

(2000) 01 CAL CK 0040
In the Calcutta High Court
Case No : M.A.T. No. 3744 of 1999

S.V.S. English School and Others

APPELLANT

Vs

Union Of India and Others

RESPONDENT

Date of Decision : 05-01-2000

Acts Referred:

Citation : 104 CWN 242

Hon'ble Judges : Samarendra Nath Bhattacharjee, J;Ruma Pal, J

Bench : Division Bench

Advocate : Nirmalya Mohan Bhattacharya, Debabrata Sana Roy and Partha Sarathi Chatterjee, for the Appellant;

Judgement

Mrs. Ruma Pal, J.—None appears to oppose this application, despite service. It also appears that nobody had appeared on behalf of the respondents at any stage of the proceeding even before the learned Single Judge. Petitioner No. 1 is a private, unaided school. The petitioners who are all members of the Governing Body of the petitioner No. 1 applied for affiliation under the Central Board of Secondary Education (C.B.S.E.) Under the relevant Bye-Laws of Central Board of Secondary Education (C.B.S.E. in short) relating to affiliation, the C.B.S.E. may grant affiliation in respect of a private unaided school provided the school has been formally recognized by the State Government and its application forwarded by the State Government or the State Government gives a "No Objection Certificate" to the effect that it has no objection to the affiliation of the school with the C.B.S.E.

2. It is the petitioners' case that they had made several representations to the State Government authorities for issuance of the "No Objection Certificate" or for forwarding of. their application in terms of the Bye-Laws of C.B.S.E. This met with no response. This statement of fact being uncontroverted, may be taken as established.

3. The C.B.S.E. has in response to a letter of the petitioners stated that it was

willing to take action, on the matter of affiliation on receipt of the request from the school along with either an order of the High Court directing affiliation to be granted or a "No Objection Certificate" from State Education Department.

4. In view of the inaction of the State educational authorities a writ application was moved by the petitioners praying, inter alia, for a direction on that to grant a "No Objection Certificate".

5. The learned Judge was of the view that since the petitioner No. 1 had not been granted a "No Objection Certificate", C.B.S.E. was not bound to grant affiliation.

6. In our view, the inaction of the State education authority cannot be condoned. They are bound to take a decision on the matter either granting a "No Objection Certificate" or refusing it with reasons to be stated. It appears in another matter C. O. No. 10292 (W) of 1996. *St. Sebastian Welfare Society v. State of West Bengal & Ors.*, judgment dated 20.9.1996, the learned Single Judge of this Court where a "No Objection Certificate" had been refused on the ground which was not germane, the Court directed the affiliating authority to consider the case of the school as if the "No Objection Certificate" had, in fact, been granted. The learned Single Judge distinguished the decision on the ground that whereas that in that case the State Government had given reasons for not issuing the "No Objection Certificate", in the instant case, no such reasons had been given at all.

7. In our view, this case would stand on a footing as that of the case of *St. Sebastian Welfare Society v. State of West Bengal & Ors.* (supra). The silence of the State Government may be construed to mean acquiescence. In *St Sebastian Welfare Society's* case, the State Government had, in fact, responded negatively. Despite this the learned Single Judge in that case had directed the affiliating authority to act on the basis as if "No Objection Certificate" had been granted after setting aside the refusal of the State Government authority to issue No Objection Certificate".

8. We, accordingly, dispose of the application by directing the respondent Nos. 4, 5 and 6 to consider the case of the appellants and to take a decision, thereon within a period of four weeks from the date of communication of this order. If the case of the appellants is rejected, the same shall be done by a reasoned order, otherwise the "No Objection Certificate" must be issued within the aforesaid period. In the event, no decision is taken by the respondent Nos. 4, 5 and 6 within the aforesaid period, it shall be taken that the State-respondents have, in fact, no objection to the affiliation being granted to the appellants and the respondents representing the C.B.S.E. shall act on the basis thereof and take decision thereon in accordance with law. As no useful purpose will be served in keeping the appeal pending, we also dispose of the appeal on the aforesaid order.

Xerox certified copy, if applied for on urgent basis, the office is directed to deliver the same within three days from the date of putting in the requisites thereof.

Samarendra Nath Bhattacharjee, J.

I agree.