



\$~61

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 12194/2023
ACTION COMMITTEE UNAIDED RECOGNIZED PRIVATE
SCHOOLS Petitioner

Through: Mr. Kamal Gupta with Mr. Sparsh
Aggarwal, Mr. Manish Vashisht and
Ms. Kriti Gupta, Advocates.

versus

CENTRAL BOARD OF SECONDARY EDUCATION
..... Respondent

Through: Ms. Manisha Singh, Advocate with
Mr. Arvind Kumar, Dy. Secretary
(Legal) of the respondent/CBSE.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **15.09.2023**

CM APPL. 47886/2023

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

W.P.(C) 12194/2023 and CM APPL. 47885/2023

By way of the present petition filed under Article 226 of the Constitution of India, the petitioner, which is a society comprising around 700 private unaided schools, impugns Appendix V of the CBSE Affiliation Byelaws 2018 read with Byelaw 4.8; and quashing of various circulars, including Circulars dated 22.02.2023, 24.03.2023, 24.07.2023, 02.08.2023, 17.08.2023 and 11.09.2023; as well as the provision at Serial No. 14 in Appendix I of the CBSE Byelaws, on various grounds as detailed in the petition.



2. It is contended that the impugned byelaws, circulars and the fee sought to be imposed by the CBSE are contrary to the provisions of the Delhi School Education Act, 1973 ('DSEA'), the Delhi School Education Rules, 1973 ('DSER') as also to the provisions of the Right of Children to Free and Compulsory Education Act 2009, apart from being illegal and unconstitutional.
3. At the outset, learned counsel appearing for the CBSE as well as the Action Committee Unaided Recognized Private Schools are informed, that while in practice, the undersigned had appeared for the petitioner in certain earlier school related matters. Learned counsel appearing for the parties submit that they have no objection to the undersigned taking-up and deciding this matter. Let requisite affidavits to that effect be filed by both parties in that behalf, before the next date.
4. Mr. Kamal Gupta, learned counsel appearing for the petitioner has made submissions on issuance of notice.
5. On a *prima-facie* view of the matter, issue notice.
6. Ms. Manisha Singh, learned counsel for the respondent appears on advance copy; accepts notice; and seeks time to file counter-affidavit.
7. Ms. Singh has also been heard on her preliminary objections, including as to the maintainability of the present petition before this court, and on the mandate of the DSEA which makes the CBSE Affiliation Byelaws binding, to be followed by all member schools of the petitioner society.



8. Let counter-affidavit be filed within 06 weeks; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
9. In the course of hearing Mr. Gupta submits, that by reason of what they consider to be illegal and unconstitutional restrictions as to the number of sections that a school can have proportionate to the land area on which it is situate; as also the number of students per section permissible in a school, the students attending Classes IX and XI of the school are being unable to enrol for the Board Examinations to be conducted by the CBSE in the ensuing years.
10. Mr. Gupta submits that the consequences of applying the impugned byelaws and circulars would be that *some* of the students attending classes IX and XI *will be unable to enrol for the Board Examinations*, which would seriously prejudice their future educational careers.
11. Mr. Gupta argues that, in particular, on point of parity, the CBSE does not implement and enforce the impugned byelaws and circulars on government and aided schools in Delhi; but does so only on private, unaided schools.
12. Mr. Gupta expresses urgency in the matter, submitting that the deadline for the schools to submit their list of candidates for Class X and XII examinations to be conducted in 2024 is Monday *i.e.* 18.09.2023.
13. After some consideration of the matter, and with inputs from Mr.Arvind Kumar, Dy. Secretary (Legal) CBSE who is present in court, and by consent of learned counsel for the parties, in order *only to protect the interests of students* who would be looking to enrol for



Class X and XII exams to be conducted by the CBSE in 2024, the following interim arrangement is put in place :

- 13.1. The CBSE will accept the list of candidates forwarded by the schools to it *without reference to the impugned byelaws and circulars* for purposes of the examinations to be conducted for Class X and Class XII in 2024; and
- 13.2. No other action to the *prejudice of the students* in enrolling for those examinations shall be taken or enforced by the CBSE pursuant to, or in implementation of, the impugned byelaws and circulars that are subject matter of the present proceedings.
14. Needless to add that the aforesaid arrangement has been put in place only to protect the interests of the students; and is without prejudice to the rights and contentions of either of the parties, which are kept open.
15. Re-notify on 17th January 2024.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 15, 2023

ds