

(2007) 09 AHC CK 0083
In the Allahabad High Court

Committee of Management, Dr. S. Radha Krishnan Public School and Sri Prashant Shukla, Manager, Committee of Management, Dr. S. Radha Krishnan Public School

APPELLANT

Vs

Union of India (UOI), Central Board of Secondary Education, Joint Secretary (Affiliation), Central Board of Secondary Education and Regional Office, Central Board of Secondary Education

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Citation : (2007) 09 AHC CK 0083

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri P.N. Saxena, Senior Advocate assisted by Shri Y.K. Saxena for the petitioner. Shri H.N. Pandey appears for Central Hoard of Secondary Education.

2. By this writ petition, the Committee of Management of "Dr. S. Radha Krishnan Public School 170 Court Road, Mainpuri through its Manager Shri Prashant Shukla; and Shri Prashant Shukla in his capacity as Manager of the School having office at Lane No. 13, Narain Nagar, Mainpuri, have prayed for a writ of certiorari quashing the orders dated 5.9.2006 and 12.8.2005, passed by Joint Secretary (Affiliation) Central Board of Secondary Education, New Delhi-respondent No. 3; as well as the order dated 4.8.2006 passed by the Regional Officer, Central Board of Secondary Adduction respondent No. 4, by which the provisional affiliation granted to the school was withdrawn with immediate effect, with an advice to the school not to take any fresh admission from academic session-2005 onwards. The Board allowed the students of classes IX, X, XI and XII to appear in the Secondary and Senior Secondary Examinations to be held in 2006 and 2007.

3. The brief facts, given in the writ petition, are that, the Central Board of Secondary Education, New Delhi (CBSE) granted provisional affiliation to the school w.e.f. 1.4.1995 to 31.3.1997. The provisional affiliation to Senior School Certificate Examination (Intermediate) was given to the school w.e.f. 1.4.1997 to 31.3.2000. The provisional affiliations were granted subject to the conditions given in the Affiliation Bye-Laws of CBSE. In the application for grant of provisional affiliation the name and official address of the Manager/President/Correspondent/Chairman of the school in column-1 (vi) was described as "Shri Prakash Chandra Shukla. Lane No. 13, Narayan Nagar, Mainpuri 205001". The name of the Trust/Society/Managing Committee running the school was described in column-1(iv) as "Dr. S. Radha Krishnan Public School Kutchehary Road, Mainpuri-205001", and the name of the school was described as Dr. S. Radha Krishnan Public School Mainpuri (UP) Lane No. 13, Narain Nagar, Mainpuri-205001", In all the correspondence, exchanged between the school and the CBSE and in the provisional affiliation letter dated 17.7.1997 for Senior School Certificate Examination (Class XI and XII), the address of the school is described as "Lane No. 13, Narain Nagar, Mainpuri".

4. A Civil Suit No. 77 of 2001 was filed, by "Shri Prakash Chandra Shukla, aged about 60 years, resident of House No. 147, Gali No. 13, Punjabi Colony (Narayan Nagar) Mainpuri, presently residing at 120/124 "Y" Block Kidvai Nagar, Kanpur," against his wife Smt. Shila Shukla, age 1 about 51 years resident of 147 Gali No. 13 (Narain Nagar) Punjabi Colony, Mainpuri, for a declaration that the plaintiff is full owner and in possession of the suit property. The plaintiff alleged that he is an Advocate, enrolled with the UP Bar Council and is practising at Mainpuri and Kanpur. The, defendant is his wife, He loved his wife and with all the love and affection towards her, he purchased the suit property by registered sale deed dated 19.1.1972 in her favour. Prior to his joining the profession he was serving as a teacher in "S. Radhanand Inter College, Mainpuri and thereafter enrolled himself as an Advocate. The defendant had no source of income. The plaintiff started a school in the name of "Dr. S. Radha Krishnan Senior Secondary Public School recognised by CBSE, Delhi in the suit property, which has now been transferred on account of family disputes at 5/121 Awas Vikas Colony Mainpuri. The parties have a son and a daughter, who are not in good company and have neglected the plaintiff. Their relations have turned sour and cases were filed between them. The plaintiff apprehends that the defendant may transfer the property and instead of a benamidhar she may misrepresent her to be the true owner of the property. The suit valued at Rs. 16 lacs for land and constructed building, appears to be still pending.

5. It appears that on the complaints dated 24.1.2003 and 6.10.2003 that the school is running at two sites from Class-I to VIII at Punjabi Colony and Class IX to XII at Narain Nagar, Mainpuri, the CBSC caused inspections and wrote a letter to the school on 19.11.2003 to shift the entire classes at one site fulfilling the requirement of two acres campus area, The Principal was requested to immediately shift the entire classes upto 31.3.2004 and submit an affidavit to

the effect that no branch or part of the school is running at old site, failing which the request of the school for extension beyond 31.3.2004 will not be allowed.

6. In reply, Shri Prakash" Chandra Shukla, describing himself to be Manager of the school, wrote to the Joint Director (Affiliation) that the primary school from Classes I to VIII running at Punjabi colony has now been shifted on 28.1.2004 to the main building and now all the classes (I to XII) are in function at one site. The playground of the building has been developed; there are sufficient number of books in the library and that the labs with equipment is now available in the school. On 30.6.2004 the Manager of the school sent a letter enclosing an affidavit regarding the proper functioning of the institution at one place at Lane No. 13 Narain Nagar and further stating that Narain Nagar is known as Punjabi Colony in " the city of Mainpuri. It was further stated in this letter that at present 29 rooms are available for the students and seven rooms for office work.

7. A surprise inspection was caused by Shri Dharam Pal Singh, Regional Officer, Delhi. In his report dated 13.12.2004 to CBSR, he reported that on his inspection dated 11.12.2004 at 11.15 AM it was found that classes from 1st to VIIIth are running at Lane No. 13 Narain Nagar Mainpuri. The Manager of the school vide his letter dated 11.12.2004 handed over to him at the time of inspection, informed that the whole school has been shifted to its new location but due to half yearly examinations and shortage of covered area, the school is conducting the examination for school-V in the old premises. The inspecting officer found that the statement was not correct. With regard to the legal notice on behalf of Shri Prakash Chandra Shukla, Shri Prashant Shukla, the Manager of the school informed that the existing building was sold out in an open auction and was purchased by his sister and as such question of vacation of the premises docs not arise. Shri Prakash Chandra Shukla-the so-called owner was reported to have no legal rights on these premises. The inspecting officer observed that the school is located in a very densely populated area where no institution can be allowed to run. The Manager was then requested to show the another premises where two acres of land has been purchased by the school, The distance of both the locations was found to be about 3 Kms. It was observed that Class Xth to XII are running at the new site. The school was located on the main road but it was quite impossible to run a full fledged Senior Secondary School at new site as the infrastructure at the new location was not satisfactory. Even the class rooms for a Senior Secondary School were not available at new site as per requirement of Senior Secondary School.

8. On the basis of the report of Shri Dharam Pal Singh, the CBSE deputed a Committee for the inspection which carried out the inspections on 2.12.2005. The Committee first visited Lane No. 13, Narain Nagai. Mainpuri, U.P and found it to be a building consisting of two floors having 15 plus rooms situated in a residential area with no open space at all. On the date of inspection no school was found running at the site. The Manager of the school was found to be staying with his family on the first floor of the building. The inspection committee was

informed that the office of the society is situated in the above premises and that the correspondence pertaining to society and the school was done from this address. The Committee wanted to visit Punjabi Colony, Mainpuri, U.P. The Manager informed that Narain Nagar and Punjabi Colony are the names of the same locality.

9. The Manager informed the Committee that the school is being run at Kachehari Road, Mainpuri and that the registration of the society was with the address at Kachehari Road, Mainpuri. The Committee observed that the building of 20 plus rooms and ground floor is completed and some construction was going on at the first floor. The furniture and upkeep of the school was not found to be satisfactory. When the Committee visited the building, it did not find any student in the school and was informed that the school is having classes from Nursery to XII and total number of students enrolled in all the classes are 467. The students had left by the time the Committee reached at the school. The Committee then interacted with the teachers and observed that a majority of teachers had been appointed recently. Even the Principal of the school was appointed only a month ago. Out of the 20 teachers, 11 teachers were appointed in the month of August/September of the year. In order to find out whether the salary is paid to them by cheque, the Committee wanted to verify the same from the bank statement. The Manager of the school informed the Committee that they have never obtained any bank statement and they did not maintain any pass book of the school account. The Committee as such could not verify the fact of payment of salary to the teachers. The income and expenditure account of three years was produced. The account of the year 2003 reflected income of Rs. 20,965/-. With regard to the income and expenditure statement for the year ending 31st March, 2004 it was observed that income over expenditure is Rs. 4, 68,735/- which was found objectionable. The Committee then recorded its findings, on the deficiencies and concluded as follows:

FINDINGS

1. The school is neither being run at Lane No. 13, Narain Nagar, Mainpuri nor at Punjabi Colony, Mainpuri. But it is being run at Kachahari Road, Mainpuri, UP which, in the opinion of the committee, is not in the knowledge/record of the Board.

2. On perusal of the NOC issued by the Education Department, the name and address of the school has been mentioned as Dr. S. Radha Krishnan Public School, Mainpuri, UP.

(Please see Annexure-7)

3. The NOC does not reflect the address of either of Lane No. 13, Punjabi Colony, Mainpuri or of Kachehari Road, Mainpuri, UP. This is quite astonishing that neither the address of Punjabi Colony, Mainpuri nor of Kachahari Road, Mainpuri is mentioned in the NOC.

4. The Committee asked the school to provide letter heads of the school on which all correspondence is done with different department. The committee was supplied two letter heads, in one the address of the school is mentioned as Dr. S. Radha Krishnan Public School, Mainpuri and in the other, it was mentioned Dr. S. Radha Krishnan Public School, Lane No. 13, Naraina Nagar and 170 Kachehari Road, Mainpuri. This is quite confusing and it is not understood as to why the school is having two addresses. The reasons for doing this are known to the school authorities only.

((Please see Annexure-8))

5. On perusal of the TC, Admission and withdrawal Register, Admission Forms, it was observed that no proper address of the school has been given.

6. It is not understood as to why the students were allowed to leave the school in spite of the fact that the Committee appointed by the Board was to inspect the school. It was intimated that half yearly examinations of the school was in process and all the children had already left the school by the time the committee reached the school. This act of the school is quite objectionable. The committee has taken a serious view of the irresponsible act of the School Management.

7. The fact that children were not allowed to meet the committee shows the intention of the, school authorities are not clear as probably by meeting the children of different classes the truth about the running of the school at two sites might have come out.

8. With regard to the land, the committee was informed that the building had been constructed on an area of approximately 2,000 sqm and there is vacant land behind the building but there was no boundary wall and the vacant land has not been properly developed to be made use of as its playground. The committee has been supplied a photocopy claiming to be the lease deed but the same is not readable and placed herewith, (Please see Annexure-9). Even in the front part and adjacent to the school building, there are three/four shops which have been constructed which are not; the part of the school, it was informed to the committee that the land behind these shops also belong to the school but because of non existence of any boundary wall or wire mesh fencing it was difficult for the committee to ascertain whether the vacant land which is not made use of at all actually belong to the school. The vacant land behind and adjacent to the school building is quite uneven and garbage was scattered all over.

9. The committee asked the school management to provide the list of conditions supplied by the Board. It was informed that even the earlier committee had suggested addition of more books and development of playground. It is stated for information that the two conditions have not been fulfilled by the school. On perusal of their records of Library, it was observed that the school does not have sufficient books. Moreover, there was no librarian available at the time of

inspection.

DEFICIENCIES

In the opinion of the Committee the following deficiencies have been observed:

1. Address at which the school is functioning is not there in any of the records of the school i.e. NOC, School Letter Heads, Transfer Certificate and Admission and withdrawal register etc.
2. No proper boundary/wire mesh fencing of the school premises has been provided and upkeep of the school plant is of very poor level.
3. No proper stability/continuity of teachers.
4. Number of books in the library are not as per norms of the Board.
5. There is no proper playground for performing sports activities.
6. Financial management needs to be more transparent and proper record of payment of salary and other charges needs to be maintained properly.
7. The irresponsible act of the school management in allowing the students to leave the school on the day of inspection is most objectionable and must not be repeated in future.

CONCLUSION

It is concluded that the school may be asked to remove the above deficiencies in a time bound manner and before considering the school for granting affiliation, the school may be got inspected again.

Sd/-7.12.2005 (M.C. SHARMA) JOINT SECRETARY (SECRET)

10. The CBSE gave a show cause notice on 21.2.2005 to the petitioner referring to the enquiry committee's report calling for explaining as to how and why the school was found to be running at two sites by giving misleading information to the Board, which is an act of wilful and intentional violation of the provisions of the Affiliation Bye-Laws. The school was further noticed with the fact that it was running Classes I to VIII at old site and that the school does not have adequate infrastructure at the new site where it claims to have two acres of land.

11. The school submitted a reply on 2.3.2005 reiterating that the school is running at one site. The construction work was still in progress; the play ground of the school is developing and that two adjoining playgrounds are there which are being developed for two separate games; the legal notice served by Mr. P.C. Shukla who is father of Manager wants that the affiliation of the school should be withdrawn and is trying to "rotate" the things and to show that there is hindrance in running the school. It was further stated in the reply that the school has sufficient land; the old building is still in the "purgation" of society not of school; the old building is used only for the meetings of the society and not for

running the school; the school has sufficient infrastructure and that a total amount of more than Rs.28 lacs was invested to develop the school; the document regarding land was enclosed for inspection.

12. By the impugned order dated 20.8.2005 the provisional affiliation was withdrawn on the ground that as per Affiliation Bye-Laws the school is required to function at the site which satisfies the requirement of land and for which the affiliation has been granted. The school affiliated with the Board cannot run at two different places, as it was found during inspections. The classes from 1st to VIII were running at Punjabi Colony, Mainpuri and classes from IX to XII at Lane No. 13 Narain Nagar, Mainpuri, U.P whereas the infrastructure available at new site is not satisfying the norms prescribed by the Board. The school made a representation on 19.8.2005 purportedly after removing the deficiencies and reiterated that it has not violated any CBSL Affiliation Bye-Laws. The Board by its letter dated 5.9.2006 rejected the representation observing that the school still not fit to consider for continuation of provisional affiliation as it is having the following deficiencies:

1. The School is neither being run at Lane 13, Narain Nagar nor at Punjabi Colony, Mainpuri, but it is being run at Kachhari Road.
2. The school is using 2 letter heads of different addresses which is quite confusing.
3. No proper address was given on the school documents such as T.C., Admission and withdrawal register, admission form etc.
4. All the children had already left the school by the time the committee reached, they were not allowed to meet the committee.
5. The building had been constructed on the area of approx. 2000 Sq. Mtrs and there, is a vacant land behind the building without boundary wall, and development hence the school is not fulfilling land condition of the. Board.
6. The photocopy of lease deed is not readable.
7. In front part and adjacent to the school building, there are 3-4 shops and therefore, the space is not suitable for academic environment.
8. The school library did not have sufficient books.
9. There was no library.

In view of the above, the Board after due consideration has once again found that the school is not following the provisions laid down in Affiliation Bye-Laws, of the Board and not fit for consideration of continuation of provisional Affiliation. The request of the school therefore stands rejected.

13. The CBSE thereafter refused to accept the registration forms for AISSE-2008. The school then made a representation to the Board on 11.9.2006 which was turned down on 7.12.2006 with observations that the provisional affiliation has

been withdrawn and that the school was already directed not to run fresh classes from Class IX and XI from the academic session 2005-06 and that the Board will not be responsible for the consequence of violation of the Rules.

14. Shri P.N. Saxena, learned Counsel for petitioner submits that the school did not violate the Affiliation Bye-Laws. The society was registered with the address at Kachehary Road, Mainpuri and was running the school at Lane No. 13, Narain Nagar, which is also known as Punjabi colony at Mainpuri. The two acres land was acquired at Kachehary Road, on which new constructions were made with more than 20 rooms and infrastructure for running the school in terms of the Affiliation Bye-Laws. At the time of inspection by Shri Dharam Pal Singh on 11.12.2004 and then by the Committee on 2.12.2005, full facts were given. The new building was inspected by the Committee. The students had left the school after half yearly examinations and that the school is not found to be running at Lane No. 13 Narain Nagar which is also known as Punjabi Colony, Mainpuri. There was sufficient space for playground, infrastructure, library and laboratories. The show cause notice lacked material particulars regarding the availability of sufficient accommodation, play ground and library. It is submitted that on account of litigation between the father and mother of Shri Prashant Shukla, the Manager of the school, the school was re-located at a new place. It has full and complete infrastructure for running the school. The CBSE was confused with the addresses. With 32 class rooms, 03 labs, 01 library, 02 staff room and 02 playgrounds measuring 7200 sq. mtrs. and 1350 sqmtrs, the school at 17 Court Road, Mainpuri fulfils all the requirement of Affiliation Bye-Laws.

15. Shri H.N. Pandey, appearing for CBSE, submits that the school has misled the Board. It furnished false information regarding re-location of the school. The lease deed produced by the school was illegible document. At the time of inspection classes 1st to VIII was found running from old premises. The school deliberately furnished wrong addresses. It had no where mentioned that Narain Nagar is also known as Punjabi Colony. The house at Lane No. 13 Narain Colony is the residence of Manager. He did not allow inspections of the school at Punjabi Colony and that on both the inspections made on 11.12.2004 and after one year 2.12.2005 with a gap of one year it was found that the school was running at two places namely at Lane No. 13 Narain Nagar, Mainpuri and at the new premises of which did not have sufficient infrastructure. The constructions of the building at new site were incomplete. There was no playground with a boundary wall. In the TC, Admission and withdrawal, registration and admission forms proper address of the school was not given. The playground did not have the boundary wall and that there was garbage scattered all over the place which "made the place unfit for running the school. There were four shops on the front of the school building. Shri H.N. Pandey further informs that the school failed to maintain norms of affiliation and thus affiliation was withdrawn in terms of the Affiliation Bye-Laws-17 falling in Chapter-V which provides in Para-1 that the provisional affiliation of the school may be withdrawn either in a particular subject or in all subjects or the institution may be disaffiliated, if it is satisfied

that the school concerned is not fit to enjoy continuing affiliation to the Board. The procedure was followed in detail and that provisional affiliation was withdrawn after inspections and after giving a proper show cause notice with the finding that the reply was not satisfactory.

16. The CBSE grants affiliation and provisional affiliation to the schools under its "Affiliation Bye-Laws effective from 28.1.1988". Under these Bye Laws the affiliation is defined under Clause-1 (i) of Chapter-I to mean, "formal enrolment of a school among the list of approved schools of the Board following the prescribed/approved courses of studies upto Class VIII as well as those preparing students according to prescribed courses for the Board's examinations. Chapter-2 provides for norms of affiliation". Para-4 of Chapter-II provides for provisional affiliation which is defined as follows:

4 (i) Provisional Affiliation: Those, schools which fulfil the essential conditions of the Affiliation Bye-Laws may be considered for provisional affiliation for a period of three years subject to fulfilling all the terms and conditions of the Affiliation Bye-Laws within this period.

17. Clause-17 of Chapter-V of the Affiliation Bye-Laws, provides for withdrawal of affiliation. The proceedings for withdrawal of affiliation may be initiated under para-2 by the Board, in case the school is found lacking of the deficiencies mentioned in item No. (i) to (xiii), on which the Board shall provide the adequate time and opportunity to the management of the school, served with a "Show Cause Notice", upto a maximum period of one year, for adequate compliance/removal of defects, failing which the Board may declare the institution disaffiliated. The decision is to be final and binding. The maximum period of show cause notice due to Clause 17 (2) (xi) which includes any other misconduct in connection with - admissions/examinations or any other area which in the opinion of the Board warrants immediate disaffiliation of the school is not to exceed one month. The Bye-Laws further provides in para-4 that in case the school seeks legal redressal from the Court against the decision of the Board, the jurisdiction of the court of Law shall be Union Territory of Delhi only and not any other place.

18. The reasons on which the provisional affiliation may be withdrawn includes the disregard of rules and conditions of affiliation even after receiving warning letters and non-fulfilment of conditions laid down regarding deficiencies to be removed even after due notice. Condition No. (X) provides for non-availability of proper equipment/space/staff for teaching a particular subject and transfer of property/sale of school by one society/management/trust to another society/management/trust. In the present case the school was running under the terms of provisional affiliation at Lane No. 13 Narain Nagar, Mainpuri. It was only on the complaints that at the time of inspection dated 11.12.2004 the Management informed Shri Dharampal Singh, Regional Officer that the school has been shifted to its new location and was shown new location where the infrastructure was not found to be satisfactory. The class rooms for Senior Secondary school was not

available at the new site, The competent authority thereafter constituted one man committee of inspection which visited the school on 2.12.2005 i.e. after one year. It did not find any school running at Lane No. 13 Nanain Nagar, Mainpuri. The Family of the Manager was living there. The Committee was informed that Punjabi Colony is also known as Narain Nagar. The Committee-found the school in the new building at Kachehary Road, Mainpuri with 20 rooms and with constructions going on the first flour of the building. The Committee did not find any student present in the school. Out of 20 teachers, 11 were appointed only in August/September of the same year and Principal was also appointed only a month ago. There was no proof that the teachers were paid salary by cheque. No objection certificate given by Education Department did not reflect the address of either Lane No. 13 Punjabi Colony, Mainpuri or Kachehary Road, Mainpuri. The letter head and the forms available in the school did not give proper address. The children was not allowed to meet the Committee. There was no boundary wall enclosing the playground. There were three/four shops constructed in the front of the school and the areas littered with garbage. This position was obtained after one year of the inspection in which the Manager could have removed the deficiencies.

19. Having gone through the record I find that the school did not remove the deficiencies even within one year of the first inspection. The Manager obstructed the Committee of inspection to meet the students and did not produce full and complete records. The first floor of the building, which was to house of 12 more rooms was under construction and the playground did not have boundary wall and was littered with garbage. There was shops in front of the school. The School did not file a legible copy of the lease deed before CBSE and has not cared to file the same even for the inspection of the Court. The satisfaction of CBSE to withdraw the provisional affiliation therefore cannot be said to be arbitrary, unreasonable and founded on the insufficient material. The school was given the show cause notice with sufficient opportunity to remove the defects.

20. The Court could interfere in such matters, only if the petitioner established that the school was not given sufficient opportunity to remove the deficiencies and that any material placed by the school relevant to the show cause notice was not considered. The Court may also interfere, if the decision is arbitrary, unreasonable or suffers from malafide. Where the decision of the Board is supported by sufficient reasons which arc relevant to be considered on record and that sufficient opportunity was given to the school to remove the deficiencies, the Court will not go into the details of the facts or cause enquiry on its own to find out whether the school had removed the deficiencies. The observations of the Board are based on the inspections reports, the contents of which were found established by inspections with the gap of one year. The Board has to keep the standards of education protect the reputation of regulating the best schools in the country and in neighbouring countries.

21. There is no room for interference with the impugned orders. The writ petition

is dismissed.