

IN THE HIGH COURT OF DELHI AT NEW DELHI  
(EXTRA ORDINARY WRIT JURISDICTION)  
W.P. (C) NO.6510 OF 2013

**IN THE MATTER OF:**

Society for un-aided Private Schools of Rajasthan ...Petitioner

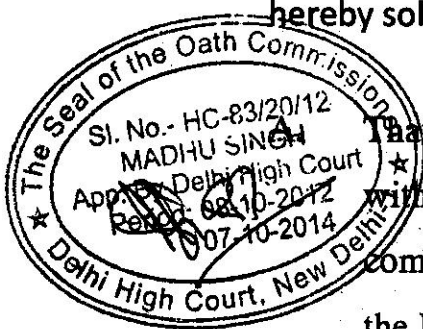
VERSUS

Central Board of Secondary Education & Anr. ...Respondents

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS NO. 1 & 2.**

AFFIDAVIT OF S.P. RANA, SON OF SH. CHET SINGH, AGE 55 YEARS,  
JOINT SECRETARY, CENTRAL BOARD OF SECONDARY EDUCATION,  
DELHI-110092.

I, S.P. Rana, Joint Secretary, Central Board of Secondary Education do  
hereby solemnly affirm and declare as under: -



That I am the above named deponent and am well conversant with the facts and circumstances of the present case and am competent to affirm and declare the present affidavit on behalf of the Respondent No.1&2.

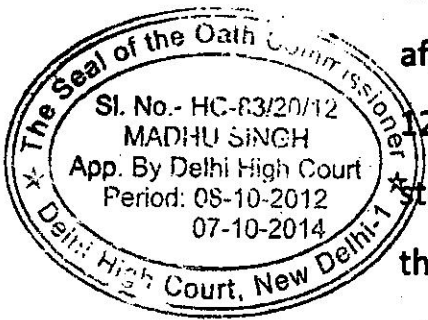
B. I say that I have gone through the contents of the Writ Petition filed on behalf of the Applicant. Each and every averment made in the Writ Petition is denied, except to the extent to which the same is specifically admitted hereunder.

*sr/ae*

## PRELIMINARY SUBMISSIONS

1. That Respondent (Central Board of Secondary Education) hereinafter called CBSE in its present form was re-constituted in pursuance of Government Resolution, published in Gazette of India vide No. F. 55-21/61 SE-2(B) dated 27 February 1962. Under Paras 16 and 18 of said Government Resolution, the Central Board of Secondary Education (hereinafter referred to as "CBSE") was authorized to frame its bye-laws and regulations for transacting its business.

2. Affiliation means formal enrolment of a school among the list of approved schools of the Board following prescribed /approved courses of studies up to class VIII as well as those preparing students according prescribed courses for board examinations. It is respectfully submitted that Classes 9<sup>th</sup> to 12<sup>th</sup> cannot be taught in isolation. These classes are not held in separate premises. These are held together in secondary schools which are imparting education from Nursery to 12<sup>th</sup> standard. The affiliation is given for the school as a whole and not for 9<sup>th</sup> to 12<sup>th</sup> standards alone. The making of career and character of students and imbibing the best moral values in them start from the day, a child joins a school. Also, for the sake of uniformity in syllabus and maintaining more or less same standard of education and infrastructure in all schools, affiliated to CBSE, the CBSE adopts the curriculum prescribed by NCERT, it has the power to lay down similar guidelines for the schools affiliated to it, the interest of wards of persons employed in migrating jobs such as Defense, Railway, Central Government, Public Sector Undertaking and big corporate houses because persons employed therein get transferred across the horizon of the



country even in mid-academic session. Also CBSE prescribes pay scale for teachers/employees of unaided private schools. Teacher employed in private school getting less salary than his counter-parts in Government schools, may not fully dedicate herself/himself towards his assigned duties. The minimum land area is required to maintain proper infrastructure in schools for morning assembly, sports, extracurricular activities, computer, library facilities, cycle stand etc. Affiliation is granted by CBSE. It is not mandatory for the school to have affiliation but if it opts for affiliation, it has to comply with the conditions laid down by CBSE.

### PRELIMINARY OBJECTIONS

1. That the present petition is not maintainable and liable to be dismissed at the outset itself, on the ground of territorial jurisdiction as the petitioners are based at Jaipur in Rajasthan. Thus the cause of action does not arise at Delhi.



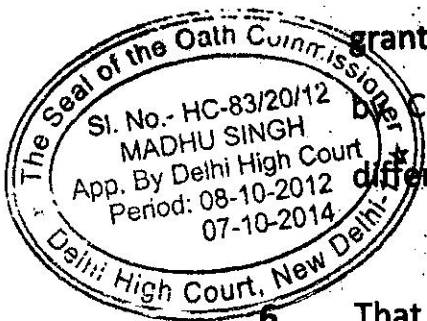
2. That the present petition is not maintainable and liable to be dismissed at the outset itself as petitioner do not have the authority or *locus-stand* to file writ petition on behalf of all the schools, which would be affected by the reliefs sought in the present petition. The petitioner society has not filed its bye-laws and its constitution. Nor has it disclosed the list of schools that are its members and those it seeks to represent.

3. That the present petition is not maintainable and liable to be dismissed at the outset itself on the grounds of delay and latches as CBSE has been functioning as regulatory body, and the affiliation byelaws are in existence since 1988 and has

the same. So there is no basis for petitioners challenging it at this belated stage.

4. That the present petition is not maintainable and liable to be dismissed as an affiliating body, like CBSE is free to lay down conditions for affiliation there is nothing in RTE Act which prevents CBSE from setting standards for education for the schools affiliated to it. Affiliation cannot be claimed as a matter of right.

5. That the present petition is not maintainable and liable to be dismissed as RTE Act and affiliating body like CBSE acts in different fields. The purpose and scope of RTE Act, 2009, is to provide for free and compulsory education to all children of the age of 6-14 years whereas the By-Laws of CBSE operate in, for grant of affiliation to see whether the schools fulfill standard set by CBSE. Nothing prevents affiliating body like CBSE to set different or higher standards than what are under RTE Act.



6. That the present petition is not maintainable and liable to be dismissed as the contents of present petition are repetitive and contradictory in nature.

### REPLY ON MERITS

1. In reply to the contents of the said para it is submitted that the respondents do not have any knowledge of the petitioner organisation, its registration, constitution, members, it is further submitted that the petitioner does not have the authority and *locus-stand* to file writ petition on behalf of schools and has failed to file copy of its bye-laws and constitution etc with the Writ

- 2 In reply to the contents of the said para are wrong false and hence denied as the petitioner have failed to substantiate how the Bye-laws and Regulations etc incorporated by CBSE are in conflict with the judgment of Hon'ble Supreme Court in TMA Pai Foundation case and Right to Education Act, 2009 (hereinafter called RTE).
- 3-4. That the contents of the said para are matter of record.
- 5. In reply to the contents of the said para, it is denied that Respondent - 1 has no competence to lay down guidelines in respect of school education below Class IX.

The definition of "Affiliation" as per Clause 2(1)(i) of Affiliation Bye-Laws clearly states "Affiliation means formal enrolment of a school among the list of approved schools of the board following prescribed approved courses of studies up to class VIII as well as those preparing students according prescribed courses for board examinations."



A perusal of para 1 of Government of India Gazette Notification No.F. 355-21/61-SE-2 dated 27 Feb 1962 (Annex. P-1) reads as under:-

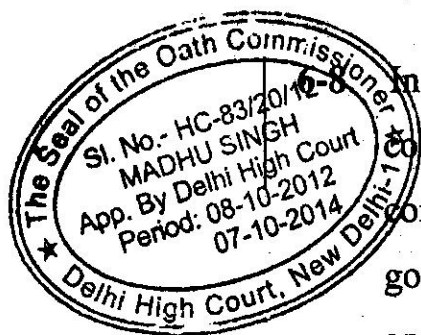
*"The Board shall conduct examinations at the secondary stage of education and such other examinations as it may consider fit, subject to the approval of the Controlling Authority or as it may be called upon to conduct by the Government of India, Ministry of Education, (now Ministry of Education & Social*

*SI love*

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*Welfare) and do such acts ancillary to the objects as may be necessary”*

That the second part of Para 1 clearly empowers Respondent-1 to do such acts ancillary to the object, as may be necessary. It can issue guidelines to its affiliated schools for various purposes. Admittedly, vide Para 9(x) of Govt. Resolution (Annex. P-1), CBSE has the powers to prescribe text books. The secondary education cannot be imparted in isolation. The making of career and character of students, and imbibing the best moral values in them start from the day, a child joins a school. For the sake of uniformity in syllabus and maintaining more or less same standard of education and infrastructure in all schools, affiliated to CBSE, the CBSE adopts the curriculum prescribed by NCERT. Since, schools are affiliated to CBSE under its Bye-laws, it has the power to lay down guidelines for the schools affiliated to it.



In reply to the contents of the said paras, it is submitted that the contents of the said paras are— a matter of record. The said constitution, powers and functions of CBSE are as a result of government gazette and empowers CBSE to lay down the rules and regulations, for regulating the basic and overall functioning of the affiliated schools. In any case the petitioner has failed to substantiate as to how the said regulations prejudicially affect the interest of petitioner.

**9-10.** That the contents of the said paras are denied to the extent that Affiliation Bye-laws are beyond the competence and jurisdiction of Answering Respondent or that it is in violation of law laid down by the judgment of Hon'ble Supreme Court in TMA Pai Foundation. The Affiliation bye-laws were framed under the authority vested under Para 16(1) and (2) of Gazette Notification

11. That the contents of the said para are wrong and hence denied. Admittedly, vide Para 9(x) of Govt. Resolution (Annex. P-1), CBSE has the powers to prescribe text books. It is further submitted that a student is not directly admitted in 9<sup>th</sup> standard. He has to pass classes from Nursery to VIII.

The words "on the pattern of syllabus/guidelines given by NCERT" are of great significance. CBSE lays down guidelines for proper functioning of schools and maintaining the standards of education. That the Classes 9<sup>th</sup> to 12<sup>th</sup> cannot be taught in isolation, neither are these classes held in separate premises. These are held together in secondary schools for imparting education from Nursery to 12<sup>th</sup> standard in continuity. The schools are granted affiliations for all the classes starting from primary level, not only for classes for 9<sup>th</sup> to 12<sup>th</sup> alone. Thus, the bye-laws and the CBSE guidelines are applicable to the entire school.



In reply to the contents of the said para the petitioner itself has quoted the extracts of Para 55 of 11 Judge Bench judgment in TMA Pai Foundation (2002(8) SCC 481) holding that a Board or a University or affiliating or recognising authority can lay down condition for excellence in education. The said para is reproduced for ready reference as under:

*"There can be no doubt that in seeking affiliation or recognition, the Board or the University or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reason*



*also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite"*

It is respectfully submitted that the instances quoted above in the said judgment by the Hon'ble Supreme Court are not exhaustive but only indicative of all such requirements that may be imposed by the Affiliating Authority.

- 13. That the contents of the said para are matter of record.
- 14. In reply to the contents of the said paras it is submitted that CBSE is free to prescribe course, contents for the schools affiliated to it. The role of NCERT exists as an academic authority in both CBSE as well as RTE Act. Therefore, there is no question of variations in the syllabus prescribed by NCERT.
- 15. That the contents of the said para are matter of record.



That in reply to the contents of the said para the definition of "Affiliation" and "Middle Class Syllabus" are in consonance with law and have served useful purpose since the constitution of CBSE . As an affiliating body CBSE is free to prescribe course and content of the schools affiliated to it. Since the schools from all over India are affiliated to CBSE, there is a need to have common syllabus and common standard of infrastructure. If there is different syllabus upto middle class in various schools located in different parts of India, it will go against the interest of wards of persons employed in migrating jobs such as Defence, Railway, Central Government, Public Sector Undertaking and corporate houses because persons employed therein get transferred across the horizon of the country even in mid-academic session. The symmetry is required to ensure similar



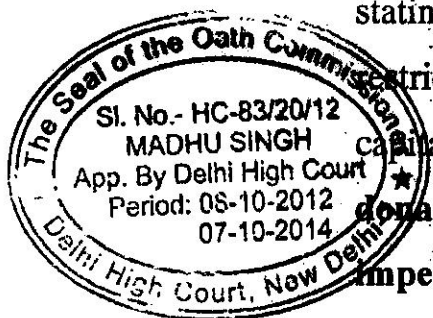
education amongst the wards of people engaged in such migratory nature of work.

17-18 -In reply to the said paras it is submitted that the said paras are matter of record.

19. In reply to the said para it is submitted that the RTE Act and constitution of CBSE are complementing each other and are not in conflict with each other.

20. In reply to the said para it is submitted that the said paras are matter of record.

21-22. In reply to the said para it is most respectfully submitted that the petitioner are trying to justify the 'capitation' fee by stating that CBSE cannot traverse beyond its jurisdiction in restricting capitation fee. The Petitioner is trying to justify capitation fee by stating that "A blanket bar on any kind of donation/contribution/subscription is per-se excessive and impermissible". The petitioners have further justified donation by stating that :



*"Even under the RTE Act, 2009 what is prohibited, is only that no capitation fee be charged at the time of or for giving admission, but it does not otherwise prohibit any voluntary donation/contribution/subscription for developing and maintaining a school"*

The petitioner has failed to substantiate that how interests of the petitioner are prejudiced by the definition of "capitation" because it includes donations and contributions. CBSE is not merely an exam conducting body but also can regulate

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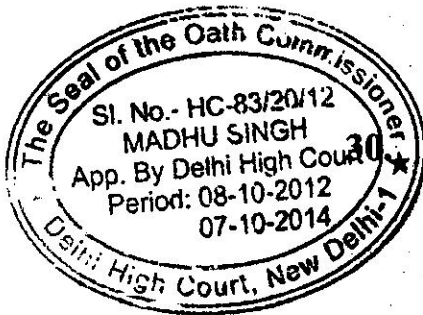
everything connected with maintaining and regulating the academic standard.

23-25. In reply to the said paras it is submitted that the petitioner has failed to substantiate as to how interest of petitioners are prejudiced by defining the term 'child' as 'male or female child of age of six to fourteen years'. There are no averments on record to warrant striking down the definition of child. In legal parlance, a child means below 14 years in age

26-27. In reply to the said paras it is submitted that the said paras are matter of record. The petitioner has not given any averments for striking down the definition of "child belonging to disadvantaged group". This does not contravene any legal provision of the land.

28. In reply to the said para it is submitted that the said paras are matter of record.

29. In reply to the said para it is submitted that by CBSE is nowhere in conflict with the RTE Act, the role, duties and responsibilities of CBSE are in consonance with NCERT.



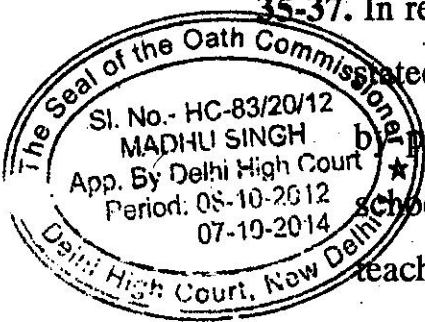
In reply to the said para it is submitted that the said paras are matter of record.

31. In reply to the said para it is submitted that petitioner has challenged condition of minimum land area required as a condition for grant of affiliation as unreasonable without even substantiating the said allegation. To maintain proper infrastructure in schools for morning assembly, sports, extracurricular activities, computer, library facilities, cycle stand

recommended by expert committees. The CBSE has the competence to lay down such conditions in view of Para 55 of 11 Judge Bench judgments in TMA Pai Foundation case, extracts quoted in reply to Para 11 and 12 of this CWP.

32. In reply to the said para it is submitted that petitioner's submissions are vague and unsubstantiated. The petitioner has failed to substantiate the time consuming mandatory provisions for affiliation referred to in the said para.

33-34. In reply to the said paras it is submitted that it is denied that CBSE ever prescribed any pay scale for teachers/employees of unaided private schools. As per sub-clause 3(v) of Chapter-II of Affiliation Bye-laws, CBSE only laid down that staff of affiliated schools should not get salaries and allowances payable to corresponding categories of employees in the State/Centre and the same does not amount to prescribing of pay scales.

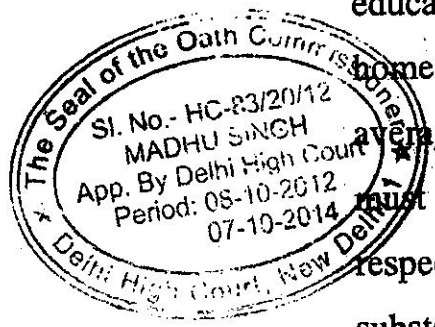


35-37. In reply to the said paras it is submitted that the petitioners have stated that payment of salary and allowances to teachers engaged by private unaided schools is a matter of contract between the school and the teachers. Further the payment of salary at par with teachers of Government school cannot be enforced. In this respect it is submitted that there is catena of judgments which lay down that teachers of private un-aided schools should get the salary at par with teachers employed in Government schools. This restriction is neither reasonable nor irrational nor irrelevant to the objectives of CBSE. The rationale behind prescribing salary at par with the corresponding staff in Government schools is to attract the best available talent in the market for maintaining higher standards of education. Teacher employed in private school getting less salary than his counter-parts in Government schools, may not fully dedicate herself/himself towards his

assigned duties. It is not mandatory for the school to have affiliation but if it opts for affiliation, it has to comply with the conditions laid down by CBSE in view of ruling of Hon'ble Supreme Court in TMA Pai Foundation case.

38-41. In reply to the said paras it is submitted that the petitioner has failed to substantiate as to how its interest are prejudiced on account of imparting one week training to teachers every year. It is a worldwide phenomenon that trainings are tools of development of human resources. Through periodic trainings, teachers get acquainted with new method of teaching and researches made in the field. Training should be welcome. The present day Mantra is "attain, train and retain", i.e., to attract the best available brains, train them by skill development and retain the best available trained manpower in the establishment.

42- 43. In reply to the said paras it is submitted that petitioner in theses paras have challenged the emphasis laid by CBSE on "quality of education" and also that there should be no school bag and no home-work for students upto second standard. Further, the average result of school for grant of affiliation in last three years, must not be less than Boards average in class X & XII. In this respect, it is submitted that the petitioner has failed to substantiate as to how emphasis on imparting quality education and reducing the school bag causes prejudice to the petitioners in any way.



44-46. In reply to the said paras it is submitted that these three paras relates to constitution of School Management Committee. Petitioners have challenged these by alleging as an encroachment in the autonomy of un-aided private schools. The relevant Clause 3(6) of Affiliation Bye-laws reads as under:-

“ 6. School Management Committee

*Subject to relevant provision in the Education Act of the State/UT concerned, every affiliated school should have a scheme of management approved by the Board. It should also have a School Managing Committee as stipulated in Section 21(1) of RTE Act 2009 and as per provisions of Section 20(1) (2), (3) and 21 of Affiliation Bye-laws of the Board.....”*

Thus, constitution of School Management Committee is as per provision of Section 21(1) of RTE Act, 2009 and relevant provisions of respective Education Act of States/ UTs. The provision is neither unreasonable nor arbitrary in nature but is in the interest of students, teachers & parents and society as a whole or say all stake-holders.

47-48. In reply to the said paras it is submitted that petitioner has challenged provisions of Affiliation Bye-laws on ‘**developing website of schools**’ which should have comprehensive information of its infrastructure, details of teachers, students and annual report. In this respect, it is submitted that the petitioner has failed to substantiate as to how developing website of schools causes prejudice to the petitioners in any way. This is not a breach to the right of privacy of schools but helps in transparency.

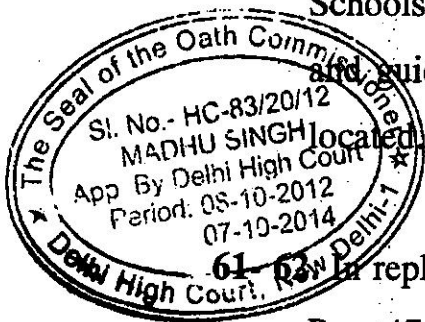


49-52. In reply to the said para it is submitted that petitioners have challenged the student teacher ratio of 1:30 and other service condition of staff. For maintaining the standard of imparting education a student-teacher ratio has to be prescribed. A teacher not only teaches in the classes but he is also to concentrate on overall development of the learner and other curricular and extra-curricular activities. A teacher is supposed to develop the overall personality of learner student.

**53-54.** In reply to the said para it is submitted that the contents of this para are repetition of para 38. As submitted earlier trainings are must to raise standard of teaching. Trainings are recognized tools of human resource development.

**55-58** In reply to the said para it is submitted that petitioner has challenged the relevant Bye-laws prescribing the mode of fixing fee i.e. by consulting parents and also that fee should not be revised during the mid-session. This is nothing but consultative decision making process. The interests of students coming from under-privileged classes are also to be looked into as they cannot afford high fees.

**59-60.** In reply to the said para it is submitted that the petitioner has failed to substantiate as to how the interest of the petitioner is prejudiced by Clause 12 (ii) and (iii) of Chapter-II of Affiliation Bye-laws of CBSE which lays down rule that school shall be governed by the provisions of RTE Act 2009 and shall maintain relevant records of students who applied and got admission in the Schools and also if CBSE is insisting on compliance of RTE Act and guidelines /instructions issued by the State where school is



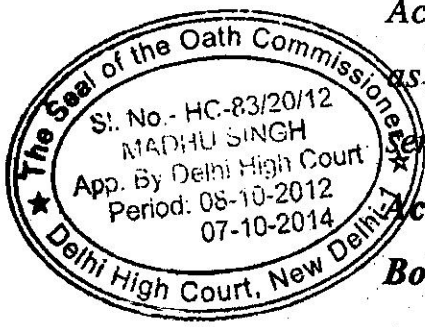
**61-62** In reply to the said para it is submitted that this is repetition of Para 47 & 48 of CWP as these broadly relate to putting relevant data of school on their website. This does not prejudice the interests of school but may result in healthy competition among schools. If entire data is available on web-site, it shall ensure a transparent procedure and also help parents in selecting the best school for their wards.

**63-70.** In reply to the said para it is submitted that these provisions

including school managements. If school managements recruit best teachers, this will help the school in expansion in long run. These provisions are further required for maintaining uniform service conditions of all affiliated schools. These provisions nowhere infringe upon the rights of management of unaided private schools. As per para 55 of judgment of Supreme Court in TMA Pai Foundation case, an affiliating or recognising body has the power to lay down the condition for affiliation/recognition. The relevant para is quoted in para wise reply to para No. 11 &12 of CWP.

71. In reply to the said para it is submitted that auditing of accounts of schools by CBSE as laid down by circular No. 13 dated 21.08.2013 was circulated with a view to bring transparency in the working of schools. The language used in circular is reproduced as under:-

*“...The account should be audited and certified by a Chartered Accountant and proper accounts statements should be prepared as per rules. A copy each of the Statement of Accounts should be sent to the Board every year. Accounts of affiliated schools are liable to be audited by the Board....”*



The CBSE has not taken away the powers of Chartered Accountant to audit the accounts of schools. This remains with the Chartered Accountants who are expert in their field. The provision only lays down that accounts are 'liable' to be audited and not 'shall' be audited. The accounts may be audited in case of serious complaints against the school managements. This provision cannot be said to be unreasonable or irrational.

72. Reply to grounds *golee*



That it is submitted that Affiliation Bye-laws of CBSE are nowhere in violation of the 11 Judge Bench judgment of Hon'ble Supreme Court in TMA Pai Foundation case nor in conflict with the provisions of RTE, 2009.

i-vii. In reply to the contents of the said paras, the petitioner craves leave to refer and rely on the submissions made herein above and the same are not repeated for the sake of brevity. It is further submitted that it may be fundamental right of petitioner to run an educational institution but it is not its vested right to get affiliation. It is respectfully submitted that the grant of affiliation is subject to the compliance of the rules and regulations laid down by the affiliating authority in this regard.

73. That the contents of the said para merit no reply.



In reply to the contents of the said para it is submitted that, in view of the submissions made herein above, the present petition is liable to be dismissed at the outset.

75. That the contents of the said para are denied for want of knowledge.

I Identified the deponent who has signed in my presence.

In view of the submissions made herein above it is respectfully submitted that this Hon'ble court may be pleased to dismiss the present petition.

*[Handwritten signature]*

*[Handwritten signature]*  
**DEPONENT**  
ए. पी. राणा / S. P. RANA  
संयुक्त सचिव (प्र. एवं वि.) / Joint Secretary (Adm)  
केन्द्रीय माध्यमिक शिक्षा बोर्ड  
Central Board of Secondary Edu  
Shiksha Kendra, 2, Community C  
Preet Vihar, Delhi-110092

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**VERIFICATION**

Verified at New Delhi on this 27<sup>th</sup> day of Jun 2014 that the contents

of above said affidavit are true and correct and no part of it is false and nothing material has been concealed therefrom.  
CERTIFIED THAT THE DEPONENT  
*[Handwritten signature]*

*[Handwritten signature]*