

DUAL RECOGNITION: CBSE AND ICSE SCHOOLS LEFT IN A NO-MAN'S LAND

- Aishwarya Gupta

The Hon'ble Madras High Court in the case of *Lakshmi School v. State of Tamil Nadu, W.P. No. 15373 of 2012 etc., dated September 21, 2012*, held that the ICSE and the CBSE schools are private schools within the meaning of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. The Court further held that in terms of the Right to Free Education Act, 2009, ('RTE Act') it is statutorily mandatory for the CBSE and the ICSE affiliated schools to have recognition from the State Government.

Facts

Prior to 2009, all the private unaided schools were fixing their own fee structure. The state of Tamil Nadu enacted a legislation namely the Tamil Nadu School Fees Act, 2009 which provided for the regulation of collection of fee by the schools in the State of Tamil Nadu. In accordance to the Act, a Committee was constituted which fixed the fee structure of various schools. The schools challenged this.

Contentions

The schools contended that the Committee has no jurisdiction to determine the fee of the CBSE/ICSE schools as these schools are not "private school" as defined in Section 2(j) of the Tamil Nadu School Fees Act, 2009. The schools further contended that the State Government can only issue a "No Objection Certificate" and has no further control over these schools which are governed by the CBSE and ICSE bye-laws respectively. The schools prayed that Sections 3(3) and 7(3) of the Tamil Nadu Schools Fee Act, 2009 should be declared ultra vires.

The State (Respondents) argued that it would not be excluded from governing the schools merely due to affiliation of these schools to the CBSE and ICSE syllabus. The State further contended that in light of the RTE Act, the competent authority for recognizing or approving a school would be the State Government. Thus, it becomes mandatory for the CBSE and ICSE schools to be further recognized by the State.

Judgment

The Court held that the CBSE and ICSE schools are “private schools” within the meaning of Section 2(j) of Tamil Schools (Regulation of Collection of Fee) Act, 2009. Hence, the fee of these schools can be regulated by the State. The Court accepted the contentions of the State and held that according to the RTE Act, it is statutorily mandatory for CBSE and ICSE affiliated schools to obtain recognition from the State Government. The Court reasoned that as per Section 2(a) (ii) (A) of the RTE Act, it can be concluded that “State government alone is the appropriate government for all schools within the territory of the State, except for the schools established by the Central Government.” The Court concluded by noting that since the State Government can exercise control over the CBSE and the ICSE schools, it can enact a legislation to fix the fee structure of such schools.

Analysis

The Court purposively interpreted the Tamil Schools (Regulation of Collection of Fee) Act, 2009 in light of the RTE Act to hold that dual recognition is mandatory in cases of the CBSE and the ICSE schools. However, the Court has ambiguously dealt with this issue. The Court fails to mention whether this recognition of the State is the granting of the ‘No Objection Certificate’ or is grant of recognition in addition to the CBSE affiliation. It seems from the language of the Court that it is the latter. Also, the latter system has been made operational in states like Kerela. In such a scenario, the CBSE and the ICSE schools will face a lot of problems in getting such dual recognition. The future of the already existing schools affiliated with CBSE and ICSE Boards is uncertain as they can lose their recognition for lack of additional recognition granted by the State. Schools can also be subjected to the delays in being granted this recognition. Cancellation or non-granting of recognition can be arbitrary and based on the State Government’s political interests. In a country like India, such regulation can provide the officials with an opportunity to take bribes for granting the state recognition certificate.

Further, as noted by the Court in this case, the RTE Act applies to standards I to VIII. Hence, the implementation of such dual recognition requirements will lead to two types of CBSE and ICSE schools. Standards I to VIII will have to be recognized by the State and will have to strictly follow the guidelines of the State. Standards IX to XII will follow a completely different system. Hence, if

the schools fail to fulfill the criteria laid down by the State they shall lose their recognition for classes I to VIII, but will continue to have classes from IX to XII. This disparity within the school itself will lead to a lot of confusion. Moreover, disparity in syllabus and other procedures to be followed by these two types of standards can lead to depreciation in the quality of education.¹

It is recommended that an amendment should be brought about in the CBSE and the ICSE bye laws so as to bypass the recognition by the state government and directly approach the Board for affiliation and recognition.²

As of now, the schools have not approached the Supreme Court challenging these schemes. In such a scenario, this decision of the Madras High Court and subsequent similar schemes adopted by the governments of the other States has definitely left the CBSE and the ICSE schools in no man's land.

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¹ A similar scheme regarding implementation of the RTE Act was brought about in Kerala and Maharashtra by the State Governments where State recognition was made mandatory for CBSE schools. The CBSE schools in Kerala fear that they may lose their recognition if provisions of RTE are not followed.

² The then Minister of State for Human Resource Development, Mr. Shashi Tharoor recommended this new amendment. However, no further step has been taken upon this by the CBSE.