

(1998) 03 DEL CK 0011
In the Delhi High Court
Case No : CW No. 1043 of 1998

Satluj Public School

APPELLANT

Vs

Central Board of Secondary Education

RESPONDENT

Date of Decision : 12-03-1998

Acts Referred:

Citation : (1998) 3 AD 467 : (1998) 72 DLT 525

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Mr. Mukul Rohtagi, Ms. Maninder Acharya, for the Appellant; Mr. Anil Kumar, for the Respondent

Judgement

Cyriac Joseph, J.—The petitioner in this writ petition is the Satluj Public School, Ambala Road, Pehowa, Kurukshetra District in Haryana State. It claims to be a private unaided school run by Satluj Education Society (Registered). The only respondent in the writ petition is the Central Board of Secondary Education, Delhi [for short the Board. The prayers in the writ petition are for a direction to the respondent to affiliate the petitioner school uptill senior secondary level with effect from the session 1997-98 and for quashing the letter dated 3.2.1998 by which the respondent Board refused to permit the students of the petitioner School to take the Senior Secondary level examination in the year 1998.

2. According petitioner the respondent vide its letter dated 24.10.1997 (Annexure P3) granted affiliation to the petitioner school for Secondary School examination of the Board with effect from 1.4.1997 to 31.3.2000. The need for education uptil Senior Secondary level and the request on behalf of the students and the parents from the area forced the petitioner School to start classes at Senior Secondary level. As a consequence there are 44 students studying in Class XII in the session 1997-98. It is also stated that the Directorate of Education, Haryana had given a no objection certificate dated 27.5.1997 (Annexure P2) for affiliation of the petitioner School to the respondent Board uptil Senior Secondary level. However, the affiliation granted by the respondent

as per Annexure P3 letter dated 24.10.1997 is only for the Secondary School level. Hence the petitioner through a letter dated 20.12.1997 (Annexure P4) requested the respondent to grant affiliation to the School upto Senior Secondary level. In Annexure P4 letter dated 20.12.1997 it was stated that the School had started classes up to Senior Secondary level. Through Annexure P5 letter dated 9.1.1998 the respondent informed the petitioner that its application for upgradation of the affiliation upto Senior Secondary level was received in the respondent's office without all the relevant documents and necessary fee required as per affiliation bye-laws. The petitioner was also advised to submit all the required documents and fee of Rs. 10,000/- Along with the original application form which was returned Along with the letter dated 9.1.1998. The petitioner was also informed through the said letter dated 9.1.1998 that it was not possible for the Board to grant permission to allow the students of Class 12 in the petitioner School, to appear in the Board examination of 1998. According to the petitioner, the upgradation form seeking provisional affiliation to Senior Secondary level was resubmitted on 16.1.1998 Along with Annexure P6 letter dated 16.1.1998. Through Annexure P6 letter the petitioner requested the respondent to consider the petitioner's case as a special case on sympathetic ground and to allow the students of Class XII to take the Board examination in 1998. It is stated in the petition that the petitioner had submitted the application forms for all its 44 students Along with the examination fee of Rs. 12,175 / - at the regional office of the respondent Board at Chandigarh. By Annexure P6A letter dated 3.2.1998 the respondent Board rejected the request of the petitioner to allow the students of Class XII in the petitioner School to appear in the Board examination in March, 1998. The reason stated in the respondent's letter dated 3.2.1998 for rejecting the request of the petitioner is that the petitioner School is not affiliated for Plus 2 stage. The amount of Rs. 12,175/- sent by the petitioner towards examination fee was also returned to the petitioner. Aggrieved by the said letter dated 3.2.1998 the petitioner has filed this writ petition.

3. Notice was issued to the respondent to show cause why the petition be not admitted. Respondent has filed a reply justifying its action in rejecting the request of the petitioner to permit the students of Class XII of the petitioner School to appear in the Board examination in March, 1998. The respondent has raised a preliminary objection regarding the maintainability of the writ petition against the respondent contending that the CBSE is an autonomous and independent body which does not receive any aid or grant or subsidy from Government, that it has not been created under a Statute and that it is not a "State" as defined in Article 12 of the Constitution of India. According to the respondent the petitioner admitted the students at the Senior Secondary level in violation of the relevant rules of the CBSE. Reference is made to Bye-law 15 of the Affiliation Bye-laws of CBSE. Bye-law 15 deals with submission of applications for affiliation and follow-up action. As per Bye-law 15(1) the Schools fulfilling the norms of affiliation given in Chapter 2 of the Bye-laws may apply to

the Board for approval of Middle Class Syllabus/Provisional Affiliation/Upgradation of Senior Secondary classes on the prescribed form Along with prescribed fee given in Appendix II before 31st August of the year preceding the year in which Classes VIII/IX/XI as the case may be is proposed to be started. As per Bye-law 15(9) the School should not start Classes VIII/IX/XI without written approval of the Board and the Board shall not be responsible for any consequences in case Classes VIII/IX/XI is started without written approval of the Board. As per Bye-law 15(10) request for getting approval of Middle Class Syllabus/Provisional Affiliation for Secondary/Senior Secondary Class should be made when Classes VI/VII/X as the case may be, has been started in the School. In view of the above provisions in the Affiliation Bye-laws the respondent has contended in the reply to the show cause notice that the petitioner could not have started Class XI without the written approval of the respondent. According to the respondent the petitioner should have applied for affiliation for the Senior Secondary level before 31st August of the year preceding the year in which Class XI was started. The petitioner applied for the secondary level affiliation as per letter dated 17th May, 1997 (Annexure R1). It is specifically stated that at that time the petitioner had not applied for affiliation for Senior Secondary level. It is also stated that the petitioner had also not disclosed that it had started Class XI or XII without the approval of the respondent. Since the petitioner applied only for secondary affiliation the inspection was carried out for ascertaining the fulfillment of the requirements of secondary affiliation. Pursuant to the inspection report the Affiliation Committee granted affiliation for Secondary level only.

4. It is pointed out in the reply of the respondent that the petitioner has not disclosed when Classes XI and XII were started by the petitioner School. While applying for affiliation for Secondary level on 17th May, 1997 the petitioner had stated that it had only classes up to Class IX. The respondent through a letter dated 8.7.1998 (Annexure R-2) informed the petitioner that the petitioner was conducting Class IX in the School without permission and as such the Board would not be responsible for any consequences arising out of such opening of classes in the School without approval. Thereafter on the basis of the report of the Inspection Committee affiliation was granted to the petitioner by the Affiliation Committee for the period from 1.4.1997 to 31.3.2000 for Secondary School examination as per Annexure P3 / R4 dated 24.10.1997. Till that time the petitioner had not disclosed that the petitioner had already started Classes XI and XII in the School.

5. It is further stated in the reply of the respondent that the petitioner had not applied for the Senior Secondary affiliation by 31st August of the year as contemplated in the Affiliation Bye-laws and that the petitioner started Classes XI and XII without approval. It is also stated that the petitioner has not submitted all the documents showing that the petitioner is entitled to affiliation for the Senior Secondary examination and that the School has not been inspected for affiliation at the Senior Secondary level. It is specifically stated that the 44 students of the petitioner School cannot be allowed to appear in the Board

examination. The respondent has also denied the claim of the petitioner that it fulfills all the terms and conditions for the grant of affiliation for the Senior Secondary examination.

6. It is pointed out in the reply of the respondent that as per the Bye laws relating to admission of students, admission to Class XI in a School shall be open only to such a student who has passed Secondary School examination (Class X examination) conducted by the Board or an equivalent examination conducted by any other recognised Board of Secondary Examination/Indian University and recognized by CBSE as equivalent to its examination and admission to Class XII shall be open only to such a student who has completed a regular course of study for Class XI and has passed Class XI examination from a School affiliated to the Board. According to the respondent the admission of all the 44 students in Class XII of the petitioner School was not in accordance with the above-mentioned provisions in the Bye-laws.

7. It is specifically averred in the reply of the respondent that the petitioner has not submitted the application for affiliation in compliance with the Affiliation Bye-laws of the respondent and that the petitioner has not submitted all the required documents.

8. It is further averred by the respondent that the petitioner School is not affiliated for Senior Secondary level and that the students of the unaffiliated Senior Secondary classes cannot be allowed to appear in the Board examination in 1998. It is also stated that the last date for the payment of examination fees by students of the affiliated institutions was 21st November, 1997. The fees of the 44 students of the unaffiliated Senior Secondary class of the petitioner was submitted after the said date. The respondent has categorically denied that the regional office of the respondent had recommended the case of the petitioner. The regional office had only forwarded the application of the petitioner to the head office. The students of the petitioner's School are not entitled to appear in the Senior Secondary examination in view of the relevant Examination Bye-laws.

9. The respondent has also denied the allegation that the Board has been allowing the students of various Schools to take the Board examination in spite of the fact that those Schools do not have affiliation. It is specifically averred that the respondent has not allowed the students of any unaffiliated School to appear in the examinations except in cases where the students were permitted to appear in examinations by orders of Court. Hence the allegation of discrimination is denied by the respondent.

10. The respondent has also contended that the No Objection Certificate issued by the Directorate of Education, Haryana does not amount to affiliation by the Board and that it did not authorise the petitioner to admit students in Classes XI and XII without the approval of the Board.

11. In the light of the pleadings mentioned above it is clear that the petitioner School has not so far been granted affiliation for Senior Secondary level by the

respondent. It is not stated that the application of the petitioner has been rejected. From the averments in the reply of the respondent it would appear that the petitioner's application has not been accompanied by the necessary documents and particulars. It is also clear that the inspection of the petitioner School has not been conducted pursuant to the request for affiliation for the Senior Secondary level. In other words, the question of affiliation of the petitioner School at Senior Secondary level is still pending. It is for the petitioner to comply with the requirements for affiliation and to remove the defects and deficiencies pointed out by the respondent so that the respondent can consider the petitioner's application in accordance with the rules. Hence at this stage it is not possible to direct the respondent to affiliate the petitioner School for the Senior Secondary level with effect from the session 1997-98. If and when the petitioner complies with the requirements under the rules and removes the defects and deficiencies pointed out by the respondent the respondent will consider the petitioner's application in accordance with the rules expeditiously.

12. The prayer of the petitioner regarding permission to allow 44 students in Class XII of the petitioner School to appear in the Board examination in March, 1998, cannot be granted in the light of the factual and legal position explained in the reply of the respondent. From the materials placed on record it is clear that the petitioner started Classes XI and XII and admitted students in those classes without the approval of the Board. Such admission of students was in violation of Bye-law 15(9) of the Affiliation Bye-laws of the CBSE. It is also clear that the petitioner did not apply for affiliation for Senior Secondary level within the time frame stipulated in Bye-law 15(I) of the Affiliation Bye-laws. The petitioner has not stated in the writ petition when the 44 students mentioned in the writ petition were admitted in the School or in which class they were admitted. When the petitioner applied for Secondary School affiliation on 17.5.1997 it was stated that the petitioner School had classes only up to Class IX. If the said statement was true the above-mentioned 44 students were admitted in Class X after 17.5.1997. The petitioner has not disclosed in the petition the name of the School or Schools in which these students were studying prior to 17.5.1997. It is also not stated whether those Schools are affiliated to the CBSE. As per Bye-law 7.5 quoted on page 12 of the reply to the show cause notice, admission to Class XII in a School shall be open to such a student who has completed a regular course of study in Class XI and has passed Class XI examination from a School affiliated to the CBSE. There is no averment in the writ petition that the above-mentioned 44 students have completed a regular course of study for Class XI and has passed Class XI examination from a School affiliated to the CBSE. Though a student who has completed a regular course of study for Class XI and has passed Class XI examination from an institution recognized by/affiliated to any recognized Board in India other than the CBSE, can be admitted to a School after obtaining permission for such admission from the Chairman of the Board, the above-mentioned 44 students are not covered by the above provision also. It is not disputed that as per the Examination Bye-laws of the CBSE, only

candidates of affiliated Schools who fulfill all other requirements of the Examination Bye-laws are entitled to appear in the examinations conducted by the Board. The 44 students mentioned in the writ petition are not candidates from a School affiliated to the Board at the Senior Secondary level. Hence the 44 students alleged to be students of Class XII in the petitioner School are not entitled to appear in the examination conducted by the Board. The conduct of the petitioner in not disclosing to the Court particulars like the time of admission of the 44 students in the petitioner's School, the class in which they were admitted and the Schools in which they had been studying earlier, raises serious doubts about the bona fides of the petitioner. The respondent has emphatically denied the allegation that the respondent has been allowing students from unaffiliated institutions to appear in the examination conducted by the respondent. There is no material in this case to prove that the petitioner has been subjected to hostile discrimination by the respondent. As rightly pointed out by the respondent the no objection certificate issued by the Directorate of Education, Haryana did not amount to affiliation of the petitioner to the CBSE for the Senior Secondary level and it did not authorise the petitioner to admit students in Classes XI and XII without the approval of the respondent. The respondent's action in rejecting the petitioner's request to permit the petitioner's students in Class XII examination conducted by the Board is not illegal, unjust or arbitrary. In these circumstances it will not be proper to issue a writ of mandamus to the respondent to compel the respondent to allow the students of the petitioner School to appear in the Class XII examination conducted by the Board.

13. Learned Counsel for the petitioner submitted that this Court should take a sympathetic view and issue appropriate directions to the respondent to protect the interests of the students since their career is at stake. Having admitted the students in the unaffiliated Senior Secondary Classes in violation of the rules, the petitioner School has no legal or moral right to seek a writ of mandamus from this Court to compel the respondent to permit such students to appear in the examination against the rules governing the matter. Even if the students were the petitioners in this case, this Court could not have issued a writ of mandamus to compel the respondent to disregard or violate the rules. In a situation like this the Court cannot be persuaded by sympathy and compassion or by concern for the career of the students.

14. While dealing with a request of the students who had undergone training in some private Teacher Training Institutes established unauthorisedly and without permission, the Hon''ble Supreme Court in N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, observed thus:

"One of the writ petitions before us (Writ Petition No. 12697 of 1985) was filed by a student claiming to have undergone training in one of the privately managed institutes. It was argued that the students of the institute in which she had undergone training were permitted in previous years to appear at the Government examination and as in previous years she may be allowed to appear

at the examination this year. A similar request was made by Shri Garg that the students who have undergone training for the one year course in these private institutions may be allowed to appear at the examination notwithstanding the fact that permission might not be accorded to them. We are unable to accede to these requests. These institutions were established and the students were admitted into these institutes despite a series of press notes issued by the Government. If by a fiat of the Court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Article 32 of the Constitution or Article 226 should be frittered away for such a purpose."

15. In *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, the Hon"ble Supreme Court refused to permit the students of an unaffiliated medical college to appear in the examination against the provisions of the University Act and the Regulations of the University. It was held in the said judgment that the Court could not direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. In paragraph 10 of the said judgment the Court stated thus:

"Shri K.K. Venugopal, learned Counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical College established by the DaruSalam educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the Regulations of the University. We cannot be our fiat direct the University to disobey the statute to which it owes its existence and the Regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws. The case of the medical college started by the DaruSalam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University did in the case of the Darusalam Medical College as a precedent in the present case to direct the University to do something which it is

forbidden from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time."

16. In *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, , the Hon"ble Supreme Court held that since the students of unaided recognized institutions were legally not entitled to appear at the examination conducted by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. "The Hon"ble Supreme Court set aside the order of the High Court which was made on humanitarian grounds.

17. In *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, , the Hon"ble Supreme Court was dealing with the case of students who had been admitted in an unauthorised D.Ed. College. The Hon"ble Supreme Court held that the High Court committed manifest error of law in exercising its prerogative power conferred under Article 226 of the Constitution directing the appellant (State of Maharashtra) to permit the students to appear for the examination. It was also pointed out that the directions to the appellant to disobey the law would be subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. In the said judgment the Hon"ble Supreme Court also quoted the following sentences from an earlier judgment of the Hon"ble Supreme Court in SLP (C) 2067/91:

"We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognized Schools and are made to suffer. Some Courts out of compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the field of regulation."

18. In *Dental Council of India v. Harpreet Kaur Bal* the Hon"ble Supreme Court set aside the judgment of the High Court of Punjab and Haryana in which the Kurukshetra University was directed to hold first Professional Examination for students of unaffiliated and unrecognized Dental College at the risk of such students. The Hon"ble Supreme Court observed that the kind of judicial sympathy shown by the High Court in that case was wholly misplaced and that it created more problems than it apparently seemed to solve. The Court further observed as follows:

"There are many pronouncements of this Court cautioning against exercise of jurisdiction characterised more by benevolence than on settled legal principles. A relief must be such as could be considered permissible in law and worked out by the application of legally recognized principles. The decision must have

legitimacy of legal reasoning and should not incur the criticism of lacking objectivity of purpose and rational and legal justification. Where an educational institution embarks upon granting admissions without the requisite affiliation and recognition and the students join the institution with their eyes wide open as to the lack of legitimacy in the admission, it would be preposterous to direct the University to hold examinations for the benefit of such students. We cannot sufficiently deplore this attitude and approach. The High Court has by its order, simply bolstered the hopes and order, simply bolstered the hopes and aspirations of these students without any means of gratifying these expectations in a manner known to law. We have, Therefore, no hesitation in setting aside the order under appeal as totally unjustified."

19. In the light of the above judgments of the Hon''ble Supreme Court I am not persuaded to grant any relief in this writ petition out of sympathy and compassion for the students or concern for their career.

20. Since the writ petition is being dismissed for reasons stated above, it is unnecessary in this case to consider the preliminary objection raised by the respondent regarding the maintainability of this writ petition.

21. The writ petition is dismissed with costs of Rs. 10,000/- to the respondent.