposed withdrawal of affiliation.

42. It cannot be disputed that no such proceeding for disaffiliation was initiated in the instant case nor any show cause notice was issued to the school proposing to disaffiliate the school.

43. It appears to this court that it has been rightly contended by the learned Counsel appearing for the respondent Council that in the instant case there has not been any cancellation or suspension of the affiliation of the school, but the provisional affiliation granted to the school lapsed after expiry of period of March, 1998 and thereafter no further affiliation of provisional or permanent was granted. Admittedly the provisional affiliation was granted to the school for a period of three years and admittedly the same was due to expire on 31st March, 1998. There is no material on record to indicate that the respondent Council cancelled or withdrew or suspended such provisional affiliation before expiry of 31st March, 1998.

44. The learned Counsel appearing for the petitioner in both the writ petitions have laid great emphasis on the letter dated 18th February, 1998 written by the Council in reply to the letter dated 14th February, 1998 of the school. Relying on the said letter it has been submitted on behalf of the petitioners that it will clearly appear from the said letter that the school was delisted by the aforesaid letter even before expiry of the period of provisional affiliation and such delisting of school really amounted to cancellation of the provisional affiliation, which could not have been done without giving hearing of the school.

45. I am, however, unable to accept such contention of the learned Counsel appearing for the petitioner. It will appear from the aforesaid letter dated 18th of February, 1998 (annexure "x" to the Affidavit-in-opposition of the respondent No. 1 and 2 in W.P. No. 17845(W) of 1999, i.e. the first writ petition) that the Council by the said letter replied to the letter dated 14th February, 1998 written by the school. In the said letter the Council after pointing out to the school that the deficiencies pointed out by the inspection report indicated that the school had not made any effort to meet the requirement for grant of affiliation, further stated in the letter that because of such deficiencies as also the deficiencies mentioned in the letter of the Council dated 13th January, 1998. the Council informs the school that on expiry of provisional affiliation the school would stand delisted from records of the Council (emphasis supplied). Therefore, it was never indicated in the said letter that the provisional affiliation was withdrawn or cancelled or suspended even before expiry of the affiliation. It was not even mentioned in the said letter that the school stands delisted from the records of the Council from the date of the letter i.e. 18th February, 1998 or even before the expiry of such affiliation. On the contrary it was clearly mentioned that the school would stand delisted only after expiry of the period of provisional affiliation.

46. The expression used in the said letter "delisting" does not find any place in the aforesaid guidelines for affiliation and such expression has been explained by the learned Counsel appearing for the respondent stating that a list of affiliated school is maintained by the Council and when a school is no more affiliated, its name is struck off from the said list.

47. Although much controversy arose between the parties at the time of hearing as to the meaning of the expression "delisting" in my view, the same is hardly of any significance in the instant case. Even if such delisting of a school in effect under certain cases may amount to cancellation or withdrawal of affiliation, in the instant case in the aforesaid letter dated 18th February, 1998 it being clearly mentioned that the school will stand delisted only after expiry of provisional affiliation, the same by no stretch of imagination Would amount to cancellation or suspension or withdrawal of affiliation even before expiry of the period of such provisional affiliation. On the contrary it appears to this court such delisting is the obvious consequence after the expiry of the period of provisional affiliation and non-grant of extension thereof.

48. It has been submitted by the learned Counsel for the petitioner that even in the aforesaid judgment of Justice Ansari it has been recorded by His Lordship that the Council delisted the school and therefore it is not open to the respondent now to take a stand that provisional affiliation expired by efflux of time.

49. Justice Ansari, however, in the aforesaid judgment never recorded that such delisting was made even before expiry of the period of provisional affiliation. The aforesaid judgement was delivered by His Lordship on 27th January, 1999 admittedly when the period of provisional affiliation of the school expired after expiry of 31st March, 1998 and the school stood delisted thereafter.

50. It was sought to be argued by the learned Counsel appearing for the petitioners that the provisional affiliation cannot be said to have expired by efflux of time on expiry of the period thereof, inasmuch as, the order of granting provisional affiliation was passed on 28th September, 1994 for the period of three years and therefore such provisional affiliation would have expired on 28th September, 1997 and could not have expired on 31st March, 1998 and it therefore it cannot be said that the period of provisional affiliation was rigid but the same was actually flexible.

51. The aforesaid contentions of the petitioners are not tenable. The order of provisional affiliation although was passed on 25th September, 1994, the letter dated 28th September, 1994 written by the Secretary of the Council to the Principal of the school clearly stated that the provisional affiliation entitled the school to present candidate for the year 1996, 1997 and 1998 and the provisional affiliation certificate would expire on 31st March, 1998 unless renewed in writing, (annexure "B" to the writ petition). It will therefore clearly appear from the aforesaid letter that the provisional affiliation was to expire on 31st March, 1998 and such provisional affiliation entitled the school to present candidates for the ICSE examination to be held for the year 1996, 1997 and 1998. The certificate of provisional affiliation which was granted to the school also clearly indicates that the school was provisionally affiliated to the Council for the period of three years to prepare the candidates for the ICSE examination only and the provisional affiliation would expire on 31st March, 1998.

52. Under such circumstances there was no scope of making such interpretation that because affiliation was granted on 24th September, 1994 for a period of three years, the same would expire on 28th September, 1997. What was the implication of the aforesaid period of three years was clearly stated in the aforesaid letter dated 28th September, 1994 which was very much accepted by the school and therefore there is no scope for the school or in the matter of that for any one to interpret the period of expiry of such provisional affiliation in the manner different from the letter dated 28th of September, 1994 and the said certificate of provisional affiliation.

53. It will also appear from the aforesaid guidelines for affiliation that such affiliation is really necessary for the purpose of presenting the students of the

school in the examinations conducted by the Council at the secondary and the higher secondary level namely, ICSE and ISE. Paragraph I of Chapter 1 of the aforesaid guidelines for affiliation provides that application for affiliation to the Council will be considered from schools which have started class VI, as affiliation must leave sufficient time for the purpose of preparing candidates and presenting them, for the first instance for the Indian Certificate of Secondary Education Examination. Clause II of the said paragraph provides school seeking affiliation of the Council for its Examination (emphasis supplied) will have to obtain a certificate of recommendation/no objection certificate from the State Department of Education concerned.

54. The contention of the learned Counsel appearing for the petitioner that such provisional affiliation granted to the school covered all the classes from Nursery to Class X is therefore not tenable.

55. That apart, one of the issues is whether after expiry of 31st March, 1998, in absence of affiliation to the Council the school can present candidates for the ICSE examination subsequent to 1998 and it will clearly appear from the letter dated 28th September, 1994 that the school is not so entitled in absence of permanent or provisional affiliation beyond the period of 31st March, 1998.

56. Although it has been strenuously argued by the Counsel for the petitioner in both the writ petitions that the action of the Council not to extend the provisional affiliation or to grant permanent affiliation to the school is illegal, arbitrary and affects the fundamental right to the education of the students who are candidates for the ensuing ICSE Examination to be held from March, 2000 as also their right to life under Article 21 of the Constitution, I have not able to persuade myself to accept such contention of the petitioner.

57. The Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., no doubt has held that the citizen has a fundamental right to education upto the secondary level which flows from Article 21 of the Constitution, at the same time it was also held by the Supreme Court in the self-same judgment that imparting of education cannot be treated as a trade or business and education cannot be allowed to be converted into commerce. Establishing of educational institution was also held not to be practising any profession. The Supreme Court in the said case also did not finally decide the question whether a person or a body of persons has a right to establish an educational institution in the country, it, however, clearly held that such right if any, is not an absolute one, but subject to such law as may be made in the state for the Interest of general public it was however, held by the Supreme Court in no uncertain terms that the right to establish educational institution does not carry with a right to recognition or right to affiliation. In this connection it is worthwhile to quote an extract of the relevant observation of the Supreme Court in paragraph 16 of the said report.

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Gujarat and Another, it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C.J. stated that this has been "the consistent view of the court." They also recognised that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State -much less have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/ or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation.... The private educational institutions merely supplement the effort of the State in educating people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is relevant obligatory in the interest of general public the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising affiliating authority is the "State", it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/ affiliation without imposing such conditions. Doing so would amount to abdication of its obligations enjoined upon it by Part-III; its activity is bound to be characterised as unconstitutional and illegal.

58. Such being the position of law, the school therefore has no right to obtain the affiliation from the Council for presenting students in the examinations held by the Council as a matter of course simply because the right to education upto secondary level has been held to be a fundamental right and as the school while imparting education to its students is performing indeed an important duty which has a public element. The respondent Council being the appropriate authority in

the instant case in the matter of granting such affiliation, it is therefore fully within its right to frame the conditions for grant of such affiliation in public interest and the said school therefore cannot claim grant of affiliation by the Council as a matter of right unless it fulfils the conditions framed by the Council for grant of such affiliation.

59. The aforesaid guidelines for the affiliation framed by the Council in Chapter I lays down the various conditions and requirements which a school has to fulfil for obtaining affiliation to the Council.

60. It appears to this court that some of such conditions are that the school has to obtain a No Objection Certificate from the State Department of Education; the teaching staffs must be properly qualified and trained; the minimum qualification of the teaching staffs will have to conform to the requirement as laid down in Chapter II of the said guidelines, the conditions of service, salaries allowances and other benefits of the staffs must be comparable to that prescribed by the State Government of education; the school must have 2 acre plot of land and suitable building; where the institution is accommodated in a rented building or buildings, the Chief Executive and Secretary must be satisfied that the society has acquired its own land and will be able to construct the building within a period specified by the Chief Executive and Secretary; the school should have well-equipped library for the staff and pupils; there should be sufficient large class rooms to accommodate all sections or classes and separate laboratory for physics, chemistry and biology. Another specific condition is that no school, may admit students to Class IX without the Council's formal approval for the same.

61. It is also necessary at this juncture to record that from the aforesaid guidelines for affiliation it appears that no separate conditions or requirements have been laid down by the Council for obtaining permanent affiliation and on an application by the school for affiliation, a provisional affiliation for a period of three years is granted and thereafter a permanent affiliation is granted after all the conditions of affiliation are fulfilled. It will however appear that provisional affiliation is granted to the school on the undertaking of fulfillment of the requisite conditions for grant of affiliation and the school applying for permanent affiliation is required to fulfill all the undertakings given to the Council at the time provisional affiliation on subsequent inspection.

62. Such being the procedure for grant of affiliation to the school when a school therefore is granted a provisional affiliation for a period of three years, the concerned school is certainly required to fulfill all the undertakings in the matter of fulfilment of such conditions within the aforesaid period of provisional affiliation, which might not have been fulfilled at the time of grant of provisional affiliation. Provisional affiliation is therefore granted to a school at the initial Stage instead of granting permanent affiliation, when the concerned school which is yet to fulfil all the conditions required to be fulfilled for grant of permanent affiliation, for the purpose of enabling the school to fulfil, during the aforesaid period of provisional affiliation, all the conditions for grant of permanent

affiliation.

63. In the instant case, admittedly, although the school could submit the No Objection Certificate from the State Education Department in the matter of establishment of the said school and also its affiliation to the Council, even such No Objection Certificate was granted on the conditions that the salary of the staff will not be less than those of Government aided schools and the school shall not enhance the tuition fees without prior permission from the State Government in writing. Clause V(b) under Chapter I of the guidelines also specifically lays down that one of the conditions for grant of affiliation is that the condition of service, salaries, allowances and other benefits of the staff must be comparable to that prescribed by the State Department of Education and the teaching staff must be properly qualified and trained. In the very letter dated 28th September, 1994 granting such provisional affiliation also the Council clearly pointed out that the provisional affiliation was granted to the school on condition that the salaries of the staff would not be below that of the State Government; the School would provide adequate facilities for the three science laboratories and the libraries. It was further specifically stated in the said letter that it was principal for the school to ensure that the provisional affiliation was extended if required. It appears to this court that admittedly during the aforesaid period of three years of provisional affiliation the school admittedly failed to pay salaries to its staff which is payable to the staff of Government aided schools. The report of inspection held on 22nd and 23rd January, 1997 also revealed that the laboratories, which are located in a separate building, do not have suitable and adequate equipment and apparatus; there are 15 untrained teachers in the school; the furniture in the staff room and the class room lay out and the facilities are inadequate, teachers are not paid as per conditions imposed on the No Objection Certificate; in the residential section the beds, lockers and cupboards are not adequate and the accommodation provided is not according to the requirement of boarders.

64. The reply of the letter dated 14th of February, 1998 clearly indicates that such deficiencies as pointed In such inspection report were clearly admitted by the school. From the said reply it clearly appears till such time of reply of the letter i.e. 14th February, 1998 i.e. one and half months before the period of provisional affiliation was due to expire the school had not been able to develop the laboratories with proper equipment and apparatus and have not been able to bring the classroom and staff room to the desired standard and 15 of the teachers were untrained and salaries of staff are not at par with the staffs of Government aided educational institution. In fact, in the said letter after admitting such deficiencies further time was asked from the Council to enable the school to fulfil the conditions for grant of affiliation. It may be noted in this connection that the said letter has not even been disclosed by the school in the writ petition. In fact, suppressing the aforesaid letter it was sought to be contended on behalf of the petitioner that it was wholly arbitrary on the part of the Council to expect fulfilment of certain conditions within a short period of one and half months when provisional affiliation was due to expire.

65. It appears to this court the very grant of provisional affiliation was on condition that all the conditions for grant of affiliation have to be fulfilled within 3 years and admittedly the school got three years time for fulfilment of such conditions and not one and half months as alleged.

66. Under such a situation if the Council, because of the failure of the school authorities, to fulfil the conditions for grant of provisional affiliation even within a period of such three years, decide that the school is not fit for permanent affiliation, such decision certainly cannot be arbitrary or illegal.

67. The school no doubt prayed for further time for fulfilment of the conditions for grant of affiliation and consequently extension of period of provisional affiliation and the Council did not grant such extension.

68. Under paragraph 8 under Chapter I of the aforesaid guideline for affiliation, the Council no doubt has the power to extend the period for provisional affiliation for a further period of three years if the Council is satisfied that the school is properly moving towards fulfilling the conditions required for permanent affiliation.

69. But such extension of affiliation again cannot be claimed by the school as a matter of right, but it is for the Council to decide after considering all aspect of the matter whether the school is properly moving towards fulfilling the conditions required for permanent affiliation and therefore such extension of affiliation is at all warranted.

70. It is true that in the matter of exercising such discretion as to the grant of extension of provisional affiliation and permanent affiliation the Council cannot act arbitrarily and whimsically, but only in a manner which will sub-serve the cause of education and public interest. In the instant case it does not appear to this court that in refusing to extend that period of provisional affiliation the Council has acted arbitrarily or whimsically.

71. On the contrary it appears from the letter dated 18th February, 1998 by which the Council declined to extend the period of provisional affiliation and informed the school that on expiry of provisional affiliation, school will stand deliste from the records of the Council, that it was clearly stated in the said letter that deficiencies pointed out in the inspection report indicate that the school had not made any effort to meet the requirement for grant of affiliation. It was therefore obvious that such extension of provisional affiliation was declined" as the Council satisfied itself from the relevant inspection report that as the school did not make any effort for grant of affiliation it was not certainly moving towards fulfilling the conditions required for permanent affiliation.

72. It has been submitted by the learned Advocate appearing for the school that the school has been established by the concerned society with the avowed object of imparting standard good education amongst the tribal people who so far had no test of education. It is contended this school has been established in the area

of Jhargram, which is mostly inhabited by tribal and backward people and that with object of bringing to the light of education to such of people the school was established and since disaffiliation of the school to the Council will result in denial of such opportunity to the said tribal students, in fitness of things the Council should consider the grant of affiliation to the school with sympathy and not with attitude of confrontation with the school.

73. Although certain vague allegations have been made in the writ petition that the Council is attempting to penalise the school, it appears to this court apart from such vague allegation no proper allegation of malafide have been made against the Council or its functionaries with proper particulars.

74. While the object of the said society and the school for imparting education to the tribal students of the concerned area of Jhargram is indeed laudable and praiseworthy, the same however cannot entitle the school to obtain affiliation to the Council as a matter of right even though it fails to fulfill the conditions for grant of affiliation.

75. As pointed out by the Supreme Court in the aforesaid decision of Unni Krishnan (*supra*) the right of establishment of a school does not carry with it the right to get affiliation from the appropriate authority and the appropriate authority has the right and indeed it is its duty to insist upon fulfilment of the conditions for affiliation from an applicant school for maintaining of the standard of education which is clearly in public interest.

76. It appears to this court that not only the school failed to fulfil some of the very basic conditions for grant of affiliation even within a period of three years of provisional affiliation, even thereafter subsequent to 31st March, 1998 it could not fulfil the requisite conditions for grant of permanent affiliation.

77. It appears subsequent to March, 1998 during the pendency of the litigation between the Council and the school and some of the parents of the students further inspection was held as directed by Justice Ansari and in such inspection also it was found that there were number of deficiencies and the conditions for grant of affiliation to the school were yet not fulfilled.

78. It appears that after the school was informed by the letter dated 18th February, 1998, the school will stand delisted after expiry of the period of provisional affiliation, by the letter dated 25th February, 1998 the school again prayed for extension of provisional affiliation with the further request to send inspection team within six months to enable the school to satisfy the Council. As pointed out hereinbefore by the judgment and order dated 27th January, 1999 the earlier writ application of the school challenging the non-extension of provisional affiliation was disposed of by Justice Ansari directing *inter alia*, that the petitioner would be furnished by the Council with a copy of the inspection report based on which affiliation was denied specifying in detail the deficiencies that are required to be rectified before permanent affiliation can be granted with a further relevant opportunity to the petitioner to reply to the same, and with a

further direction upon the Council to complete decision in respect thereof. Thereafter another inspection was held on 12/13 of March, 1999 and thereafter a copy of the said inspection report was furnished which contained all the particulars of the inspection report which was submitted in a proforma therefrom it appears that still some deficiencies were there in the matter of updating of the libraries, work of equipment of the laboratories, lack of training of the 15 teaches, in the matter of financial solvency and in some other matters. But from the said report it appears that till then even the conditions for grant of No Objection Certificate which is also a condition for grant of affiliation namely, that the staff of the school shall have been paid less than staff of Government aided school was not fulfilled. What was worst, it was also reported that the school had admitted 24 students from another unaffiliated school in Class IX for the session 1997-98 without the approval of the Council. Such act of the school therefore was also in clear violation of one of the conditions for provisional affiliation of the school which provides that no school may admit students to class IX without the Council's formal approval for the same.

79. From the records of the case therefore it appears that even after expiry of the provisional affiliation after expiry of 31st of March, 1998, till middle of 1999 there is nothing to show that the school was fit for grant of affiliation having fulfilled the requisite conditions and having rectified all the deficiencies which have been pointed out to the school from time to time and therefore it could be said that the school was properly moving towards fulfilling the requisite conditions for grant of affiliation. On the contrary, the records of the case indicate just the opposite, namely, not only it was not proceeding towards fulfilment of such condition, it actually failed to rectify the deficiencies already pointed out and what was worse it actually acted in violation of such requisite conditions by admitting students in Class IX without written approval of the Council.

80. It has been submitted by the learned Counsel appearing for the petitioner that when the provisional affiliation was granted to the school in the year 1994, under the guidelines for affiliation then prevailing, the Council has the power to give extension to provisional affiliation for the purpose of enabling the school to fulfill the requirement for grant of permanent affiliation. It has been submitted although subsequently such provision has undergone an amendment, the provisions of the unamended guidelines would be applicable and under such circumstances the respondent Council certainly should have given extension for provisional affiliation to enable the school for fulfil the regulation for grant of permanent affiliation.

81. The previous regulation which contained the provision for extension of provisional affiliation for a further period of one year if the Executive and the Secretary of the Council is satisfied that the school did not fulfill the condition required for permanent affiliation was framed in the year 1991 and admittedly was in existence in the year 1994 when provisional affiliation was granted to the

school.

82. But the present regulation as framed in the 72nd meeting of the Council on April 23, 1997 and therefore when the question of extension of provisional affiliation came up, the present 1997 regulation was very much prevalent. Under such circumstances in my view, the present 1997 regulation will be applicable and not the old 1991.

83. I am, however, of the view that notwithstanding such change relating to procedure of extension of provisional affiliation by the 1997 regulation, the same cannot fetter the power of the Council to extend the provisional affiliation for a further period of one year or even to grant fresh provisional affiliation for a period of three years in a fit and proper case if Council is of the view after consideration of all materials that by such extension and or grant of fresh provisional affiliation, that school will be able to fulfill the conditions for grant of permanent affiliation.

84. As it will appear from the aforesaid guidelines for affiliation that provisional affiliation is merely a prelude to grant of permanent affiliation and a provisional affiliation is granted to a school on fulfilment of certain specific conditions, even though at that stage all the conditions of permanent affiliation were not fulfilled, to enable the school to fulfil or such conditions within the aforesaid period for ultimate grant of were not fulfilled, to enable the school to fulfil or such conditions within the aforesaid period for ultimate grant of permanent affiliation. Under such circumstances, in my view, there is no material difference in the matter of extension of provisional affiliation under the 1991 regulation and the present 1997 regulation. Under the old 1991 regulation also provisional affiliation could be extended for a further period of one year if the Secretary of the Council is satisfied that the school does not fulfill the condition required for permanent affiliation. Such extension therefore would be granted only if the Council would have been of the view that during such extended period the conditions for permanent affiliation would be fulfilled. Under the present regulation for extension the Council has to be satisfied that the school is properly moving towards fulfilling the conditions required for permanent affiliation, meaning thereby that the Council has to be satisfied that during the aforesaid extended period of the school will be able to fulfill all the conditions for affiliation.

85. In the instant case it appears to this court that after admitting the deficiencies except making a vague prayer for extension, no particulars were furnished in the representation to the Council in what manner it will be possible for the school to remove all the deficiencies and fulfilling all the conditions for grant of permanent affiliation within the extended period. On the contrary the very representation of the school made in February, 1998 praying for extension clearly indicate that even the very conditions for grant of provisional affiliation also were not fulfilled by the school within a period of three years or there is even chance of the fulfilment of the same within the extended period namely, as to the deficiencies of pay scale of the school staff which was required to be at par

with the school staff of Government aided school, etc.

86. It has been submitted on behalf of the petitioner that the Council in the matter of granting of such permanent affiliation cannot act arbitrarily and cannot withhold grant of permanent affiliation by pointing out different deficiencies at different stages as it has been done in the instant case.

87. Reliance has been placed in this connection in the decision of the Supreme Court in the case of Al-Karim Educational Trust and another Vs. State of Bihar and others,

88. It certainly cannot be disputed in the matter of such permanent affiliation since the Council is performing a duty which has a public element as it relates to interest of education, it certainly cannot act arbitrarily and cannot refuse permanent affiliation on frivolous grounds or cause delay in the matter of granting permanent affiliation without clearly spelling out the requirement which are necessary to be fulfilled for grant of permanent affiliation.

89. As held by a Full Bench of the Delhi High Court in the case of Master Bibhu Kapoor vs. Council of Indian School Certificate Examination & Anr., reported in AIR 1985 Del 142 that the Council having entered into an arrangement with the Government to enable it to discharge its public function of imparting education and thereby has not only received the authority or concession or privilege to conduct public examinations but has been statutorily recognized by Section 2(a) of the Delhi Education Act as a body of persons to discharge the public functions or the Governmental function by imparting education which is deeply impregnated with Governmental character and is admittedly discharging a public function and is as such an authority.

90. Therefore there cannot be any doubt that the Council while exercising function in the matter of granting permanent affiliation to educational institutions established for imparting education, which has been recognised as a fundamental right of a citizen, cannot act arbitrarily, but in consonance with the rules and regulation framed by the said Council which again has to sub-serve public interest namely, interest of education and not contrary thereto.

91. In the instant case the rules and regulation and or guidelines for grant of affiliation of the Council are not under challenge on the ground that the same are contrary to public interest namely, interest of education. The right of such an authority, that is the Council in the instant case, to frame its own regulation in such public interest and to insist fulfilment thereof in the grant of affiliation has been upheld by the Supreme Court in the aforesaid case of Unni Krishnan (supra).

92. Such being the position of law the aforesaid case of Al Karim Education Trust (supra) does not come to aid of the petitioners at all.

93. In the said case the Supreme Court was considering the question whether the very grant or recognition was being unduly delayed by the University and the

entire matter of grant of affiliation was being prolonged as the University after fulfilment of one deficiency subsequently was pointing out other deficiencies. Under such circumstances it was held by the Supreme Court in the said case *inter alia*, that if it is found that the permanent affiliation was being delayed unreasonably or the decision was being prolonged for one reason or the other, the Supreme Court, though reluctantly, would be constrained to exercise its jurisdiction. At the same time the Supreme Court also clearly observed that the same did not mean the importance of fulfilling the essential prerequisite affiliation for granting recognition by the Medical Council is to be diluted and the matter was disposed of by the Supreme Court by merely giving appropriate direction for expedient procedure for grant of permanent affiliation.

94. In the instant case provisional affiliation in fact, was granted on condition that certain conditions have to be fulfilled in the matter of grant of permanent affiliation in the meantime but the petitioners having failed to fulfill such conditions even after expiry of provisional affiliation, the same has not been extended nor any permanent affiliation has been granted.

95. It was also sought to be argued by the learned Counsel appearing for the petitioner that in the subsequent inspection report further deficiencies were pointed out, which were not pointed out earlier.

96. It has also contended that such inspection report are all *malafide* as the same are contrary to the observation made by some of the officers of the inspecting team who recorded their satisfaction about the school's progress in the matter of fulfilment of conditions, in the school inspection books, the copies of extract of which have been annexed.

97. Simply because certain observation might have been made by some of the members of the inspecting team in the inspection book of the school recording their satisfaction as to the progress of the school, the inspection report pointing out the deficiencies of the school in the matter of fulfilment of requisite condition cannot certainly be said to be *malafide* or arbitrary.

98. Certainly the personal view of some of the members of the inspection team cannot prevail over the inspection report. That apart, there is nothing in the said observation recorded in the inspection book from which it can be said that the school fulfilled all the requirements for grant of permanent affiliation or removed all the deficiencies in the matter of such fulfilment of conditions.

99. Certain photographs have been annexed by the school authorities in the writ petition for the purpose of refuting certain allegation of deficiencies made relating to the building of the school, space of examination hall etc. made in the inspection report. Submissions have also been made on behalf of the petitioner that the court should appoint a special officer for the purpose of ascertaining as to whether the allegation of such deficiencies are correct and whether the school will be able to fulfill the condition for grant of permanent affiliation.

100. I am, however, unable to accept such submission of the petitioner. In my view, it is not for the writ court to go into such question of facts and usurp the power of the Council for the purpose of coming to a decision as to whether the school is fit to be granted permanent affiliation. That power is with a Council and there is nothing in the record to show that such power has been exercised by the Council arbitrarily or illegally warranting interference by the writ court.

101. The Council after consideration of the inspection report as also the representation of the school appears to be of the view that the school not having fulfilled even one condition for grant of provisional affiliation, is not fit for grant of permanent affiliation or even extension of provisional affiliation and it is not for the writ court to sit in appeal over such decision or to substitute its satisfaction for that of the Council or to interfere with the same, there being no perversity and arbitrariness in such decision of the Council.

102. It is true that in the report of inspection held in March, 1999 certain more deficiencies have been pointed out. It however appears to this court that such further inspection was held by the Council after the disposal of the writ petition being W.P. No. 5869(W) of 1998 by Justice Ansari. In the said report certain short-comings as to the building etc. were pointed out which were not pointed out originally in the report of inspection held in December, 1997. In the said report it was also pointed out that the school in violation of the regulation admitted students in Class IX without taking permission of the Council.

103. Such illegality committed by the school was pointed out in the said report obviously because of the same came to be known subsequently. As to the other deficiencies relating to the building of the school, however, it was certainly open to the council to point out the same earlier which it did not choose to do.

104. To such extent no doubt the Council failed to perform its duties properly. The whole purpose of granting of provisional affiliation is to enable the school to fulfil all the conditions for grant of permanent affiliation within a period of three years and therefore it is also incumbent upon the Council to point out all the deficiencies clearly at the first opportunity so that the school gets a chance to remove the same within the period of provisional affiliation or at least the school can satisfy the Council it is taking positive steps to remove such defects and will be in a position to remove the defects and fulfil all the conditions within an extended period of provisional affiliation.

105. In the instant case, however, such failure on the part of the Council cannot said to have vitiated the decision of the Council in not granting permanent affiliation or in not extending the provisional affiliation, inasmuch as, the deficiencies originally pointed including the failure of the school to fulfil even to grant of No Objection Certificate went at the very root of the matter and such failure by themselves certainly can justify the action of the Council not to grant permanent affiliation or extend the provisional affiliation. That apart the reckless conduct of the school in admitting students in Class IX without the permission of

the Council in clear violation of the condition of grant of provisional affiliation and in violation of the guidelines for affiliation, also can hardly be overlooked.

106. This now takes up to the question as to whether the respondent Council acted illegally and arbitrarily in refusing to grant permanent affiliation to the school and whether it has at all complied with the direction of the Division Bench given in MAT No. 320 of 1999 and MAT No. 322 of 1999 that the application for grant of permanent affiliation may be considered by the Council on its own merits.

107. As pointed out hereinbefore in the aforesaid appeals, which were preferred against the aforesaid judgment of Justice Ansari the appeal court did not come to finding at all as to the question whether refusal of the Council to grant extension of the provisional affiliation or to grant permanent affiliation is illegal or arbitrary.

108. By judgment and order dated April 16, 1999 both the appeals were disposed of (after recording the fact Council had accepted the suggestion of the court to publish the result of the candidates of the said school who appeared for ICSE Examination March, 1999 without any further concession for grant of affiliation of the school or extension of the same and further recording that the Council had rejected the application of school for extension of the provisional affiliation) by merely directing that if the school authorities are aggrieved by any order which has been passed during the pendency of the appeals or the writ petitions it will be open to them to question the validity or legality thereof. It was further directed that it was made clear that if the Managing Committee of the school had filed any application for grant of permanent affiliation, the same may be considered on its own merit and if such application had not been filed the same may be filed and as and when the same is done the Council shall consider the same on its own merits.

109. It has been submitted by the learned Counsel appearing for the petitioner that despite the aforesaid direction of the appeal court, the respondent Council failed and neglected to dispose of the application of the petitioner for grant of proper affiliation on merits.

110. It appears that after the judgement of the appeal court the school made a representation to the Council for grant of permanent affiliation enclosing a draft for the requisite fees thereof. The Council by letter dated September 16, 1999 returned the said draft pointing out that the school is no more affiliated to the Council and requesting the school to adhere to the direction of the Hon''ble High Court in this regard.

111. It has been submitted by the learned Counsel appearing for the petitioner that it will appear from the aforesaid reply of the Council that despite the direction of the appeal court the Council did not care to consider the prayer for grant of permanent affiliation on merits but chose to advise the school to adhere to direction of the Hon''ble High Court in that regard which were really unmeaning.

112. I accept the contention of the learned Counsel appearing for the petitioner that the last part of the aforesaid letter written by the Council was really unmeaning.

113. But I am unable to accept the contention of the learned Counsel appearing for the petitioner that the prayer for permanent affiliation of the school was not considered by the Council on merits as directed by the Division Bench.

114. The Council by the letter dated 16th June, 1999 written to the school (annexure "M" to the affidavit-in-opposition filed on behalf of the respondent Nos. 1 and 2 in W.P. No. 17845(W) of 1999), which was written in reply to the letter dated 3rd June, 1999 of the school regarding its affiliation to the Council, clearly informed the school that in view of short-comings pointed out in the inspection report of March, 1999 it is not possible to reopen the case and the said report of final inspection indicated that basic infrastructure and amenities in the school are unsatisfactory.

115. The decision of the Council therefore that such affiliation cannot be granted to the school as the short-comings were still there and it could not fulfil the condition for affiliation, is a decision on merits.

116. It is pertinent to record in this connection it will appear from guidelines for affiliation that the very procedure for grant of affiliation indicates that permanent affiliation is preceded by grant of provisional affiliation on fulfilment on certain conditions during the period of which all requisite conditions as laid down in the regulation and relating to which undertaking was given by the school on the basis of which provisional affiliation was granted, have to be fulfilled.

117. Unless therefore a school fulfils all the undertakings on the basis of which a provisional affiliation was granted and also fulfils all the conditions for grant of affiliation, it cannot claim grant of affiliation as a matter of right.

118. The records of the case itself reveals that even after several inspections were held by the Council admittedly not only the school could not fulfil all the conditions for grant of permanent affiliation, even failed to fulfil the undertakings on the basis of which provisional affiliation was granted, and it is because of the aforesaid reason the Council declined to grant permanent affiliation.

119. It is also inconceivable that when admittedly the school failed to fulfil the undertaking on the basis of which provisional affiliation was granted, can be granted a permanent affiliation.

120. I, therefore, do not find any merit in the submission made on behalf of the petitioner that there has been no consideration of the prayer for grant of permanent affiliation on merit or refusal to grant such affiliation is arbitrary or illegal.

121. It may also be noted in this connection that the school in its writ petition has not even chosen to challenge the aforesaid letter dated 16th June, 1999

issued by the council.

122. For the reasons aforesaid, I am of the view that the school in the first writ petition is not entitled to relief as asked for in the said writ petition, nor the decision of the Council either not to extend provisional affiliation of the school or not to grant permanent affiliation of the school can be said to be arbitrary or illegal.

123. At the same time, I am of the view that although the Council may not have allowed the prayer of the school for extension of provisional affiliation or for grant of permanent affiliation, the same cannot stand in the way of the Council to grant permanent affiliation to the school or even to grant fresh provisional affiliation, if the school can satisfy the Council in future that all such conditions have now been fulfilled by the school or the school at least now is in a position to fulfil such conditions including the undertaking which was given by it at the time of provisional affiliation in September, 1994 within a reasonable period of time.

124. For the aforesaid purpose it will be open to the school to make an appropriate and comprehensive representation to the Council for grant of permanent affiliation or to grant fresh provisional affiliation after giving detailed particulars as to whether the deficiencies pointed out in the earlier inspections have been removed and how it has now fulfilled all the conditions for grant of permanent affiliation or if it has still not fulfilled all the conditions for grant of permanent affiliation or even the undertakings on the basis of which provisional affiliation was granted earlier in 1994, how the same will be fulfilled by the school within a reasonable period of time. It is made clear that in such representation the school must give all such particulars as aforesaid and in the event such a representation is made, within eight weeks of receipt of such representation the Council shall hold another inspection on payment of the requisite fees by the schools for the purpose of ascertaining whether all such conditions have been fulfilled for grant of permanent affiliation and if not whether the school is in a position to fulfill all such undertakings of conditions within a reasonable period of time and thereafter to come to a decision by passing a reasoned and speaking order as to whether the school now can be granted permanent affiliation and if not whether the school is in a position to fulfill all such conditions or undertakings within a reasonable period of time for which a fresh provisional affiliation can be granted.

125. It is however, made clear under no circumstances the school shall admit any students in Class IX or Class X either by promotion or otherwise without the permission of the Council and till affiliation permanent or provisional is granted.

126. The first writ petition being W.P. 17845(W)/1999 is disposed of accordingly.

127. There will be no order to costs.

128. Now it takes us to the question involved in the second writ petition moved by the guardians/parents of five students of the said school studying in Class IX

who are due to appear in ICSE examination for March, 2000.

129. Since in the said writ petition also the aforesaid action of the Council in not extending the provisional affiliation and not granting permanent affiliation have been challenged more or less on the same ground, no interference is called for in the said writ petition on such ground for the same reason as in the first writ petition.

130. The only question, therefore, which remains in the second writ petition is whether the said students should be permitted to appear in such examination on humanitarian grounds and consequently whether appropriate direction upon the Council should be passed for the aforesaid period.

131. It may be recorded that in the second writ petition no main relief has been asked for towards the same, but such prayer has been made only by way of interim relief. Consequently although because of the reason of the failure of the writ petitioners in the second writ petition also to obtain the main relief no interim relief can be granted. I am not inclined to go into such technicalities but I am inclined to treat such prayer for interim relief as prayer for main relief, the career of number of students being involved.

132. Sum and substance of the submissions of the learned Counsel appearing for the petitioner in the said case is that even if there was lapses on the part of the school for which the provisional affiliation was not extended or there cannot be grant of permanent affiliation, the students who are innocent third parties and have got a fundamental right to education cannot be made to suffer and can be denied the opportunity to appear in such examination, but for which their entire career will be jeopardised. Certain decisions have also been relied upon by the learned counsel for the said petitioner in support of his contention that appropriate direction may be issued permitting the students to appear in the said examination specially in the case of *Sri Gurudas Dasgupta vs. ICSE* reported in 1996(2) CLJ 230 where Justice Bhagwati Prosad Banerjee (as His Lordship then was) was pleased to give such direction being of the view but for which the innocent students and the interest of education will suffer.

133. The learned Counsel for the respondent Council on the other hand has opposed such prayer relying on a number of decisions of the Supreme Court contending inter alia that on such misspent sympathy the court should not issue any direction upon the Council to admit such students for such examination particularly when admittedly from April 1, 1998 the school is no more affiliated to the Council.

134. The students in such a case whether should be permitted to appear in the examination and whether appropriate direction the court should issue therefore even in absence of affiliation is indeed a tricky question which is coming up before the court again and again. It also cannot be disputed that in such a situation very often than not the court issues direction in favour of the students on humanitarian grounds particularly taking into consideration the fact that in

absence of the same, the very career of the students may be in jeopardy.

135. It is with such view in the aforesaid case of Gurudas Dasgupta (supra) Justice Bhagwati Prosad Banerjee was pleased to issue such direction.

136. But unfortunately after giving my anxious consideration to the respective submissions of the parties as also of the decisions cited at Bar by both the parties and on entire materials on record. I have now persuaded myself to hold that such direction should be issued in the present case directing the Council to permit the students to appear for the ICS Examination and to declare their results. It appears to this court a number of cases the Supreme Court has not only declined to pass such order, but in fact deprecated in no uncertain terms and practice of High Court to very often pass such direction out of sympathy for the students.

137. In this connection the decision of the Supreme Court in the case of State of Maharashtra Vs. Vikas Sahebrao Roundale and others, in the case of Managing Committee of Bhagwan Budh Primary Teachers Training College and Another Vs. State of Bihar and Others, ; in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, in the case of Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, may be referred to.

138. All these cases are sought to be distinguished by the learned Counsel appearing for the petitioner by contending that the decision rendered in the said case are not applicable in the present case inasmuch as in all such cases before the Supreme Court the concerned institution either were not recognised at all or affiliated but were awaiting affiliation or recognition whereas in the instant case provisional affiliation was granted.

139. I, however, do not find any such distinction for which the ratio of the aforesaid decision of the Supreme Court would not apply in the instant case. The ratio of all the Supreme Court cases clearly is that in absence of recognition or affiliation, it is not for the court to issue direction upon the appropriate authority for grant of recognition of affiliation as the case may be and to admit the students or examination and thereby to direct them to act contrary to law.

140. In the instant case, although provisional affiliation might have been granted fact remains with effect from April 1, 1998 the school is not affiliated to the Council as the provisional affiliation expired and no permanent affiliation was granted. If a direction therefore of the aforesaid nature is issued by the court today in February, 2000 the result will be notwithstanding admitted fact the school now is not affiliated to the Council, the Council will have to admit such students for examination contrary to law.

141. In the case of Central Board of Secondary Education Vs. Nikhil Gulati and Another, the Supreme Court deprecated in no uncertain terms such a practice. True the Supreme Court after deprecating such practice did not interfere with the

order of the High Court on the ground that as fond hopes were raised in the minds of the students herein the order of the High Court would not be interfered with.

142. The decision of the Division Bench of our High Court may also be referred to this connection in the case of Central Board of Secondary Education & Ors. vs. Adarsh Kumar Badhwarayan & Ors., reported in 1998(2) CHN 61 where it has been held inter alia, unless statute permits appearance of students as private candidates, the court cannot, on compassionate grounds allow such students to appear at the examination as the court cannot grant relief on humanitarian ground contrary to law.

143. Relying on the same it was sought to be argued that for the same reason appropriate direction should be issued for the instant case permitting the students to appear in the said examination.

144. Such observation of the Supreme Court, however, is not really a pronouncement on law. Under facts and circumstances of that case after laying down of the law the Supreme Court did not choose to interfere as fond hopes was raised in the mind of the students. Such direction however cannot be claimed as a matter of right and it is for the court to decide under facts and circumstances of the case whether such directions should be given to save the students.

145. In the instant case, in my view, it is not at all a fit case where it can be said that the students were innocent victims of circumstances for which in the interest of education and in the interest of their career they should be rescued by issue of such appropriate direction.

146. In the instant case admittedly from April 1, 1998 the school is no more affiliated to the Council. The school moved the writ court challenging the action of the Council which was finally disposed of by Justice Ansari by giving certain direction for further inspection; but clearly recording at the same time that no direction for admission to examination either way of interim or permanent relief will be granted by the court.

147. The appeal court no doubt by an interim order permitted the students to appear at the ICS examination, for March, 1999 with the further direction upon the Council not to publish the result without the leave of the court. At the final hearing the appeal court requested the Council whether they are ready and willing to publish the result under the peculiar facts and circumstances of the case and the Council with deference to such requests of the appeal court agreed to publish the result. But all the same time it was clarified by the Council that no concession will be made as to extension or grant of affiliation. Although some of the parents/guardians of the students also moved the appeal court, at no stage of such proceeding it was ever prayed that not only the students for ICS examination for 1999 but the students for subsequent year should also be allowed to appear in the examination as the matter is now pending before the

court. Such prayer was also not made by the school authority and the court also did not pass such order.

148. But the time the parties were litigating before the trial court and the appeal court in the said case, the students who were already admitted to Class X during the period of provisional affiliation were due to appear in the 1999 ICS examination and therefore in fitness of things the appeal court granted such interim order and the Council also considering the fact that such innocent students would have suffered serious prejudice unless results are declared, declared their results.

149. But the present students who are now asking for such permission for appearing in the present examination were admitted to class X in 1999 by promotion or otherwise when the school was no more affiliated which could not have been done by the school. The students and their parents therefore also were fully aware that although they are now so admitted they cannot appear in the ICS examination for March, 2000 as the school is no more affiliated. The fact that the parents are fully aware of such fact will be evident from the fact that in the writ petition moved by them it was stated in detail the facts about such non-extension of the provisional, affiliation (in fact they challenged the same) and has affirmed such paragraph as true to knowledge. The parents therefore were fully aware that from 1st April, 1999 the school not being affiliated any more to the Council their students cannot appear in the examination for ICS March, 2000. Yet instead of taking transfer certificate they chose to take a chance. Under such circumstances it cannot be said that they are the innocent third parties but they are really persons who chose to gamble and therefore must be ready also for the failure.

150. It is also pertinent to note that even though they were aware that from 1st April, 1998 the school was no more affiliated and the litigation was going on before the court in the matter of extension of affiliation and grant of affiliation and if the same are not granted they will be seriously affected, they did not chose to intervene at that stage in the earlier writ proceedings or to move a similar petition asking for such relief but chose to wait till the last moment, obviously banking on the sympathy of the court.

151. For the reasons stated above I am therefore of the view that the school admittedly not affiliated to the Council since April 1, 1998 no direction is called for upon the Council to permit such students to appear at the ICS examination for the year 2000 either legally or even out of humanitarian consideration.

152. The said writ application therefore fails and the same is thereby dismissed. There will be no order as to costs. Xerox certified copy, if applied for, be given to the parties as expeditiously as possible.