
(2006) 02 DEL CK 0032
In the Delhi High Court
Case No : LPA 99-100 of 2006

Rajdhani Public School and Another

APPELLANT

Vs

CBSE and Another

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Citation : (2006) 02 DEL CK 0032

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

Bench : Division Bench

Advocate : Sandeep Sethi and P.S. Bindra, for the Appellant; Maneesha Singh, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This Writ Appeal has been filed against the impugned judgment of the learned Single Judge dated 13.12.2005.

2. Heard learned counsels for the parties and perused the record.

3. The facts of the case have been set out in the judgment of the learned Single Judge and, hence, we are not repeating the same except where necessary.

4. By means of this Writ Appeal the petitioners/appellants have prayed for a writ of certiorari quashing the letter dated 28.09.2005 issued by the Joint Secretary of the Central Board of Secondary Education (CBSE), and for a writ of mandamus directing the respondents to accept the examination forms for the All India Secondary Examination and grant permission to its students to appear in the All India Secondary Examination to be held in March, 2006 and also register the students studying in Class 9 in the Petitioner No. 1 School for Class X examination of Respondent no. 1 to be held in March, 2007.

5. The petitioner is a School which was initially having classes up to 8th standard. In the middle of 1997, the School was upgraded to Secondary level i.e. two more classes i.e. upto X standard were added, and the Director of Education

granted approval for upgradation of the School by letter dated 06.06.1997. A copy of the letter is annexed as Annexure-P/3 to the Writ Petition. It is alleged that the School has excellent academic results.

6. In para 2 of the writ petition it has been stated that the School is in occupation of land admeasuring 1220 sq. yds (1110 Sq. mts.). The petitioner-School took on rent area admeasuring 171 sq. yds. by rent deed dated 13.10.2005.

7. Pursuant to the petitioners' application seeking affiliation with the CBSE, the respondent No. 1 by letter dated 09.01.2004 required the petitioner to submit some details. The petitioners submitted those details and thereafter its students were allowed to appear for the Board examination for the year 2004-05.

8. In para 3 of the Writ Petition, it has been stated that from 1997 till date, the petitioner No. 1 has been granted 8 successive provisional affiliations. The last affiliation was granted for the examination held in March, 2005. Copies of the provisional affiliations are annexed as Annexure P/6 to the Writ Petition.

9. These orders of the CBSE state that the request of the School for grant of provisional affiliation has yet not been acceded to. However, to avoid any hardship to the students of the School, approval of the competent authority of the CBSE was granted permitting the school to sponsor the names of such students who had studied in Classes IX-X in the school to appear for the Secondary examination. All these orders from 1997 onwards are almost identical.

10. The petitioner sought permission to allow its students to appear in the CBSE examination students in the examination to be held in March 2006. True copy of the letter dated 19.07.2005 in this connection is annexed as Annexure P/17. This was followed by some more letters since no reply was received from Respondent No. 1. However, by letter dated 28.09.2005, the respondent No. 1 has declined provisional affiliation to the petitioner No. 1 and also not allowed its students to sit in the Class X examination to be held in March, 2006 on the ground that the School is in possession of land of area admeasuring less than 1000 sq. mts and also because 12 candidates who were not qualified to appear in the Board examination of Class X were allowed to appear by the petitioner No. 1 School.

11. In para 8 of the Writ Petition, it is stated that the School vide letters dated 19.10.2005 and 25.10.2005 apprised the respondent No. 1 that the contents of the letter dated 28.09.2005 were incorrect inasmuch as the petitioner No. 1 had in fact taken on rent additional area of 171 sq. yds. and as such was in possession of land of 1221 sq. yds. area which is more than 1000 sq. mts.

12. As regards the ground that the documents supplied were not registered in the office of Sub-Registrar, the petitioner stated that the documents for registration were submitted in the office of the Sub-Registrar on 13.10.2005 and the same would be registered shortly. As regards the ground that 12 unqualified students were allowed to appear in the Board examination of 2005, it is stated

that this fault could not be attributed to the petitioner No. 1-School as the said candidates were allowed to appear in the Class X examination by the Ex-Vice Principal Shri Murari Lal on his own. Immediately on coming to know of the said irregularity, the Management of the petitioner No. 1-School reprimanded the said Vice Principal who Realizing that he had committed an error and could not escape punishment resigned from the services of the petitioner No. 1-School. The resignation letter was accepted by the Director of Education. A copy of the letter dated 31.08.2005 is annexed as Annexure P/10. Hence, it is alleged that there was no violation on the part of the Management.

13. Counter affidavit has been filed by respondent No. 1-CBSE and we have perused the same.

14. It is alleged that the petitioner-School had sponsored ineligible candidates, who had failed in the Class IX exams, and hence were ineligible for appearing in Class X examination held in March, 2005. It is alleged that the petitioner is seeking affiliation to the Board without complying with the requirements of the Affiliation Bye-laws which cannot be granted.

15. As regards the contention of the petitioner that it is in occupation of land admeasuring 1110 sq. mts. at present, this contention has been denied. As regards the additional 171 sq. yds land, it is stated that the documents supplied to the Board are not registered documents and further it is not clear whether all the plots are adjacent to each other and make a single plot.

16. A rejoinder has been filed by the petitioner in reply to the counter affidavit filed by the respondent no. 1-CBSE and we have perused the same.

17. In the rejoinder affidavit it has been submitted that the ineligible students were permitted to appear in the Class X examination by the then Vice-Principal Shri Murari Lal on his own without consulting the Management. Realizing his guilt, and realizing that disciplinary proceedings would be initiated against him, Shri Murari Lal resigned from the services of the petitioner-School whose resignation letter was accepted by the Director of Education. It is alleged that the petitioner-School cannot be penalised for the fault of one of its employees who has accepted that the fault was on his part, and the Management of the School should not be blamed. There are 84 students studying in Class X who have to take the All India Secondary School Examination to be conducted by CBSE in March, 2006 apart from the 40 students studying in Class 9 in the petitioner School. Significantly, the 84 students studying in Class X were registered with CBSE in September, 2004. Hence, it is alleged that it would be unjust now to prevent the said students to take the All India Secondary School Examination for Class X in March 2006 for no fault of theirs or of the petitioner-School.

18. It is stated in para 9 of the rejoinder affidavit that the petitioner School fulfills all the requisite criteria for affiliation to the respondent Board. The petitioner is in occupation of land admeasuring 1220 sq. yds. The additional land was taken by the petitioner School admeasuring 171.84 sq. yds. by a rent deed

dated 27.07.2005 which could not be registered with the Registrar of Assurances as during the said period no deeds were being registered and the same was pointed out to the respondent and, in fact, a copy of the aforesaid lease deed was sent to the respondent with petitioner's letter dated 28.07.2005. A copy of the letter dated 28.07.2005 is annexed as Annexure-P/12 to the Writ Petition. The petitioner thereafter executed a fresh deed with the landlord in October, 2005 for the purposes of registration which has since been registered. A copy of the said lease deed is annexed as Annexure P/13.

19. In our opinion on the facts of the case this writ appeal deserves to be allowed. There is no specific denial of the averment of the petitioner School that it is in occupation of land admeasuring 1220 sq. yds. Apart from that, it is in occupation of additional land admeasuring 171.84 sq. yds. taken on lease and if this land admeasuring 171.84 sq. yds. is included, then it will be much more than 1000 sq. mts. which is the requisite area as required by the CBSE bye-laws. In view of the additional land admeasuring 171.84 sq. yds. which has been registered in October, 2005 vide Annexure P/13, there is no lack of eligibility for provisional affiliation. As regards the second ground for denying provisional affiliation, in our opinion, that also cannot be a valid objection as it is evident from the facts that the fault was on the part of the then Vice Principal who without consulting the Management took the decision, and who has since resigned from the post of Vice Principal of the petitioner-School. In our opinion, since the students studying in Class X were registered with CBSE and the examinations are to commence next month, it would be now unfair and inequitable, if they are barred from appearing in the CBSE examination to be held in March, 2006.

20. In our opinion, it is the CBSE which is at least partly to be blamed for giving permission to students of the petitioner School to appear in the Board examination from 1997 onwards year after year. In 1997 itself, the CBSE should have taken a decision whether the petitioner School is eligible for provisional affiliation or not, but instead it adopted a policy of ad hocism which was wholly arbitrary. The CBSE should have in 1997 itself verified whether the school fulfilled the criteria for affiliation or not, and if it did not, the CBSE should have rejected the application for affiliation. We fail to see how the CBSE could have allowed students to appear in the Board examination year after year even without granting affiliation.

21. Apart from that, we are of the opinion that there is no provision for granting provisional affiliation. The affiliation granted should be a permanent affiliation, or else the application for affiliation should be rejected. Whenever an application for affiliation is made by a school to the CBSE, the CBSE should make all the requisite enquiries about infrastructure, classrooms, availability of qualified teachers, etc and only after being satisfied should it grant affiliation, but this affiliation must be a permanent affiliation. Granting provisional affiliation one year at a time is bound to become a source of corruption, apart from not being

contemplated by law.

22. Of course, even after grant of permanent affiliation the same can be suspended/cancelled if after enquiry there is some major default or misconduct by the school, which under the rules of the CBSE justifies taking action against it.

23. For the reasons given above, the appeal is allowed, the impugned judgment is set aside and the relief as prayed for in the writ petition is granted. However, we make it clear that we are not directing grant of affiliation to the school by the CBSE. The CBSE shall make detailed enquiries and only if it is satisfied that the school fulfills the norms shall it be granted affiliation. This enquiry must be completed within 3 months.

24. On the special facts of the case, the students studying in Class X will be allowed to appear in the 2006 examination, but thereafter no students of the school will be allowed to appear unless the school gets affiliation from the CBSE.