

(2005) 09 DEL CK 0040

In the Delhi High Court

Case No : Writ Petition (C) 6368 of 2003 and WP (C) 16944 of 2005

Tushar Welfare Society

APPELLANT

Vs

Central Board of Secondary Education

RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:

Societies Registration Act, 1860 — Section 6, 7

Citation : AIR 2006 Delhi 28 : (2005) 123 DLT 449 : (2005) 84 DRJ 450

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Vipin Sanghi and Devendra Singh, for the Appellant; Amit Bansal, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The grievance that has been ventilated by the Petitioners in these Writ Petitions is that the respondent Central Board of Secondary Education (CBSE), is not processing and deciding its application for being granted affiliate institution status. The stand of the CBSE is that unless the approval of the State Government concerned accompanies the application for affiliation, it would not be processed.

2. The CBSE functions under its Constitution, Clause 9 (iv) of which empowers the Board to "affiliate institutions for the purpose of its examinations provided that the Board shall not accord affiliation to any institution without the concurrence of the State Government concerned if such institution is in receipt of a regular maintenance grant-in-aid from the State Government." Clause 16 vests jurisdiction in the Board to make Regulations for the purpose of carrying into effect the provisions of the Constitution. Clause 21 of its Constitution deals with the powers to amend the Constitution and broadly stipulates that concurrence of the two-thirds of the members of the Board is essential for amending the Constitution.

3. The Affiliation Bye-laws define affiliation to mean "formal enrolment of a school among the list of approved schools of the Board following prescribed/ approved courses of studies up to class VIII as well as those preparing students according to prescribed courses for the Board's examination" The Bye-laws also define "No Objection Certificate" as a letter issued by the Appropriate Authority of the Education Department of the State/Union Territory in respect of School situated in the State/U.T. for affiliation of the School to the CBSE. Thereafter the term "Private Unaided School" has been defined as a School run by Society/Trust duly constituted and registered under the provisions of Central/State Act not getting any regular grant-in-aid from any Government source(s). The following Rules of Chapter II of the Bye-laws are critical to the decision of the Writ Petition and are reproduced below:-

1. The Board may affiliate several categories of schools all over India and abroad, as forexample:

i)Government or Government aided schools;

ii)Schools run by autonomous Organisations under the Government like Kendriya Vidyalaya Sangatha, Navodaya Vidyalaya Samiti, Central Tibetan Schools Organisation, Sainik Schools Society etc.

iii)Schools run by Government Deptts. Directly like defense, Railways etc.

iv)Schools managed directly by Public Sector Undertakings or by reputed societies for Public Sector Undertakings under the financial control of such Public Sector Undertakings or by Societies formed by such Undertakings.

v)Private, unaided schools established by Societies registered under the Societies Registration Act 1860 of the Government of India or under Acts of the State Governments as educational, charitable or religious societies having non-proprietary characters by Trusts.

3. Any educational institution in India or outside India which fulfills the following essential conditions (without which the case cannot be processed) can apply to the Board for affiliation:i)The school seeking Provisional Affiliation with the Board must have formal prior recognition of the State/U.T. Govt. Its application either should be forwarded by the State Govt. or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the C.B.S.E. Condition of submitting a No Objection Certificate will not be applicable to the categories 3.1 (i) to (iv).

It will be of advantage to recapitulate that so far as the CBSE Constitution does not contemplate or prescribe that private unaided schools should obtain the concurrence of the State concerned, whereas this compliance is necessary in respect of those Institutions which are receiving regular maintenance and/or grant-in-aid from a State Government. The Bye-laws do not respect this distinction and on the contrary declare that unless the concurrence/approval of the State Government does not accompany the affiliation application it will not

even be processed. The Bye-laws are thus palpably not in consonance with the CBSE Constitution.

4. Mr. Bansal, learned counsel appearing for the Respondent has justifiably not pressed the preliminary objection pertaining to the maintainability of the present Writ Petition. There can be no gainsaying that the CBSE fulfills a public function of great public importance and is, Therefore, amenable to the Writ jurisdiction of High Courts. He has, however, pressed the objection that the State of U.P. ought to have been impleaded as a Respondent since it is the Petitioner's case that it had applied for the grant of a No Objection Certificate to that State but till date it has not been disposed of. So far as this objection is concerned it has been contended, and with merit, that since the Petitioner need not apply to the State for the grant of a No-Objection Certificate the concerned State is not a necessary party. The Petitioner falls within the purview of the phrase 'private, unaided School' and Therefore, it does not mandatorily have to obtain any such certification from the State concerned as a pre-requisite for the processing of its application for affiliation.

5. So far as the cause of action is concerned, it has been contended on behalf of the Petitioner, also on merits, that Bye-law 3 extracted above precludes the Respondent from considering its application for affiliation and this Bye-law is ultra virus the CBSE Constitution. Reliance has also been placed on the letter of the Controlling Authority to the CBSE to the effect that in the event that a response is not received from the State Government within three months, the Board should taken a decision on the case in an impartial manner. It is no doubt true that in the absence of the impleadment of the State concerned, the veracity of the asseveration made by the Petitioner pertaining to its having applied for the grant of No Objection Certificate from the State of U.P. on 30.10.2002 cannot be affirmatively decided. However, since the Petitioner have laid siege on the legality of the Bye-laws mandating this precondition, these Objections are over-ruled. The neat question is whether institution such as Petitioner No. 1 which are private and unaided Schools, should at all be required to apply for a No-Objection from the State Government concerned.

6. So far as Regulations or Bye-laws viz a viz a Statute are concerned it is firmly entrenched in our jurisprudence that a delegatee would exceed the jurisdiction and the powers vested in it if it were to go beyond the provisions of the Statute which has created it. There is abundance of precedents on this issue including Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., and State of Karnataka and Another Vs. H. Ganesh Kamath and Others, cited by learned counselor the Petitioner. In Kamath the law has been succinctly stated in this manner -

"The conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto."

There is every reason to apply these principles even to the interplay between the CBSE Constitution and the Regulations and Bye-laws framed under its umbrella. In *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*, the Supreme Court went to the extent of holding that "notwithstanding the subordinate legislation being laid on the Table of the House of Parliament or the State Legislature and being subject to such modification, annulment, or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule making power provided in the statute". In *A.N. Parasuraman Etc. Vs. State of Tamil Nadu*, in the context of the sundry provisions of the Tamil Nadu Private Educational Institutions (Regulation) Act, 1966 it had been contended that since no guidelines had been laid down for the exercise of the power to recognise private institutions, it vested unrestricted and unguided discretion on the Authority. It was opined that -

"5. The point dealing with legislative delegation has been considered in numerous cases of this court, and it is not necessary to discuss this aspect at length. It is well established that determination of legislative policy and formulation of rule of conduct are essential legislative functions which cannot be delegated. What is permissible is to leave to the delegated authority the task of implementing the object of the Act after the legislature lays down adequate guidelines for the exercise of power. When examined in this light the impugned provisions miserably fail to come to the required standard.

6. The purpose of the Act is said to regulate the private educational institutions but does not give any idea as to the manner in which the control over the institutions can be exercised. The Preamble which describes the Act "for regulation" is not helpful at all. Learned counsel for the State said that the Object and the Reasons for the Act are to eradicate corrupt practices in private educational institutions. The expression "private educational institution" has been defined as meaning any college, school or other institution "established and run with the object of preparing, training or guiding its students for any certificate, degree or diploma", and it can, Therefore, be readily inferred that the purpose of the Act is to see that sch institutions do not exploit the students; and while they impart training and guidance to the students of a standard which may effectively improve their knowledge so as to do well at the examination, they do not charge exorbitantly for their services. But the question is as to how this objective can be achieved. Section 6 which empowers the competent authority to grant or refuse to grant the permission for establishing and running an institution, does not give any idea as to the conditions which it has to fulfill before it can apply for permission under the Act, not are the tests indicated for refusing permission or cancelling u/s 7 of an already granted permission. The authority concerned has been left with unrestricted and discretion which renders the provisions unfair and discriminatory".

7. The Constitution of the CBSE requires the concurrence of the State Government concerned if in those cases where an Institution receiving `regular

maintenance or grant-in-aid from a State" applies for affiliation to the CBSE. There is sufficient reason for this stipulation since the State which is disbursing grant-in-aid to an Institution must retain the power to decide inter alias whether such Institutions should prepare the students for appearing for examinations conducted by the State itself or jointly by the State Education Boards as well as Central Board such as the CBSE. Equally, Institutions which do not take aid from the State must have the freedom to choose whether they will prepare its students to appear in a Central or State Board examinations. If Central Boards are increasingly preferred over State Board, one of the consequences would be that High Courts throughout the country would not be burdened with several Writ Petitions dealing with the grant of equivalence of educational qualifications. It is widely experienced that one State does not automatically grant recognition to educational qualifications obtained from another State and educational standard vary drastically. The most effective solution is to be found in students appearing in one of the Central Board examinations such as conducted by the CBSE. The difficulties and problems that are endemic in varying and deferring standards of State Education Boards would automatically be obviated.

8. In this analysis, Therefore, the CBSE is adopting a retrograde practice and stand in insisting that State clearances should be taken even by School which are private and unaided. In the present times, control and interference of the State is consciously being minimised. It would be a progressive step if educational institutions maintain themselves and regulate their affairs without drawing upon the State funds for which there invariably are many other suppliants. Where the parents of students are unable to afford the fees of private institutions, State schools should be available, as they presently are. No further regulation of education is called for. It is this ethos which has been expressed in the Constitution of the CBSE itself. All institutions which fall in the category of being private and unaided need not Therefore obtain the concurrence and prior approval of a State Government for applying for affiliation to the CBSE. This is also what the Constitution of the CBSE itself envisages. The Bye-laws of the CBSE which require the concurrence and/or approval of the State Government are clearly ultra vires, and are, Therefore, struck down. Private institution which obtain affiliation to the CBSE or any other Central Board need not have any Connection with the State in which it is located, apart from it following and adhering to local laws including labour legislation.

9. The Writ Petitions are allowed. The CBSE shall consider, process and decide the application of a private and unaided educational institution without insistence on the concurrence of the State Government where the schools is territorially located. It is not in dispute that the CBSE has the infrastructure to carry out inspections with a view to ensuring the maintenance of criteria established by CBSE for educational excellence. If it finds, after due inspection, that any private and unaided institution/School which applies for its affiliation meets with the educational criteria established by the CBSE, it should grant affiliation to it.

10. The Writ Petitions stand disposed of accordingly.