

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21-09-2021
Delivered on	08-10-2021

CORAM

The Hon'ble Mrs. Justice Pushpa Sathyanarayana
and
The Hon'ble Mr. Justice Krishnan Ramasamy

W.A. Nos.2143, 2145, 2147 of 2021
and C.M.P.Nos.13547, 13549, 13550,
13552, 13560 & 13561 of 2021 and
C.M.P.Nos.14770 and 14772 of 2021 in
W.A.S.R.No.76292, 76291 of 2021

SRK International CBSE School
(Affiliated to CBSE)
Rep. by its Correspondent
Aayeept Main Road, Keezhur,
Neyveli, Cuddalore District ~ 607 302.

... Appellants
in all Writ Appeals

versus

1.The Central Board of Secondary Education,
Rep. by its Secretary,
Shiksha Kendra 2, Community Centre,
Preet Vihar,
Delhi -110 092.

2.The Regional Officer,
Chennai Central Board of Secondary Education,
New No. 3 Old No. 1630, A J Block,16th Main Road,
Anna Nagar West,
Chennai-600 040.

3.The Assistant Secretary,
New No.3 Old No. 1630, J Block, 16th Main Road,
Anna Nagar West,
Chennai -600 040.

...Respondents
in all Writ Appeals

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 10.08.2021 passed in W.P.Nos.4774, 12162 and 16772 of 2021 respectively.

For Appellants : Mr.P.Wilson, SC for
M/s.Richardson Wilson
For Respondents : Mr.G.Nagarajan

COMMON JUDGMENT

Krishnan Ramasamy, J.,

These Writ Appeals arise out of a common order passed by a learned single Judge of this Court, dated 10.08.2021 passed in W.P.Nos.4774, 12162 and 16772 of 2021 respectively.

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2. Since the issues involved in all these Writ Appeals as well as the facts are common, these Writ Appeals are taken up together and being disposed of vide this common judgment.

3. The brief facts, which are necessary for disposal of the present Writ Appeals, can be stated as under:

4. SRK International CBSE School, the appellant herein was established in the year 2015 in Neyveli, Cuddalore District. The appellant school is affiliated with Central Board of Secondary Education (in short, "CBSE"). The school applied for CBSE affiliation for Class XI and XII from the academic year 2019-2020. The affiliation was granted by CBSE/1st respondent through proceedings dated 09.01.2020 whereby, they allowed the school to admit the students for Class XI and XII to appear for the Board examination conducted during March 2021. The appellant applied for the affiliation on 11.04.2018, but the same was given by the CBSE on 09.01.2020 after a lapse of 1 year and 8 months. Therefore, the appellant was not able to admit students for Class XI for the academic year 2019-20 and in the meantime, the pandemic had started in the middle of March 2020. Therefore, all the schools in the state of Tamil Nadu have been closed.

5. Under these circumstances, 27 students who studied Class XI in Jayapriya Vidyalaya, Virudhachalam, approached the appellant school for admission. All these students have been residing in and around Nevyeli. However, they got admission in the school at Virudhachalam, thereby they have to travel more than 40 kms in one way and 80 kms on both ways from their homes to the school. When the pandemic was in peak, the parents have decided to get TCs of their wards in the month of June in the interest of the their wards and they have approached the appellant school and they have also admitted them directly to the Class XI in the month of September 2020 since as on the said date, i.e. 28.08.2020, the affiliation was granted by the CBSE to conduct Classes for Class XII. The parents have also given the consent letters for admission of their wards.

6. After the admission of the above students, the appellant school has applied for migration of students to the CBSE on 03.09.2020. However, the same was rejected on 30.11.2020 by the CBSE and on the same date, the appellant has sent another representation to the 2nd respondent, but the same was also rejected by letter dated 16.12.2020 and thereafter, the appellant school approached the appellate authority/Chairman of CBSE by

virtue of representation dated 07.01.2021. The rejection letter was issued on 13.02.2021 through the 3rd respondent. Aggrieved by the said order, the appellant school approached this Court by filing W.P.No.4774 of 2021, challenging the rejection orders.

7. In the above said Writ Petition, this Court passed interim order, whereby permitting 27 students to appear for the practical examination which was commenced from 01.03.2021 in the name of the appellant's school in the appellant school itself. The respondents herein have challenged the interim order by preferring a Writ Appeal in W.A.No.860 of 2021, wherein, by judgment dated 08.04.2021, the Division Bench of this Court has confirmed the interim order passed by the learned single Judge. Thereafter, the appellant school has sent several communications by enclosing the orders of this Court, requesting the respondents to comply with the orders by uploading the list of candidates in the CBSE Website and after approving the same, to assign Roll numbers for the students and to accept the payment of fees to be paid by the appellant's school and allow them to write practical and written examinations in the name of the appellant school. Since no action was forthcoming from the respondents,

the appellants school also moved a Writ Petition in W.P.No.12162 of 2021.

8. Subsequent to the filing of the above Writ Petition, the respondent Board, by its Notification dated 01.06.2021, notified that the Board of Examinations for Class XII were cancelled and in its place, Policy for Tabulation of Marks for Class XII Board Examinations 2021 was notified by the respondent Board vide its Notification dated 17.06.2021. Thereafter, by virtue of the interim orders, the appellants school uploaded marks of Class XII students as per the Tabulation Policy and waited for declaration of results. On 03.08.2021, the results of Class XII were declared by the respondent Board, while the results of Class XII students of the appellants school were not declared. The appellants school made a representation on 04.08.2021 requesting the respondent Board to declare the result, which evoked no response and hence, the appellants moved another Writ Petition in W.P.No.16772 of 2021, seeking Mandamus to the respondents to declare the results of 27 students of the appellants school for the academic year 2020-21 and to issue mark sheets and migration certificates to them.

9. All the above three Writ Petitions were taken up together and heard and by a common order, dated 10.08.2021, a learned single Judge of this Court, dismissed the Writ Petitions.

10. Aggrieved by the order of the learned single Judge, the appellant school has preferred the present Writ Appeals.

11. Assailing the order of the learned single Judge, Mr.P.Wilson, learned Senior counsel appearing for the appellant school would submit that the order of the learned single Judge cannot be sustained, since many of the aspects touching the core issues have not been considered by the learned Judge and only based on surmises and conjectures as if the appellant resorted to *en masse* transfer of 27 students without following the Standard Operating Procedure (in short "SOP") for admission directly to Class XII, the learned Judge declined to grant the relief in favour of the students whose interest would be at stake which entirely depend upon the decision of the Court. He pointed out that though the appellant school applied for grant of affiliation to CBSE for Class XI and XII as early as on 11.04.2018, but the respondent Board granted the same only on 09.01.2020, after a lapse

of nearly one year and 8 months that too in the middle of the academic year, the appellant school was not in a position to admit the students to Class XI.

12. The learned Senior counsel also pointed out that by virtue of the provisional affiliation granted by the CBSE, the appellant school admitted the students for Class XI with effect from 1st April, 2019 and allowed the first batch of Class XII to appear in Board examinations to be conducted during March 2021 and therefore, there is no impediment for the appellant school to resort admission of students to Class XII even in the absence of any student registered in Class XI for the academic session 2019-20 which is due to the fault in granting the affiliation belatedly, that too at the verge of the academic year. He would submit that during March, 2020, Covid-19 pandemic situation started and in order to control the outbreak, the State Government declared complete lock-down, due to which, all schools and colleges were closed with almost 3/4th of the academic year 2020-21. Since the menace of pandemic still continues and as there was no sign of its end, in the month of June, 2020, the students who studied Class XI in Jayapriya Vidyalaya, Virudhachalam which is situated 40 kms away from their residences, decided to get admission of their children for Class XII in

the appellant school, which is situated nearby to their houses with an intention to avoid their children to get affected by Covid by travelling 80 kms every day. He would draw the attention of this Court to "Standard Operating Procedure for Admission to Class X and XII", and also "By Laws" and submitted that in the matter of migration of CBSE student from one school to another school for direct admission to Class XII, the appellant school has complied with all the requirements and admitted 27 students and sought for approval of the same by making a representation on 03.09.2020 to the 2nd respondent, but the same was rejected vide letter dated 30.11.2020 and again on the same day that is 30.11.2020 the appellant school made another representation and the same was also rejected by the 2nd respondent vide letter dated 16.12.2020. Thereafter, the appellant school approached the Chairman, CBSE by way of a representation dated 07.01.2021 for approval of the admission of 27 students, but the 1st respondent also vide letter dated 13.02.2021, rejected the request of the appellant school without assigning proper reasons.

13. The learned Senior counsel would submit that the parents of the students have given letters to the appellant school seeking admission of

their children for Class XII only for the reason to avoid their wards from travelling long distance during the pandemic and to save their lives without getting affected by Covid and this is one of the fittest cases to consider for migration of the students but the respondents as well as the learned single Judge had misconstrued that the appellant resorted to *en masse* admission directly to Class XII without adhering to the norms prescribed which sounds very whimsical and unacceptable. He pointed out that the learned Judge has not at all considered the vital aspects of long distance of travelling by the students during the pandemic situation which prompted the parents of the students to take unanimous decision to admit their wards in the appellant school. Therefore, the learned Senior counsel would submit that there is no justification on the part of the respondents to reject the request of the appellant school and the order of the learned single Judge is bereft of consideration of vital aspects, which is liable to be set aside.

14. Per contra, the learned counsel appearing for the respondents would refer to para 15 of the order of the learned single Judge, which is extracted as under:

"15.The Respondents have filed a counter affidavit in this case. The Respondents have taken a stand that the present

case is governed by Clause 7.5 of the bylaws and the same prescribes various contingencies where students can be admitted directly into Class XII. One such contingency is where the students are finding it difficult to attend regular school owing to the school being situated at a long distance from their respective residences. In the present case, the 27 students are said to have shifted to the Petitioner School only on the ground that their existing School is situated at Virudachalam, and they have to travel for nearly 80 kilometres every day. It is stated in the counter that the syllabus for the senior level is integrated for two years in Class XI and Class XII and therefore, the students are expected to study in the same School in both the classes and the direct admission of students in Class XII is only an exception. It is stated that out of 27 students, 20 students actually studied in Neyveli in a CBSE School upto Class X, and thereafter these students had shifted to the School at Virudachalam and they completed their Class XI in that School. Therefore, a stand has been taken in the counter affidavit that those students had joined at Virudachalam knowing fully well about the distance they had to travel and more particularly when they were undergoing studies at Neyveli till Class X and that School also had Classes XI and XII. The Respondents have also taken a stand to the effect that all is not well in the manner in which the Petitioner School has en bloc admitted 27 students directly into Class XII, and considering the fact that such an attempt has been made by the Petitioner School to cover up certain complaints

received against the Petitioner, the Respondents took a decision not to grant the approval for the admission of the 27 students directly into Class XII."

Therefore, the learned counsel for the respondents would submit that the respondents have rightly rejected the request of the appellant in regard to direct admission of 27 students to Class XII since such admission was done without adhering to the norms prescribed, which was rightly confirmed by the learned single Judge, which requires no interference by this Court.

15. In reply, Mr.P.Wilson, learned Senior counsel submitted that the complaint referred to by the respondents with regard to alleged conducting of the coaching classes, the appellant school has already replied in the month of May 2020 itself, whereas, the admission of 27 students was made only in the month of September 2020 and therefore, the complaint is nothing to do with the present admission and in fact, after complying with all the requirements only, the appellant admitted the students to Class XII and thereafter sought for approval of the admission. As regards the decision of the parents of 27 students to admit them in the appellant school is concerned, during the Covid pandemic, they were scared to send their

wards to travel long distance and their intention is very genuine that in order to protect their wards from being affected with Covid and to avoid travel of long distance of about 80 kms (to and fro) everyday. Due to this reason only, the parents decided to shift their children to the appellant school since it was situated nearby to their houses. This core issue has not at all been considered by the learned single Judge and erroneously dismissed the Writ Petitions.

16. Heard the counsel Senior counsel appearing for the appellant school and the learned counsel appearing for the respondents and perused the entire materials available on record.

17. Upon hearing the learned counsel for the parties and on perusal of the records, the following points would arise for consideration:

(i) Whether the 27 students are entitled to migration from their previous school, Jayapriya Vidyalaya which is situated 40 kms away from the residence of the students to the appellant school in terms of the Standard Operative Procedure (SOP) issued by the 1st respondent Board and as per Bye Law of the CBSE?

(ii) Whether the appellant school is entitled to effect

admission of the students directly to Class XII in the given circumstances, especially during Covid-19 pandemic situation?

(iii) Whether the learned Judge has dealt with all the aspects in proper perspective?

(iv) To what relief?

18. **Point Nos.1 & 2:**

Nearly 20 students have completed their 10th standard in Jawahar School, Neyveli and thereafter, they have decided to join Class XI at Jayapriya Vidyalaya, Virudhachalam for better education and they have completed their Class XI standard in the academic year of 2019-2020. Thereafter, the schools were closed for all over Tamil Nadu due to the Covid pandemic. Therefore, in view of the Covid pandemic, the parents decided not to allow their wards to travel 40 kms from Neyveli to Virudhachalam which is also impossible during the Covid-19 pandemic and to get the TCs of their wards and admit them in a school situated in and around their residences. Here, the parents have given the importance to the lives of their children than their education. Upon a perusal of the entire record, this Court could understand the Covid-19 pandemic and the undue hardship of their wards was the reason for the parents seeking migration of

their wards from their previous school to the appellant school.

19. It is relevant to extract the Standard Operating Procedures (in short, 'SOP') which provides admission of the students to Class X and Class XII wherein, the ground 'long distance' has been prescribed under Sl.No.7, which reads as under:

Category of Direct Admissions	Formalities to be Fulfilled by School at the Time of Submission of Cases of Direct Admissions to the CBSE
07. Long Distance	(a) Request of the parent (b) Registration Card/Registration Number of CBSE of CLASS-IX/XI (c) # Report Card of previous class (d) * Transfer Certificate of previous school. (e) Undertaking by parents about the distance (in Kms.) of old as well as new school from the residence. (f) Justification to be given by parent of student to change school at this stage. # Report Card of previous class clearly mentioning 'qualified/passed' (on having obtained minimum 33% marks in all five main subjects) duly attested by the Principal of school. * (i) In case Transfer Certificate issued by a CBSE affiliated school, directions

Category of Direct Admissions	Formalities to be Fulfilled by School at the Time of Submission of Cases of Direct Admissions to the CBSE
	as given in Circular No.CBSE/T.C.Uploading/2018 dated 01.10.2018 to host the T.C. on the school website be complied with (CBSE affiliated schools should not send TC to CBSE for verification/counter signature). (ii) In case TC is issued by school recognized by another Board, it should be duly countersigned by the Educational Authorities of the Board concerned.

20. A perusal of the above SOP would show that for change of school sought for by a parent, he has to comply with five requirements, of which, he shall give undertaking about the distance of old as well as new school from the residence and also justification to change school at the stage when they sought for.

21. Here the parents had made a request with justification and indicating about the distance of old as well as new schools from their respective residences. As far as new school is concerned, it is situated within town limits, whereas the previous school is concerned, it was about 40 kms away from their residences. Even, this SOP does not prescribe

anything about the distance for a student who studied Class XII about 40 kms, is too away and as far as that is what this Court feels. Further, during the pandemic situation, no parents would incline to send their children to the school which is situated 40 kms away from the residences by taking the risk in Covid pandemic which is life threatening for each and every citizen living in this country. Under these circumstances, the parents have taken a decision to shift their wards from old school and get admission in the appellant school.

22. Admittedly, the previous school, wherein, these students have pursued Class XI as well as the appellant school were affiliated with CBSE. Looking on this aspect, the students are entitled for migration to the present school.

23. It is also relevant to extract Clause 7.5 of the CBSE By Laws, which provides for the migration of the students, which reads as under:

7.5 Admission to Class XII:

(i) As the syllabus prescribed at Senior level is of two years integrated course, no admission shall be taken in Class XII directly. Provided further that admission to Class XII in a school

shall be open only to such a student who:

(a) has completed a regular course of study for Class XI and has passed Class XI examination from an institution affiliated to this Board.

(b) has completed a regular course of study for Class XI and has passed Class XI examination from an institution affiliated to this board and migrating from/within one city/state to another only on the transfer of the parent(s) or shifting of their families from one place to another, after procuring from the student the mark sheet and the Transfer Certificate duly countersigned by the Board; and

(c) 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 can be admitted to a school affiliated to the board only on the transfer of the parent(s) or shifting of their families from one place to another, after procuring from the student the mark sheet and the Transfer Certificate duly countersigned by the Educational Authorities of the Board concerned.

Notwithstanding anything contained in the rules above, Chairman shall have the powers to allow change of school for better academic performance, medical reasons etc. to avoid undue hardship to the candidate(s).

In case of all such admissions the schools would obtain post facto approval of the board within one month of admission of the student."

24. A perusal of the By Laws also would show that the criteria for direct admission for Class XII standard is that the candidate has to complete his regular course of study for Class XI and pass Class XI examination from an institution affiliated to this Board. In the present case, all the 27 students have completed Class XI in the school, which was affiliated with CBSE. A reading of Clause 7.5 of the By laws would show that a student under CBSE stream, can be migrated from one school to another school provided if he/she completed Class XI in regular course in an institution where the affiliation was granted by the CBSE.

25. Though Clause 7.5 of the CBSE By Laws provides certain circumstances under which, the migration of the students can be resorted to from any other school either within one city/state to another school on transfer of parents or shifting of their families from one place to another, however, the Chairman has power to allow the change of school for better academic performance, medical reasons etc. to avoid undue hardship to the candidate and allow for change of school, for betterment of education, undue hardship to the students.

26. In the present case, Covid-19 pandemic is the undue hardship to the students, as they have to travel 40kms from Neyveli to their previous school and as such everyday they have to travel about 80ks in both ways during pandemic, which ought to have been considered by the Chairman. Therefore, on the ground of undue hardship, which is in compliance of SOP, the students are entitled to migration from their previous school to appellant school. The parents of the students have obtained TCs in the month of June, i.e. is in the mid of Covid pandemic. It is to be noted that due to the Covid-19 pandemic, during the month of June 2020, all the schools and colleges were closed and there was complete lock down was enforced in the state of Tamil Nadu. In spite of this, they have managed to get TCs to avoid any undue hardship to the students by travelling 80 kms (both ways) everyday and thereafter, they have admitted the students only in the month of September 2020 in the appellant school.

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27. Now, let us see whether the appellant school is entitled to admit all the 27 students who completed Class XI from Jayapriya Vidhayala to appellant school directly to Class XII.

28. As we have already discussed in detail, all the 27 students are entitled for the migration, since they are facing undue hardship due to the travel of long distance during the Covid pandemic.

29. Yet another issue arises before answering these issues is as to whether the appellant school can directly admit Class XII students without having any student in Class XI. In the present case, the appellant made an application on 11.04.2018 for grant of affiliation for Class XI and XII for the academic year 2019-20. However, the permission was granted only on 09.01.2020 by the 1st respondent CBSE. Therefore, the appellant school was not able to accommodate any Class XI student. In fact, there is no instruction with regard to the admission in granting permission for admission of Class XI and Class XII students. We do not see any restriction in the grant of permission. If the direct admission to the Class XII standard, as a pre-condition, to have the students to be admitted in Class XI standard, then CBSE should have granted permission only for Class XI standard and there is no necessity for granting affiliation for XII standard. Therefore, the intention of granting the permission to admit the students for Class XI and

XII together. Having given permission to admit students to Class XI and XII, now, they cannot take a different stand holding that the appellant school cannot admit the students directly to Class XII, without having any students admitted in Class XI. Even failure to admit the students in Class XI for the academic year 2019-2020 was only due to the lethargic attitude on the part of the 1st respondent CBSE in granting the affiliation for Class XI and Class XII students. Admittedly, the appellant school made application for grant of affiliation to the respondents on 11.04.2018, while so, only on 09.01.2020, permission was granted, i.e. after one year and eight months.

30. Even on perusal of the SOP, we find that the appellant school and the students have duly complied with the norms prescribed in the SOP as well as Clause 7.5 of the By laws. In order to avoid undue hardship to the students, migration is possible even if it is *en masse* admission also. Of course, distance was not a matter when there was Covid-19 pandemic and the students have also completed Class XI in their previous school by travelling 80 kms both ways. However, subsequently, during the Covid-19 pandemic, the distance was a matter and certainly, it was undue hardship to

the students to travel 80 kms (both ways) during Covid-19. This Court posed a query to the authorities in open Court whether they can allow their children to travel 40 kms in one way and 80 kms in both ways during Covid-19?, the answer to the question is, obviously 'no!' as everybody knows that there is every likelihood of getting affected by Covid. Even, we also certainly will not allow our children to travel 80 kms every day during Covid-19. Even many students are travelling 20 kms, 30 kms in the normal course of time and it is unimaginable to have any thought that they can travel 80 kms (both ways) during the pandemic. Therefore, we find that the parents have duly complied with the norms prescribed both in SOP and By laws and the respondents cannot pin point any fault on this aspect.

31. Under these circumstances only, the appellant made a request letter seeking permission for direct admission of 27 students to Class XII, on 03.09.2020. However, the 2nd respondent, vide letter dated 30.11.2020, rejected the request of the appellant school to admit the students. The relevant portion of the rejection letter is extracted hereunder:

This refers to your letter dated 03.09.2020 seeking direct Admission into Class XII for 27 candidates.

In this connection, I am to inform you that the documents submitted by you was examined and due to anomalies observed in the bulk admission of all these students who have all studied Class XI from the same school and due to administrative issues, the case was referred to competent authority. The competent authority after examining the case informed that the request for these admissions could not be accepted as the school did not adhere to the norms in this regard. This is for your information.

32. A perusal of the above rejection order would show that the CBSE found anomalies in the bulk admission and the transfer of students from the same school. But that apart they have not expressed any opinion or any other objection for the refusal to grant permission for admission of 27 students in the appellant school. **They have not raised any issues with regard to the dis-entitlement of the appellant school for the direct admission to Class XII standard without having any admission in Class XI standard.** This is very sorry state of affairs that a Central Government institution, the 1st respondent CBSE herein having issued such a letter, when the entire country is facing the outbreak of Covid-19 pandemic and

they have suspected about the bulk admission. It is a piece of cake that anybody can understand the reason for the bulk admission from the previous school to the appellant school was only the long distance and undue hardship faced by the students during the Covid-19 pandemic period. There was no transport facility available and even it is very difficult to travel to a nearby school. Even if school is reopened, the parents can take their children by two wheeler for about 40 kms which is quite impossible to travel. However, the learned single Judge has lost sight on this issue. This is the main issue needs to be addressed, which issue was raised by the appellant and parents for the bulk migration of the students from one school to another school. Without answering this issue, the learned Judge has travelled beyond the issue and held that the appellant had resorted to bulk admission contrary to the prescribed norms, which is not warranted for a Writ Court.

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33. It is fundamental to our adversarial system of justice that the parties should clearly identify the issue that arises in the litigation, so that each has the opportunity of responding to the points made by the other. The function of a Judge is to adjudicate on this issue alone, whereas, in the

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present case, the issue raised by the appellant school and the parents was not considered and no reasons were assigned by the learned Judge or by the 1st respondent Board. They have only indicated the suspicion over the appellant school in regard to *en masse* admission to Class XII. Even if they have any suspicion, they have to come out what was the suspicion against the appellant school and without highlighting such suspicion, the Writ Court should not have dealt with the said aspect ignoring the real issues which were addressed by the parties.

34. The learned single Judge involved in the issue and suspected more than what the 1st respondent Board suspected which is totally unwarranted and not related to the issue at all. The very important things which required to be decided, the Judge has completely lost sight and as stated above, the learned Judge has suspected the admission resorted to by the appellant and decided the issue and recorded strong remarks against the appellant school which is unwarranted and the same is liable to be deprecated from the record.

35. Due to the onset of COVID-19 pandemic, even the Hon'ble

Supreme Court, in Writ Petition (Civil) No. 3/2020 (*In RE: Cognizance for extension of Limitation*), took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State) and by an order dated 23.03.2020, the Hon'ble Supreme Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time.

36. In the present case, the Writ Court has failed to be pragmatic in consideration of the predicament of the students in the constrained circumstances during Covid-19 pandemic and their welfare and interest and declined the relief, which we are unable to fortify the same for the reasons cited supra. Accordingly, we hold that there is no merit in the order passed by the learned single and the same is liable to be set aside.

37. On 30.11.2020 itself, the appellant made one more application to

the CBSE to reconsider its decision of rejecting the request of the appellant in their letter dated 30.11.2020. However, on 16.12.2020, the 2nd respondent rejected the request of the appellant once again. In this reply, the 2nd respondent has improved its case and added one more point that without any candidate in Class XI standard, the direct admission to Class XII is not permissible. This issue has already been answered by this Court that the moment when the CBSE granted the permission to conduct classes XI and XII, the appellant school is entitled to admit students in Class XII directly and there was absolutely, no prohibition for conducting classes to XII standard. In the first year, there was no students in Class XI. In the present case, admittedly, there was no student in Class XI standard due to the reason of delay in granting the affiliation by the 1st respondent Board. It is only due to the delay on the part of the 1st respondent Board.

38. For the reasons assigned by this Court as above, this Court is of the view that direct admission in Class XII standard is permissible even if there is no admission in Class XI standard which had taken place only due to the delay in granting affiliation by the 1st respondent Board. Furthermore, after all, this is pertaining to the lives of 27 students and we

do not want to show any misplaced sympathy on the students, as in our book, the students are entitled for migration in accordance with SOP and By Laws of CBSE, which no one can prevent it. The rules and regulations are available to permit the student for the migration and even CBSE By laws will permit migration in the event if the students face any undue hardship, which in the present case, the undue hardship caused to the students is due to Covid-19 pandemic and to travel 80 kms (both ways) during pandemic situation. Therefore, the reasons stated in the second rejection letter against the appellant school are also not proper.

39. On 07.01.2021, the appellant school made an appeal to the Chairman of CBSE, stating that as per the Bye-laws, the appellant school is entitled to effect admission to Class XII on the ground of undue hardship being caused by virtue of Covid-19 and requested to look into the matter and to avoid undue hardship faced by the students for betterment of education. It is a clear case of undue hardship to the students and the betterment of their education and certainly if they will travel during Covid-19 pandemic, there is every likelihood of getting affected by Covid which would have an impact on their education. In such circumstances, the

parents of the students decided to change the school and sought for admission in the appellant school. Considering the request of the parents and the undue hardship being faced by the students both due to Covid and travel of a long distance, having duly complied with the norms prescribed in SOP and By laws for admission of 27 students, the appellant made a request to the 2nd respondent to approve the admission resorted to by the appellant school under the constrained circumstances, however, the 2nd respondent unfortunately rejected the request of the appellant school vide letter dated 13.02.2021 without assigning proper reasons, but in the interest of the students, they permitted to register the candidates from the previous school for appearing AISSCE-2021. In the Chairman's refusal letter also, no reason was assigned with regard to undue hardship being faced by the students during Covid-19 pandemic and undertaking of travelling long distance by the students. In the rejection letter, dated 13.02.2021, the 3rd respondent conveyed the decision of the Chairman. In the said letter, the 2nd respondent has further improved its stand for rejection with little more grounds, which is extracted as under:

"In view of the above, the request of the school was once again examined by the competent authority of the Board. After examination of the request it was observed

that:

1. The SRK International School did not register any candidate in Class XI in academic session 2019-20.

2. All the 27 candidates admitted by the school in Class XII (AY 2020-21) are direct admissions.

3. All the 27 candidates were previously studying in the same school namely Jayapriya Vidyalaya (55569).

4. This year as there was no physical classes, there is no issue of distance also.

5. The school has taken the rules very lightly.

Therefore, after thorough examination of the request, the competent authority has not acceded to the request of SRK International School, Cuddalore for direct admission of 27 candidates in Class XII. However, considering best interest of the students, the competent authority has allowed to register these candidates from the previous school for appearing in AISSCE 2021."

40. As regards the point Nos.1, 2 and 3 cited in the above letter, already, this Court answered. As regards point No.4, that "this year as there were no physical classes, there was no issue of distance also" is concerned, this Court has seriously viewed this since admittedly, the appellants obtained TCs of their children in the month of June, 2020 itself and the admission was made in the month of September 2020, during the midst of

Covid and they were not aware nor could expect that when the crisis of Covid-19 pandemic will come to and end when the physical classes will be started. But in the month of February, 2021, the 2nd respondent while rejecting the request of the appellant school, observed that there were no physical classes during 2020 and unfortunately, 2nd respondent ignored to consider what was the situation prevailed during June, 2020 and September, 2020 when the parents obtained TCs and sought admission in appellant school. Even the learned single Judge who passed the order in the month of August, i.e. on 10.08.2021 has also observed that during the year, there were no physical classes conducted and distance is not a matter, which, in our considered opinion, is highly preposterous and self-designed prediction, which is untenable and unsustainable. We are of the view that the Writ Court has not applied its mind by visualising the situation what was in the month of June and September 2020 during which period, the parents sought for admission in the appellant school due to the undue hardship being faced by their children due to Covid-19 and long distance. but unfortunately, the learned single Judge ignored the issue and travelled beyond the issue and dealt with the issue which is irrelevant to the subject matter and all along he proceeded to pass orders which we can observe

from a reading of the order that the learned Judge passed the order on his own assumption that there was suspicion in the matter of bulk admission resorted to by the appellant school. The learned Judge has to consider and determine the issues that were raised by the parties and not to conduct any investigation on behalf any party in respect of any issue that was not raised or canvassed by the parties, as our system of justice is not an inquisitorial. Therefore, the rejection of approval in regard to admission of 27 students is incorrect and rendered due to non-application of mind. There were three rejections orders passed by the 2nd respondent, rejecting the request of the appellant school, wherein, the 2nd respondent has improved its stand for rejection from time to time by citing different reasons which are untenable as already held by this Court. Further, the 2nd respondent has mentioned that the competent authority, in the best interest of the students, has allowed to register the candidates from the previous school for appearing in AISSCE 2021 and the learned Judge also fortified the same. It is quite unreasonable to permit the students to register for AISSCE 2021 from their previous school since once the students had left their previous school after obtaining TCs, they were no more students of the previous school, but they are the students of the appellant school after their admission. Therefore, we

are of the view that there is no impediment for the respondents to approve the admission resorted to by the appellant and the appellant school is entitled to effect the admission of 27 students directly to Class XII.

41. For the foregoing reasons, the Points 1 and 2 are answered in favour of the appellant, holding that the 27 students are entitled to migration from their previous school to the appellant school and the appellant school is entitled to effect the admission of the students directly to Class XII in the given circumstances, especially during Covid-19 pandemic situation as discussed supra.

Point No.3:

42. Now, let us see whether the learned Judge dealt with all the issues in proper perspective. As already discussed above, the learned Judge had travelled too far away from the issues. He is supposed to have answered the issues raised before the Court, but he has completely lost the sight on the issues and travelled beyond the scope of the issues, which were raised by the appellant school regarding the undue hardship faced by the students due to Covid-19 and travelling of long distance. These issues

were not dealt with by the learned single Judge. He only suspected the appellant school in the matter of bulk admission by way of migration, describing it as larger design of the appellant school, but what was the actual design of the appellant school has not been highlighted by the learned Judge, rather he went on to hold that the matter requires to be probed by CBSE. We are unable to understand why the writ Court has not considered the predicament of the students who were to travel 80 kms (both ways) every day in the midst of Covid-19 pandemic crisis. The Writ Court has completely misled itself from the issue and determined the same which is unwarranted in the present case. The findings of the Writ Court in its order, are without any basis and evidence, but only on surmises and suspicion over the bulk admission resorted to by the appellant school. Once the Writ Court found that the appellant school had devised a mechanism and all of them were directly admitted to Class XII, then, it is for the Writ Court to highlight and deal with what was the mechanism that was allegedly devised by the appellant school, but nothing has been stated. In fact, the parents approached the appellant school for admission of their wards since in the midst of Covid, they were scared of sending them to the school situated far away from their residences and to avoid undue hardship

due to Covid and travel of long distance. This should be the main reason for the migration of the students and beyond this, nothing can be imaginable during the Covid pandemic. As far as the complaint received for conducting the coaching classes is concerned, it was in the month of May 2020 and the respondent can deal with this aspect separately and ought not to have clubbed together with the issue of granting permission to the appellant school as regards admission of 27 students.

43. The learned Judge observed that the Courts should not pass orders based on misplaced sympathy. In fact, there was no need for misplaced sympathy but on merit, in the present case, since the appellant school, as held by this Court, is entitled to effect admission of students, of-course *en masse* in the peculiar circumstances, wherein, the students were facing undue hardship due to Covid-19 and travelling long distance in the midst of Covid and such admission is in accordance with SOP and By Laws and we are unable to find any deviation and even the Chairman, who is competent to consider the undue hardship being caused to the students and to avoid the same for better education, he can approve the request of the appellant school, but he also failed to do so. These aspects were not dealt

with by the learned Judge and therefore, we have no hesitation to hold that the learned judge has miserably not dealt with the issues which were actually raised by the parties.

44. After all, taking into consideration the plight of the students in travelling long distance and the concern of the parents to avoid their wards getting infected by Covid-19, the appellant school resorted to admission of 27 students to Class XII by duly complying with all requirements and SOP, which in our view, is well within the prescribed norms and in accordance with the procedure contemplated. While so, there would be no occasion for this Court to show sympathy towards the students for the purpose of issuing the orders. In fact, all the interim orders passed by this Court having satisfied that the appellant has made out a *prima facie* case and the appellant has not taken any undue advantage of interim orders passed by this Court. But because of inordinate delay in granting the affiliation by the respondents, the appellant was forced to approach the Writ Court to get orders from time to time despite having complied with all requirements contemplated under SOP and By Laws of CBSE. While so, it is very deplorable to note that the learned Judge has observed that- "... Ultimately

these 27 students can once gain write the Class XII examination and pursue their future as this might not cause an irretrievable loss to them. However, this Court does not want to allow the Petitioner School to use the students as a shield and get over the illegality committed by them." By this, certainly, the students will lose an academic year and it would have considerable impact throughout their entire career and therefore, it would cause irretrievable loss to the students, who were innocent of the episode which had taken place at the instance of the respondents in not granting affiliation in time, despite compliance of SOP and By Laws of CBSE by the appellant school, which necessitated this Court to come to the rescue of the students in the interest of their education and welfare.

45. In fact, we would like to state at this stage that Justice is based/rendered by a Judge who holds the balance between the contending parties without himself taking part in their disputations. An appeal to a judge's discretion is an appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in accordance with established principles of law. It is time and again held by the Hon'ble Supreme Court in a catena of decisions that Courts should be pragmatic rather than pedantic,

realistic rather than doctrinaire, functional rather than formal and practical rather than precedential.

46. The Court's constant endeavour must be to ensure that everyone gets just and fair treatment. A Writ Court, while dealing with the matter, it can certainly apply different approaches in order to render substantial justice to the aggrieved party, which should be explicitly reflected in its findings, either such approach be pragmatic, dogmatic, even by applying the common sense of reasonableness or by precedents and even by combination of above approaches. But in the present case, a perusal of the entire order, it reflects that the Writ Court has not adopted any such approaches. Therefore, this Court is of the view that the Writ Court ought to have atleast followed any of the approaches while considering the undue hardship expressed by the parents that would cause to the students due to Covid-19 and long distance, which prompted them to seek for migration. Therefore, there is no merit in the order of the learned Judge and the same is liable to be set aside.

47. **Point No.4:**

In the result, the Writ Appeals stand allowed and the order of the learned single Judge in W.P.Nos.4774, 12162 and 16772 of 2021, dated 10.08.2021 is hereby set aside. The respondents are directed to pass appropriate orders, approving the admission made by the appellant school in respect of 27 students as expeditiously as possible and in the meantime, also declare their results and issue mark sheets and migration certificates to them within five working days from today to enable the students to pursue their further studies. The learned counsel appearing for the respondents is directed to communicate this order immediately. No costs. Consequently, all connected CMPs are closed.

The Registry is directed to issue a copy of this judgment to the parties by today itself.

C.M.P.Nos.14770 and 14772 of 2021
in
W.A.S.R.No.76292, 76291 of 2021

48. The above petitions have been filed by 3rd party appellants, who are also similarly placed students, seeking to grant leave of this Court to prefer 3rd party appeal against the common order dated 10.08.2021 passed

by learned Judge of this Court in WP.Nos.4774 and 16772 of 2021.

49. The case of the present petitioners is that they also completed Class XI in Jayapriya Vidyalaya Senior Secondary School, Virudhachalam and later got admission directly to Class XII in 4th respondent school, i.e. the appellant school herein. According to the petitioners, since they are also similarly placed, their admission has also to be approved by the 1st respondent CBSE and as such denying the similar relief sought for by the appellant school by the respondents as well as by the learned single Judge, they were virtually aggrieved by the common order passed by the learned single Judge in WP.Nos.4774 and 16772 of 2021 and hence, they seek to grant leave of this Court to prefer 3rd party appeal.

50. In this Judgment, since we have elaborately discussed all the issues and held that the appellant school is entitled to effect admission of the students directly to Class XII in the peculiar circumstances as narrated above, we are of the view that this Judgment will hold good even in respect of the present petitioners also. Hence, no separate orders are required to be passed in these matters. Accordingly, these Civil Miscellaneous Petitions

W.A. No.2143, 2145 & 2147 of 2021

are closed.

[P.S.N., J.] [K.R., J.]

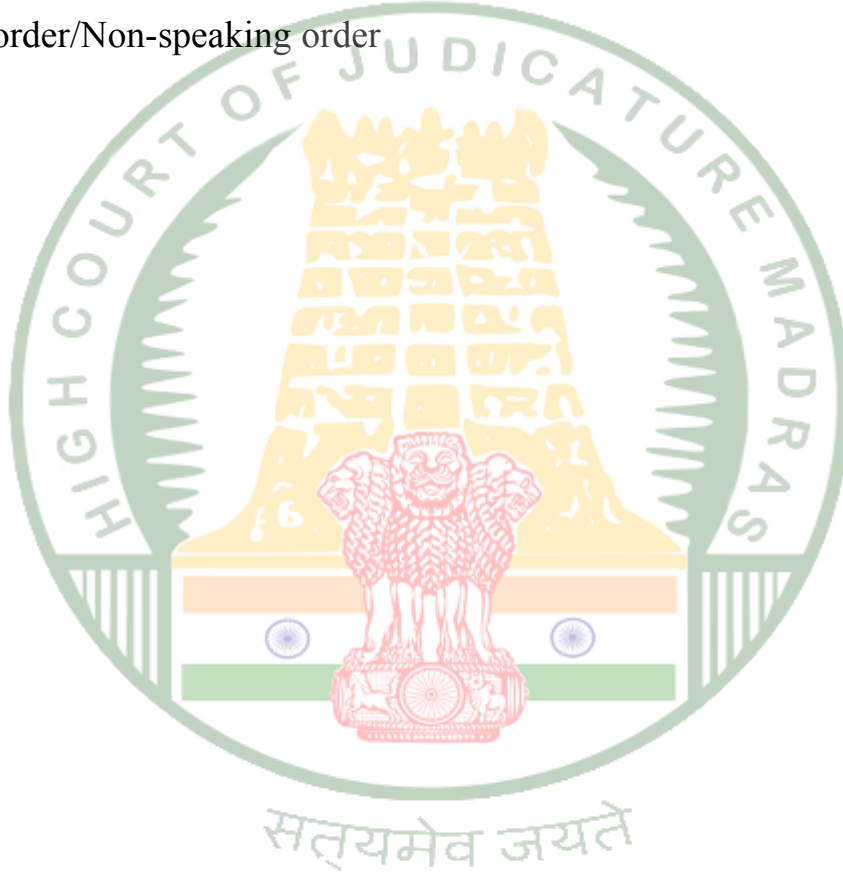
08.10.2021

Index : Yes/No

Internet: Yes/No

suk/jd

Speaking order/Non-speaking order



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To

1.The Central Board of Secondary Education,
Rep. by its Secretary,
Shiksha Kendra 2, Community Centre,
Preet Vihar,
Delhi 110 092.

2.The Regional Officer,
Chennai Central Board of Secondary Education,
New No. 3 Old No. 1630, A J Block,16th Main Road,
Anna Nagar West,
Chennai 600 040.

3.The Assistant Secretary,
New No.3 Old No. 1630, J Block, 16th Main Road,
Anna Nagar West,
Chennai 600 040.

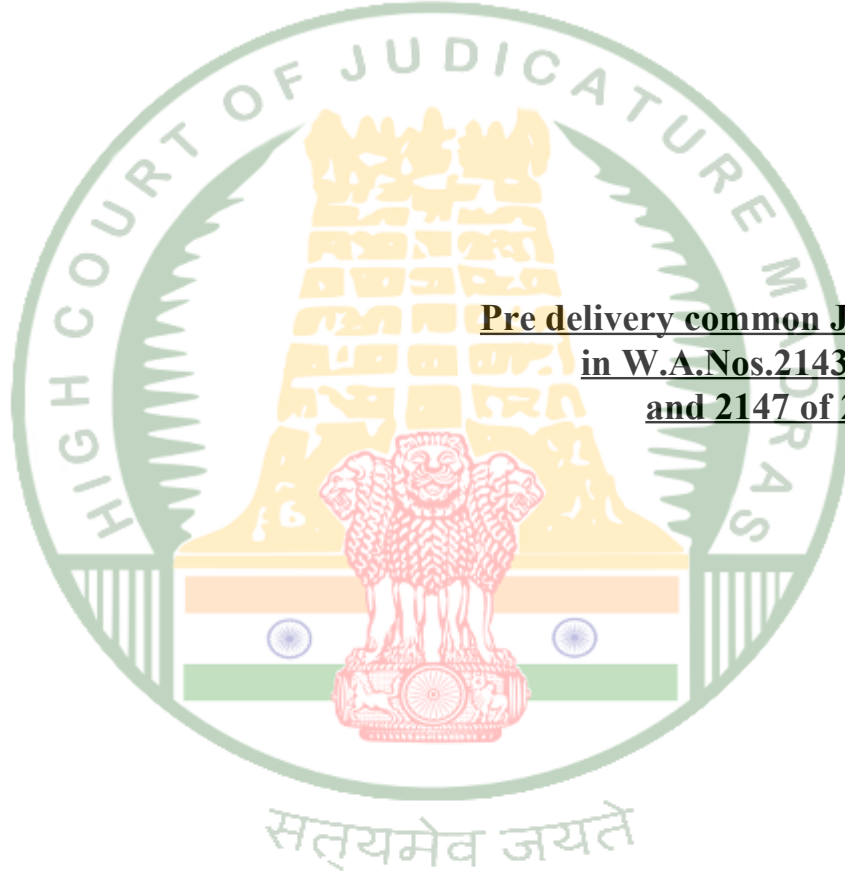


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W.A. No.2143, 2145 & 2147 of 2021

Pushpa Sathyanarayana,J.,
&
Krishnan Ramasamy,J.,

suk



Pre delivery common Judgment
in W.A.Nos.2143, 2145
and 2147 of 2021

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08.10.2021

W.A.Nos.2143, 2145 & 2147 of 2021
& C.M.P.Nos.13547, 13549, 13550,
13552, 13560, 13561 of 2021
and CMP Nos.14770 and 14772 of 2021
in W.A.SR.Nos.76292 & 76291 of 2021

PUSHPA SATHYANARAYANA, J.
AND
KRISHNAN RAMASAMY, J.

PUSHPA SATHYANARAYANA, J.

The writ petitioner School is the appellant in these writ appeals questioning the common order dated 10.08.2021 made in W.P.Nos.4774, 12162 and 16772 of 2021 respectively, passed by the learned Single Judge.

2. The students, being the third parties to the said writ petitions, filed civil miscellaneous petitions seeking leave to prefer appeal against the said common order dated 10.08.2021.

3. My learned Brother Judge had undertaken the task of venturing into a discussion on all the relevant aspects. Without delving much into the factual aspects, I agree and concur with the conclusion arrived at by my learned Brother Judge, but only like to add the following few lines.

4. The decision taken by the parents of class XII students, in their wisdom, for the welfare of their wards to change them from one school to another school had led to the current litigation. The attitude of the anxious parents to admit their children in the professional colleges, perhaps, brought a havoc in the crucial stage of their lives and ended disastrous to them.

5. Admittedly, the appellant School had affiliation upto Standard X and it had applied for affiliation for Standards XI and XII for the Academic Year 2019-2020 on 11.04.2018. However, the affiliation was granted by the Central Board of School Education (in short, "CBSE") only on 09.01.2020. The above said delay also would have deprived the students of their legitimate expectation of joining school, which is affiliated to the CBSE for the Academic Year 2019-2020.

6. Many schools admit students, even before obtaining affiliation, just informing the candidates that the affiliation to the CBSE is pending and subject to affiliation, admitting the students should be deprecated. In the instant appeals, the parents and the students have carefully noted that and joined Jayapriya Vidyalaya, Virudhachalam, as the approval to the appellant school had not come through, till the

students were admitted in the said school for the Academic Year 2019-2020. Later, when it was made known to them that the appellant school was given affiliation on 09.01.2020 by the CBSE, by granting permission for admission in Class XII, the students migrated to the appellant school. The parents have given consent.

7. When the appellant school applied for direct admission of those 27 students in class XII, the CBSE rejected it and subsequently allowed to register those students from the previous school for appearing in AISSCE 2021, which were questioned in W.P.No.4774 of 2021 and this Court, by virtue of the interim order dated 26.02.2021 permitted 27 students to sit for the practical examination. The CBSE unsuccessfully questioned the said interim order in W.A.No.860 of 2021, which was disposed of on 08.04.2021.

7.1. Though the appellant school sought permission for those students to take up the Standard XII Examination under the school's banner, it was kept pending, which led to the filing of W.P.No.12162 of 2021.

7.2. Owing to COVID-19 pandemic situation, the CBSE cancelled the Board Examinations and notified Policy for Tabulation of Marks for Class XII. The marks of the students of the appellant School were uploaded, but the results are yet to be declared. The

representation of the appellant School in this regard failed to yield the expected result, which necessitated the appellant school to file W.P.No.16772 of 2021.

7.3. The learned Single Judge heard all the three writ petitions together and passed the common impugned order dated 10.08.2021 dismissing all the writ petitions.

8. A Standard Operating Procedures for Admission to Class X and Class XII (SOPs) were issued by the CBSE and they were only to streamline the process of admission in Class X/XII. The preamble of the same specifically states that in order to ensure better adaptability to the academic environment of new school students desirous of changing school may be advised to change the school while studying in Class IX or in Class XI. However, the Board itself has provided for direct admission to Class X and XII for few categories, which includes long distance under clause 7 of the SOPs. Admittedly, in this case, the parents have requested for change of school, considering the physical strain taken by the students travelling 40 + 40 kms in a given day. Further, the CBSE has not prohibited admission directly to class XII in any school, if the bye-laws dealing with the said aspect have been adhered to and only in contemplation of certain exigencies, the SOPs referred to above were drawn. When the Board itself is to regulate the

school education, it cannot find reasons to reject the transfer request of students, when there is a provision for regulating the same, even at the stage of standard XII. It would not be appropriate for the Board to discourage and dissuade the students from joining the appellant school, when they have to undertake a travel of very long distance.

9. The learned counsel for the CBSE relied upon the judgment of the Delhi High Court in **Satluj Public School V. CBSE** reported in **72 (1998) DLT 525**. The said case deals with admission of students in a school, which had no affiliation at all for a particular academic year to commence Class XII, wherein, it was noted that when the Courts granted the reliefs on the ground of compassion and misplaced sympathy, the same was frowned upon by the Hon'ble Supreme Court. However, in the instant case, it is not the case of the CBSE that the School was not recognised and affiliation was not obtained for the academic year, but the only objection raised was with respect to the direct admission of the students to the Standard XII, which is also provided for in the SOPs. Therefore, the above decision is inapplicable to the facts of the present case.

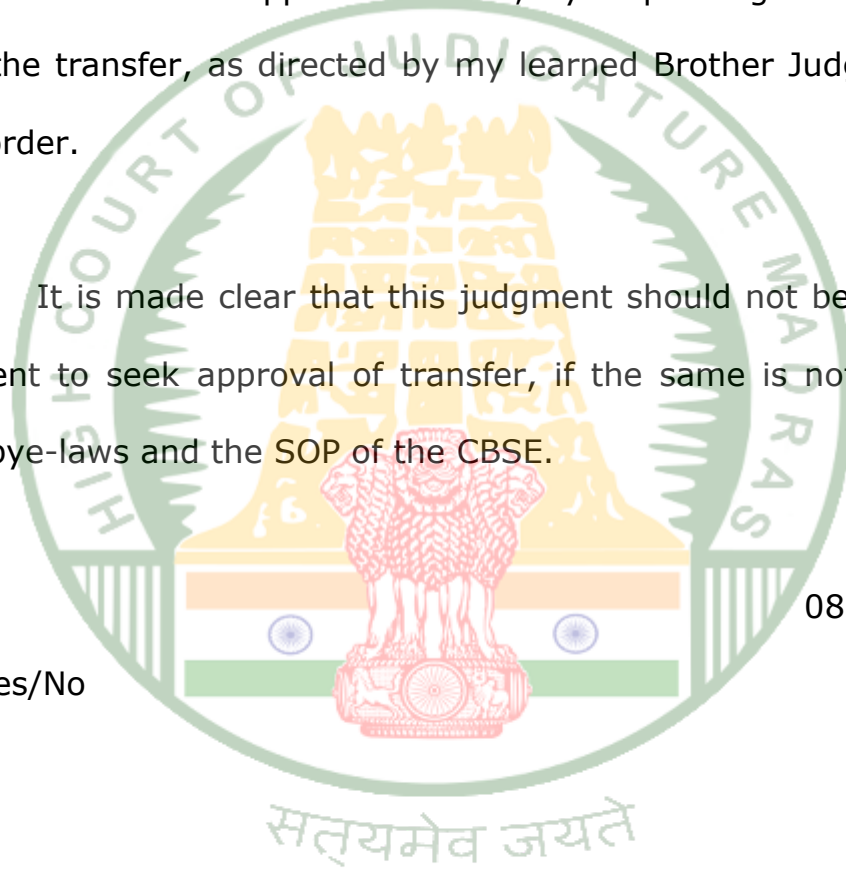
10. In such circumstances, though personally I am in agreement with the view taken by the learned Single Judge, with no

intention to punish the minor students, whose independent decisions cannot be accepted by the Court of law and given the facts and circumstances of the case, I deem it appropriate to agree with the conclusion arrived at by my learned Brother Judge to accommodate the 27 students of the appellant School, by requesting the CBSE to approve the transfer, as directed by my learned Brother Judge in the detailed order.

11. It is made clear that this judgment should not be cited as a precedent to seek approval of transfer, if the same is not in tune with the bye-laws and the SOP of the CBSE.

08.10.2021

Index : Yes/No
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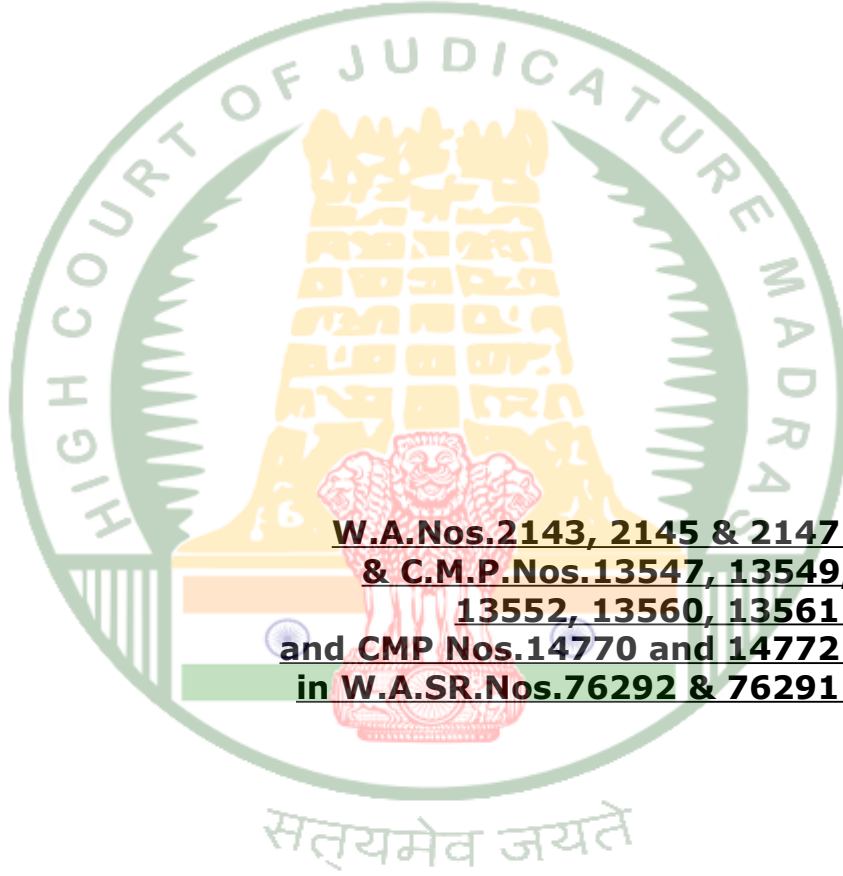


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PUSHPA SATHYANARAYANA, J.
AND
KRISHNAN RAMASAMY, J.

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W.A.Nos.2143, 2145 & 2147 of 2021
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