

(2006) 05 SHI CK 0005
High Court of Himachal Pradesh
Case No: C.W.P. No. 92 of 2006

Divya Jyoti Educational
Society and Another

APPELLANT

Vs

Himachal Pradesh
Board of School
Education and
Another

RESPONDENT

Date of Decision: May 25, 2006

Citation: (2006) 2 ShimLC 220

Hon'ble Judges: Deepak Gupta, J

Bench: Single Bench

Advocate: Archana Dutt, for the Appellant; Lovneesh Kanwar, for the Respondent

Judgement

Deepak Gupta, J.

This case brings out the deplorable state of affairs in the State of Himachal Pradesh with regard to the manner in which schools are being run and affiliation granted to them.

2. The facts necessary for decision of the case are that the petitioner No. 1 Society is running a school under the name and style of Divya Jyoti Senior Secondary School at Sanouran Chowk, Gaggal, Tehsil and District Kangra, H.P. This school is affiliated to the respondent No. 1 H.P. Board of School Education. The respondent No. 1 has framed regulations regulating the affiliation of educational institutions affiliated to the Board. These regulations are called the H.P. Board of School Education Affiliation Regulations, 1992.

3. According to the petitioners they had applied to the Board for affiliation of classes 10th, 10+1 and 10+2 for the academic session 2004-2005. The respondent Board granted provisional affiliation to the petitioners for the session 2004-2005 vide order dated 18.1.2005 for 10+1 and 10+2 for Science, Arts and Commerce subjects. According to the petitioners thereafter the affiliation was also granted for 10th class

vide undated letter copy of which is attached as Annexure PB. The petitioners further submit that for the Session 2005-2006 they submitted an application for renewal on 20.5.2005 alongwith requisite fees. According to the petitioners they received no reply to the said letter and they presumed that affiliation would be granted in view of the previous affiliation granted to the school for the academic session 2004-2005. However, on 28.10.2005 the petitioners received a communication dated 31.8.2005 whereby the respondent No. 1 raised various objections for the grant of affiliation. According to the petitioners immediately after the receipt of the communication dated 24.10.2005 the school removed all the objections and sent a communication Annexure PE to the respondent No. 2 who is the Chairman of the respondent No. 1 Board. It would be pertinent to mention that this letter is also undated and there is no averment in the petition as to when this letter was sent. However, it appears that the same was received by the Board on 2.11.2005. According to the petitioners since no reply was received to their earlier communication they sent another letter Annexure PF which is also undated. Thereafter, on 7th January, 2006 the respondent Board granted affiliation to the petitioners only for students of classes 10+1 and 10+2 and that too of the science stream only. The order passed by the Chairman of the Board reads as follows: Since the school Management played a fraud last year by adding class 10th with +1 and +2. Secondly, the Management produced a false certificate to get the Examination Centre created. In the annual year the Management sent the case for affiliation without completing the codal formalities with the recommendation of the Committee the case was rejected. But keeping in view the career of the students particularly Science students affiliation is accorded only for +1 and +2 Sc. students for the current session i.e. 2005-06 only.

4. Thereafter, the petitioner Society filed the present writ petition before this Court on 19th January, 2006. The main reliefs claimed in the petition were that the action of the Board in not granting affiliation to the other classes is illegal and that the Board be directed to grant affiliation to the petitioner No. 2 School from classes 6th to 12th for science, arts and commerce streams for the academic session 2005-2006 and that the Board be directed to permit the students studying in the petitioner No. 2 school in 8th, 10th, 10+1 and 10+2 classes to appear in the annual examinations being conducted by the respondent Board in February and March, 2006. Other ancillary reliefs were also prayed for.

5. Alongwith this petition an application for interim relief was filed in which it was prayed that the Board be directed to issue examination forms/roll numbers to the students pursuing their studies in 8th, 10th, 11th and 12th classes in Science, commerce and arts streams in petitioner No. 2 school. This matter was taken up by this Court during vacations and after hearing both the sides a detailed order was passed on 31st January, 2006. The relevant directions contained in the said order are as follows:

(i) that the respondent-Board shall grant provisional affiliation to the petitioner No. 2-School for the year 2005-2006 for all students in the Science stream in class 10th as mentioned in the list of students filed by the petitioner No. 2-School with its original application on 20th May, 2005. In this list the names of 49 students find mention as students of class 10.

(ii) The respondent-Board is also directed to grant affiliation to the school for the year 2005-2006 for students of Class 10, 10+1 and 10+2 in the Arts stream only for the purpose of those students in the Arts stream who have taken Information Technology as a subject and whose names find mention in the list of students of classes 10th, 10+1 and 10+2 as supplied on 20th May, 2005.

(iii) The other students of the Arts stream or Commerce stream who do not have to appear in any practical examination shall be permitted by the Board to appear as private students.

(iv) The petitioner No. 1-Society is directed to supply the list of students studying in Arts and Information Technology alongwith their attendance register in the subject with the name of the teacher teaching the subject to the Board within three days from today and in case this information is not supplied within three days to the Board, the Board need not comply with the earlier part of the order.

(v) The petitioner No. 1-Society is directed not to grant any further admission to classes 10th, 10+1 or 10+2 for the next session i.e. 2006-2007 till it obtains provisional admission from the respondent-Board.

(vi) The petitioner No. 2-School shall not be declared a center for the examination and its students shall appear in the examination in one of the nearby schools, keeping in view the convenience of the students.

6. By this order the petitioners were directed to supply the requisite information to the Board within 3 days. The petitioner No. 1 submitted the requisite information on the 4th day but the Board refused to entertain this information. Therefore, the petitioners filed CMP No. 202 of 2006 which was allowed and the order was modified and it was directed that the information be supplied to the Board by the petitioner No. 1 Society by 14th February, 2006 upto 4 p.m. In this application no other relief had been prayed for. On 15.2.2006 the petitioners moved another application in which they prayed that the Board may also be directed to accept the candidatures of students of 10th, 11th and 12th who had been admitted after 20.5.2005 since admissions had been carried on upto 15th July, 2005. They also prayed that the Board be directed to accept the examination forms of the candidates appearing in 8th classes as per list Annexure A-6. By interim order dated 17.2.2006 this application was also allowed by the learned Vacations Judge. It would be pertinent to mention that the orders dated 10.2.2006 and 17.2.2006 were passed ex-parte without notice to the respondents.

7. Thereafter, the matter was admitted and was ordered to be heard. Detailed reply was filed by the respondents 1 and 2. According to the respondents, the petitioner Society had in the previous year been granted affiliation only for 10+1 and 10+2 classes but the petitioners in connivance with some employee of the Board had later got a letter issued showing that the affiliation was for 10th also without any order from the competent authority. However, the Board came to know about this fact at a later stage and therefore students of 10th class for session 2004-2005 were allowed to appear as regular students. Therefore, the request of the petitioner school for affiliation was rejected but keeping in view the interest of the science candidates who could not appear as a private candidate the affiliation was granted only for science stream students. According to the Board the original application for affiliation dated 20th May, 2005 was rejected by the Board vide letter dated 31.8.2005. Thereafter, a representative of the petitioner school visited the Board office in October, 2005 and was informed about the fact that affiliation has been rejected vide letter dated 31.8.2005. The said official of the petitioner claimed that the petitioners had not received the letter and therefore the letter was again dispatched on 24.10.2005. According to the Board thereafter nothing was heard from the petitioner Society till the application for review was filed in which affiliation was granted for +1 and +2 classes for science stream only. The Board claimed that the stand of the petitioners that they came to know about the rejection in the end of October, 2005 is false since the documents filed by the petitioners clearly reveal that it had tried to meet all the objections raised by the Board in the first week of September, 2005 itself. The stand of the Board is that on 31.1.2006 while passing the order this Court had specifically ordered that only those students would be granted roll numbers who had been admitted upto 20th May, 2005 and whose names were reflected in the first letter for grant of affiliation sent by the petitioners to the Board. Thereafter, the petitioners fabricated and forged fresh documents and obtained the orders on 10.2.2006 and 17.2.2006 by giving false information.

8. According to the Board a number of discrepancies were found in the records of the school. The number of candidates admitted by the petitioner school as per the admission and withdrawal register does not tally with the number of forms submitted for 10th, 10+1 and 10+2. The area of the school was also not sufficient to hold all the classes. Various other objections were also raised.

9. Since there was a very contentious dispute with regard to the fact whether the petitioners had fabricated documents to obtain orders from this Court, this Court on 9.3.2006 hard directed both the petitioners and the respondents to produce the entire records relating to the school. The case was then adjourned to 13.3.2006. On 13.3.2006 while going through the record this Court prima facie felt that the records with regard to the number of students and the dates on which the students were admitted were not correct and they appeared to be fabricated. This Court, therefore, directed that the statements of Sh. Suresh Kumar one of the members of the petitioner Society and Sh. Amit Sharma, Principal of the school who were present on

the said date be recorded. Since it was not possible to record the statements with regard to each and every class and all the students separately, this Court randomly took up the admissions for class 10+1 (Arts).

10. The Principal of the School stated that classes for 10+1 (Arts) were started in April and all admissions were completed by May, 2005. Various subjects are available for study in class 10+1. English is a compulsory subject and a student has to choose four out of the other subjects available. The Principal stated that the dimensions and number of classes in the school were as per the plan Annexure PD filed with the original writ petition. He admitted that the dimensions of the hall are 5.79 mts. x 4.87 mts. roughly 18 ft. x 15 ft. The total area of the hall works out to 28.19 sq.mts. or 270 sq.ft. In answer to a Court Question he stated that the English class, which all 120 students had to attend, was held in the main school hall and other classes were held in two separate class rooms. He stated that the hall has benches and desks for the students. This witness was unable to explain how 120 students could be adjusted alongwith desks and benches in a room measuring just 18 ft. x 15 ft. He further stated that out of the 120 students in class 10+1, 90 had taken political science as a subject, 80 had taken history and 120 had opted for Information Technology. According to him information technology classes were also held in the hall. The witness was shown the original admission and withdrawal register of the school which was produced by the Board and admitted the same to be correct. He admitted that out of the 120 students who had originally joined 10+1 in the arts stream, the names of 35 students had been struck off. Towards the end of the year only 85 students remained in class 10+1. The witness was asked to explain that how in pursuance to the orders passed by this Court on 14th February, 2006 the school submitted a list of 120 students as being students of class 10+1 in the subject of information technology whereas the names of 35 students had already been struck off. In reply thereto the witness stated that he could not answer this question since the date of withdrawal of students is not mentioned in the register and no date is given as to when the name of the students was struck off. On the asking of the witness the attendance register was shown to him. The names of the 35 students whose names had been struck off even in the attendance register prior to 14.2.2006 were submitted by the school to the Board. Then the witness changed his stance and stated that since the last date of admission was 15th July, 2005, therefore, the names of all the students on the rolls on 15th July, 2005 were given.

11. From the statement of this witness it is also clear that the school was not maintaining any proper records with regard to the receipt of school fees as well as the manner in which the funds were spent by the school. A perusal of the receipt books for 10+1 (Arts) from April to September, 2005 reveals a most startling fact. It was noticed that from April to September the fees for all the months had been paid in the same order as the sequence in which the names of the students were entered in the admission and withdrawal register. This was most unusual. Fees for each

month could he paid upto the 10th of the month and it was most unnatural that all the students would pay the fees in the same order for a period of six months from April to September. This created a doubt with regard to the authenticity of the receipt books. Even the name of one person Vineet whose name did not find mention in the admission and withdrawal register but was entered wrongly in the first receipt book for the months of April and May continued to appear in the other receipt books also. The principal was asked as to how this has happened but he expressed his inability to explain this. When asked further questions as to how the accounts are maintained, the principal stated that this must be known to the Management. It was also revealed that though the school had a bank account, this bank account had not been operated from 30.12.2004. The money collected as fees was not being deposited in the bank accounts.

12. Thereafter, Suresh Kumar, member of the petitioner No. 1 Society who had filed the writ petition and filed an affidavit in support thereof was examined. His statement was to the similar effect and he also could not explain as to how 120 students could be accommodated in a hall having area of only 28.19 sq.mts. or 270 sq.ft. His version was contradictory to that of the principal. Whereas the principal had stated that in the hall there were benches and desks for the students, this witness stated that the students used to sit on the floor. Whereas the principal had stated that all the classes are held in the class rooms only and not in the play ground, this witness stated that the classes were also being taken in the play-ground. It is obvious that one of them is telling a lie. This witness when asked further questions feigned ignorance about a number of matters and stated that the day to day functioning of the school was being looked after by Sh. M.L. Dogra. He also did not produce the accounts of the school since according to him these were with the Chartered Accountant. Therefore, the school was directed to produce Sh. M.L. Dogra, the Manager of the petitioner No. 1 Society and the Accounts Clerk. The Accounts Clerk was not produced on the ground that the Accounts Clerk had left the service of the school.

13. Sh. M.L. Dogra appeared on 17.4.2006. In the meanwhile the school was also directed to produce the audited accounts. The audited accounts did not tally with the receipt books previously produced by the school. According to Sh. Dogra fees from each student was collected by the class teacher and the class teacher issues the receipts to the students and thereafter the amount is deposited with the accounts clerk who in turn gave the amount collected as fees to the Manager or the Managing Committee and then the amount was spent. This witness stated that different receipt books are given to different class teachers but that each class teacher at one given time would have only one receipt book. Attention of the witness was drawn to the audited accounts showing entries made on 7.5.2005 in which there is entry for receipt of fees against receipts bearing serial numbers 1749 to 1774. Though in the audited accounts the entry is of 7.5.2005 the receipts are shown to have been issued on 7th and 8th May, 2005. The witness was asked to

explain how a receipt issued on 8th May, 2005 was entered on 7th May, 2005. He was unable to give any answer and stated that the accountant might have made some mistake. Thereafter, the attention of this witness was drawn to various other entries relating to receipt Nos. 1501 to 1519. Though these receipts are purported to have been issued in October, 2005 in the audited accounts they were entered in April, 2005. The witness was unable to explain how this had happened. There are many other instances where the audited accounts do not tally with the receipt books and both do not tally with the admission and withdrawal register.

14. From a perusal of the aforesaid statements of the officials of the School and the record produced by the school and the Board it is apparent that the petitioners have fabricated documents after the filing of the writ petition to obtain favourable orders from this Court. The discrepancies are more than apparent from the statement of the officials of the school. It is apparent that the number of students have been inflated at a later stage to take advantage of the orders passed by this Court. The dates of admission have been forged with the intention of proving that all the students were admitted in May, 2005 itself. The admission and withdrawal register with regard to 10+1 (Arts) reveal startling facts.

15. The result of class 10 was declared by the Board on 25th May, 2005. The result of Class 10+1 was declared on 31st May, 2005. All admissions have admittedly been made in class 10+1 and 10+2 prior to 25th May, 2005. A number of students admitted to class 10 are those who had failed in a previous attempt. How could the students have known whether they were to pass or fail? It may be accepted that a student who is appearing in class 10 may be provisionally admitted in class 10+1. However no student would be expected to again take admission in class 10 prior to 25th May, 2005 itself. Similarly the result of class 10+1 was declared only on 30 May, 2005, Admissions to class 10+2 as well as 10+1 were all completed on 25th May, 2005 before the declaration of result. Surprisingly in both cases no admission has been made after the declaration of the result(s). This clearly shows that the records maintained by the petitioners are incorrect and have been fabricated at a later stage.

16. The admission forms were called for and a perusal of these forms show that none of them bears any date. The admission forms are in most cases incomplete.

17. Another surprising aspect is that the admission forms of those students whose names have been struck off are not available. If the admission forms had been properly maintained then even the admission forms of those students whose names have been struck off would have been available on the record of the school. It is apparent that these admission forms have been filled in later on and therefore the admission forms of those students whose names have been struck off were not available and could not be produced in Court.

18. As per the record produced 129 students were admitted in class 10. All of them were admitted on or before 25th May, 2005. The results of class 10 were declared on 25th May itself. About 50 forms relate to candidates who had failed. How could these failed candidates have been admitted even prior to declaration of result. The situation is even more startling with regard to the 10+1 class. The total number of students shown is 122. The names of three students Yugal Kumari, Anup Lal, Aman Kumar are not entered in the admission and withdrawal register. All the admissions have been made between 8th April, 2005 and 24th May, 2005. The names of 31 students have been struck off. That leaves 88 students in all. Out of these 88 students as many as 23 candidates failed in 10+1 examination of the previous year result whereof was declared on 30th May, 2006. How could these persons who had already appeared in 10+1 examination be readmitted in the class of 10+1 even before their results were declared? There are many other discrepancies in the admission forms. In a number of cases where the children had studied earlier in some other school either the school leaving certificate is not attached to the admission form or the school leaving certificate bears a date later to 25.5.2005. In some cases the school leaving certificates are of October and November, 2005. All these facts show that the admission and withdrawal register and other documents/record produced before the Court are totally fabricated.

19. It is further apparent from the record that the school was inspected by a team of the Board on 27th June, 2005. In the list supplied on 20th May, 2005 only 49 students were shown to be studying in class 10. When the inspection took place on 27th June, 2006, 60 students out of 67 were stated to be present. As per the admission register 109 students had been admitted by May, 2005 and out of these 29 had been struck off and 80 students remained in the class. Similarly for class 11th when the inspection was made on 27th June, 2005, 49 students were present out of 54 stated to be studying in class 11th. But as per the admission and withdrawal register there were 120 students. The list of students originally supplied on 20th May, 2005 does not tally with the admission and withdrawal register. It is thus apparent that the petitioner Society has manufactured some record with regard to the number of students and the dates on which they were admitted. The petitioners are guilty of trying to mislead this Court by filing false and fabricated documents. Therefore, the petitioners are not entitled to any relief from this Court and the petition is bound to be dismissed.

20. However, while dismissing the writ petition this Court cannot lose sight of the fact that the persons who are going to be directly affected by the dismissal of the writ petition are the students. They are innocent and have played no part in the fraud committed by the School. Therefore, keeping in view the interest of the students while dismissing the writ petition it is ordered that regardless of the affiliation earlier granted for science stream students only, all the students of 10+2 from all streams who appeared in examinations shall be treated as regular students and the Board shall grant affiliation to the school for this limited purpose for 10+2

class for arts and commerce stream also. All the students of classes 8th, 10th and arts and commerce students of 10+1 shall be treated to be private candidates. The petitioners are directed to deposit the difference of fees between the regular candidates and private candidates with the respondent Board within one week from today. The Board shall declare the result of the students of the petitioner No. 2 school forthwith.

21. The petitioners are burdened with exemplary costs of Rs. 50,000 since they have tried to mislead this Court by forging false documents. These costs shall be paid to the H.P. Advocates Welfare Fund within two weeks from today. In case the costs are deposited the dismissal of this petition shall not disentitle the petitioners from seeking affiliation for the academic year 2006-2007 and the Board shall decide the said application for affiliation, if submitted, strictly on its own merit and totally uninfluenced by the aforesaid findings.

22. Before parting with the case I feel that some directions need to be issued for guidance in future keeping in view the facts which have emerged from the present case. As per the present practice the schools are started and students admitted even when the school does not have any affiliation whatsoever. The schools continue to grant admission regardless of the last date of admission. No proper registers with regard to attendance are maintained. Even the Board has not acted with promptitude in dealing with the application for affiliation. The Board should ensure that the career of the students is not put in jeopardy by improper and illegal acts of the school authorities and the inaction of the Board.

23. Further as has been revealed in the present case even without proper infra-structure being there a large number of students are admitted. In the present case 120 students were admitted to 10+1 class. It is claimed that all these students were attending English and Information Technology classes in a hall having area of 28.19 sq.mts or 270 sq.feet. There is no way that 120 students can be accommodated in a room of such dimensions. As per the affiliation Regulations in a class room there must be 0.5 sq.mts. space for each student. That would mean that at the most 56 or 57 students could have been taught in a room of this size, instead 120 students were herded like cattle to study in the class.

24. The facts also reveal that the school was being run like a private fiefdom. The money collected as fees was never deposited in the bank. All payments were made in cash and even the salary paid in cash. No proper accounts were maintained or produced before this Court. Despite orders of this Court only the audited accounts have been produced but the cash book, ledgers etc. were not produced. Keeping all these factors in view I feel that it would be appropriate to direct the respondent No. 1 Board to amend its affiliation Regulations in an appropriate manner in the light of the following directions:

(1) That for the academic session 2007-2008 commencing in April, 2007 and thereafter all applications for affiliation by schools should be invited by the Board by issuing advertisements in the month of November of the year previous to the academic year for which affiliation is sought in leading newspapers being widely circulated in Himachal Pradesh (three English and three Hindi) requiring that the applications for affiliation should be submitted to the Board by 31st December of the year prior to the year for which affiliation is sought that is to say that for the academic year 2007-2008 the applications for affiliation should be submitted to the Board by 31st December, 2006 and no application for affiliation should be entertained thereafter under any circumstances.

(2) The Board may fix reasonable fees for the purpose of affiliation to meet the expenses of the inspection of the school. Alongwith the application for affiliation the school shall be required to submit detailed plans of the existing structures and facilities available with the school and also the names and qualifications of the staff proposed to be engaged in the school alongwith the consent letters of such persons and any other documents which the Board may prescribe.

(3) The Board shall constitute one or more inspection teams to visit the schools. The Board may also consider associating the officers of the Education Department in the inspection team. These inspection teams shall visit the schools within one month of the submission of the application for affiliation so that the last such report is received in the Board by 31st January of the year for which the affiliation is sought.

(4) The Board shall convey the objections, if any, raised by the inspection team(s) to the school(s) by registered post and courier within 15 days thereafter i.e. latest by 15th February of the year for which the affiliation is sought.

(5) The School(s) may remove the objections and submit the applications after removal of objections by 28th February of the year. The Board shall then ensure that the orders on the application for affiliation are passed on or before 31st March of the year for which the affiliation is sought.

(6) No school shall be permitted to admit any students unless it is affiliated to any one of the recognized Boards i.e. CBSE, ICSE or the H.P. Board of School Education, etc.

(7) The Board while granting the affiliation shall specifically state that affiliation is granted for particular classes and for particular streams especially for classes 10+1 and 10+2. The Board shall, keeping in view the facilities available (including laboratory facilities) in the school, specify the maximum number of students who should be admitted to a particular class or subject or stream.

(8) The school granted affiliation shall depict the affiliation number on its official stationery and a copy of the affiliation letter shall be conspicuously displayed on the notice board of the school. This certificate/document should reflect not only the

affiliation granted, it should clearly state that the affiliation is granted for particular classes and streams. This document shall also clearly mention the maximum number of students that can be admitted in each class and in each subject.

(9) The Board shall also ensure that the list of students class-wise and subject-wise and stream-wise is submitted to the Board by the school by 31st May of the concerned year. This shall be the last date of admission and no admission shall be normally granted thereafter. With late fees, in special cases, admission may be granted upto 30th June, 2006.

(10) There shall be a rule directing that the schools should within 15 days of the withdrawal of a student or the striking off his name from the rolls of the school shall inform the Board about the same alongwith complete details such as parentage, date of birth, residence address etc. The vacant seat so created can be filled in by transfer etc. upto 31st July, 2006.

(11) There can be exceptional cases where in view of the transfer of the parents etc. the student may be required to be admitted in a school at a different place even after 31st July. In such cases the school may provisionally admit the student but it shall within 15 days of such admission submit the reasons for late admission alongwith the entire case to the Board and the admission shall be subject to the final decision of the Board.

(12) The affiliation should be granted only after all the facilities such as buildings, laboratories, class rooms are complete and not prior to completion of the facilities.

(13) The school should within 15 days of the commencement of the academic year send complete information to the Board with regard to the staff which has actually been recruited, names of the staff alongwith qualifications, photographs etc. In case any teacher resigns or his services are terminated, within 15 days thereof the school shall inform the Board of such fact and shall also inform the Board of the fresh teacher appointed in his/her place.

(14) The Board should also frame a rule that in all schools affiliated with the Board all monetary transactions over a particular sum whether on account of receipt or on account of expenditure shall be made by cheques only. The Board should also insist that proper day to day account should be maintained and the cash in hand of each day should be deposited in the bank the same day or the next day. No Society should be permitted to mis-utilize the funds or retain the funds itself.

(15) Keeping in view the tendency of the private schools to encourage copying the Board may issue directions that the private schools shall not be declared as Centres of examination for their own schools.

(16) These directions are not meant to be comprehensive and are in the nature of guidelines and the Board may evolve further rules and other methods to ensure that proper schools and not teaching shops are run in the State of Himachal

Pradesh.

25. With the aforesaid directions the writ petition is disposed of with costs as aforesaid. All the misc. applications shall also stand disposed of.