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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.7414/2017 & C.M.Nos.30616/2017 & 30617/2017.**

Reserved on: 9th February, 2018.
Date of Decision: 21st February, 2018.

ASSOCIATION OF SCHOOL VENDORS & ORS.

.... PETITIONERS

Through: Mr.Tanmaya Mehta with
Mr.S.Anand, Advs.

Versus

CENTRAL BOARD OF SECONDARY EDUCATION & ORS.

.....RESPONDENTS

Through: Mr.Amit Bansal, Adv. with
Ms.Manisha Singh, Adv. for R-1/CBSE.
Ms.Isha Khanna, Adv. with Ms.Anam
Ahmed, Adv. for GNCTD.

+ **WP(C) No.10052/2017 & C.M.No.41018/2017.**

PARENTS-STUDENTS WELFARE ASSOCIATION

....PETITIONER

Through: None.

Versus

THE DIRECTORATE OF EDUCATION & ANR.

.....RESPONDENTS

Through: Mr.Gautam Narayan,
Adv.for R-1.
Mr.Amit Bansal, Adv.
with Ms.Manisha Singh,
Adv for CBSE.

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

JUDGMENT

REKHA PALLI, J

1. The present writ petitions involve inter-related issues, though the prayers made therein are diametrically opposite and are accordingly being decided vide this common judgment. The first petition which has been filed by an Association of persons engaged in the business of trading and sale of uniforms, books, stationery etc. in different Schools of Delhi and two parents of School going children, challenges the Circular dated 19th April, 2017 as also the order dated 4th July, 2017 rejecting the Petitioner's representation dated 26.5.2017, both passed by Respondent no.1/CBSE, whereby the affiliated Schools have been prohibited from selling books, both NCERT and non-NCERT, stationery items, as also uniform from shops within the School premises.

2. The second writ petition has been filed by Parent-Students Welfare Association, claiming to be an association of parents of school-going children, challenging Circular dated 24th/25th August, 2017, issued by CBSE, primarily on the ground that the said circular permits commercial activities of selling books and stationery through vendors within the School premises and is therefore not only in contravention of its earlier Circular dated 19th April, 2017, but is also violative of various CBSE Affiliation Bye-Laws and more particularly

of Affiliation Bye-laws No.14(B) & 19.1 (ii) & (iii), which prohibits commercialization or carrying out business activities in the School.

3. For the sake of convenience, parties in the first petition are being referred to as the Petitioners/Respondents hereinafter and the Petitioner in the second petition is being referred to as the Parents-Students Welfare Association.

4. The facts which emerge from the two petitions are that the CBSE is one of the Boards as defined in Section 2(s) of Delhi School Education Act & Rules, 1973 (hereinafter referred to as DSEAR, 1973) established for the purpose of conducting “public examination”.

5. The private unaided Schools are granted recognition upto Elementary, Secondary and Senior Secondary levels by the Directorate of Education (hereinafter referred to as DOE), Govt. of NCT of Delhi/Respondent no.2, under the provisions of DSEAR, 1973 and Right to Education Act, 2009 (hereinafter referred to as “RTE Act, 2009”), and are governed by the provisions of these Acts. The Managing Committees of these Schools are bound to comply with the provisions of DSEAR, 1973 and the RTE Act, 2009, for managing the affairs of the School. The DOE is the regulatory authority over the said private unaided recognised Schools within the provisions of DSEAR, 1973 and the RTE Act, 2009, and the said Schools are bound to follow the guidelines, orders, notification etc. issued by the DOE from time to time.

6. The Respondent no.1 issued a Circular dated 19th April, 2017, which was in the nature of an advisory to the Schools not to indulge in any commercial activity by way of selling of books, stationery,

uniforms and School bags etc. within the School premises and to adhere to the provisions of Affiliation Bye-laws of the Board. The Schools were further directed to desist from the unhealthy practice of coercing the parents to purchase books/uniform etc. from within the School premises or from selected vendors only.

7. Aggrieved by the issuance of circular dated 19.04.2017, the Petitioners challenged the same before this Court by way of writ petition being *WP (C) No.4322/2017* titled as **Association of School Vendors Vs. Central Board of Secondary Education & Ors.**, wherein this Court, after noticing the fact that even though the circular had been addressed to all the heads of CBSE affiliated schools, but the Petitioner being the association of school vendors, may have a grievance, disposed of the petition vide its order dated 19th May, 2017 by holding that it would be appropriate if the Petitioners were to make a representation to the CBSE within ten days and directed the CBSE to decide the same within a period of four weeks.

8. Pursuant to the aforesaid directions of this Court, the Petitioner no.1 made a representation dated 26th May, 2017 to the CBSE/Respondent no.1, seeking a clarification, or in the alternative, a modification of the Circular dated 19th April, 2017, with a request to clarify that the effect of the Circular dated 19th April, 2017 was not to prohibit the sale '*per se*' of the items mentioned therein within the School premises, but only to prohibit the Schools from forcing parents to purchase those products only from the said vendors within the School, and to further clarify that as long as an option was available to

the students and/or parents and there was no coercion of any kind, the operation of such shops in the schools would be valid.

9. The CBSE rejected the Petitioner's representation vide its order dated 4th July, 2017, by holding that the clarification sought therein was untenable in view of Rule 15(b) of Right to Education Rules 2010 (hereinafter referred to as "RTE Rules, 2010") read with Rules 14(B) and 19.1(II) of the Affiliation Bye-laws of the Board which prohibits any commercial activity in School premises. The CBSE also opined therein that the Petitioner No.1/Association of School Vendors did not have any *locus standi* to challenge the circular, as the same had been issued by CBSE to the Schools which had been granted affiliation as per the conditions stipulated in Affiliation Bye-laws of the Board.

10. Aggrieved by the rejection of its representation by the CBSE, vide its order dated 4th July, 2017, the Petitioners have filed the present petition with the following prayers:-

a. Quash and set aside the impugned order dated 04.07.2017 passed by the Respondent No.1 rejecting the representation made by Petitioner No.1;

b. Quash the circular dated 19/04/2017 issued by the Respondent No.1;

c. In the alternative, a direction may be issued to the respondent No.1 to clarify that the effect of the circular dated 19.4.2017 is not to prohibit sale per se of the above stated items within the school premises, but that the prohibition only applies to the extent that schools force parents to purchase products only from the said vendors within the school, and that as long as an option is available, the operation of such shops would be valid;

d. Read down Clause 19 of the CBSE Affiliation Bye Laws to clarify that running of uniform, stationery

and text book shops etc. in schools does not amount to commercialization.”

11. Soon after the present petition was filed, the CBSE/Respondent no.1, with an aim to augment the availability of NCERT books for the students of CBSE affiliated Schools, issued a circular dated 9th August, 2017 addressed to all the Heads of the affiliated Schools, calling upon them to place their online indent for purchase of the NCERT books as per the requirements assessed by the Schools for the Academic year 2018-19 and place their demand for the same through the online site www.ncertbooks.ncert.gov.in.

12. The aforesaid circular was followed by another circular dated 24th/25th August, 2017 issued by the Respondent no.1/CBSE wherein while amending its earlier circular dated 19th April, 2017, the Respondent no.1 permitted the Schools to open a 'Tuck Shop' inside the premises of the School where besides the sale of NCERT books, stationery and other materials, as required by the students, could also be sold. It may be relevant to reproduce para 3 of the aforesaid circular *in extenso* as learned counsel for the Petitioners, in both the petitions have referred to it, at great length:-

“3. In view of the above, the schools are allowed to place indent for purchase of NCERT books directly through NCERT website for distribution among their students and for this purpose, a 'Tuck Shop' may be opened inside the premises of the schools. The stationery and other materials required by the students are also allowed to be sold from the 'Tuck Shop'. To this extent, the circular No.CBSE/AFF/CIRCULAR/10/2017 dated 19.04.2017 stands amended.”

13. It is the issuance of this Circular dated 24th/25th August, 2017 that has led to the filing of the present writ petition by the Parents-Students Welfare Association, who has while challenging the circular, contended that under the garb of the same, commercial activities have been allowed in the Schools by virtually superseding Respondent no.1's own Circular dated 19th April, 2017 and by ignoring the mandate of the Affiliation Bye-laws of the CBSE, which specifically prohibit commercial activities in the School. It is also claimed that as a result of the shops in the schools being permitted to sell books, stationery and other items, the students were now being forced to buy books and other materials from the 'Tuck Shops' in the Schools.

14. Opposing both the petitions, Respondent no.1/CBSE and Respondent no.2/Directorate of Education, Govt. of NCT of Delhi, have filed their counter affidavits in the first petition while placing reliance on the same in response to the second petition as well.

15. Since the circulars impugned in both the petitions have been issued by the CBSE and not by Respondent No.2 i.e. the Directorate of Education, Govt. of NCT of Delhi, it is primarily the CBSE which has defended its circulars while the Directorate of Education, Govt. of NCT of Delhi has by placing reliance on Rule 15(b) of the Right to Education Rules, 2010 and Rule 50(ix) of the Delhi School Education Rules, 1973 contended that no commercialization can be allowed in the Schools. Respondent No.2 has also emphasized that all private unaided recognized Schools are bound to follow the provisions of the Delhi School Education Act & Rules, 1973 as also the Right to Education Act, 2009 & Right to Education Rules, 2010.

16. In its counter affidavit, the CBSE has, besides challenging the locus of the petitioners to challenge the circular issued to the schools, defended the impugned circulars by contending that the same have been issued only with an intention to prohibit commercialization of education, for which there is a specific bar in its Affiliation Bye-laws. It is averred that Rule 14(B) of Affiliation Bye-Laws of the Board clearly mandates that the School shall not use its building and infrastructure for any commercial activity. Reliance has also been placed on Rule 19.1 (ii) of Affiliation Bye- Laws mandating that the School should run as a community service and not as a business and no kind of commercialization should take place in the school. Reliance has also been placed on Rule 15 (b) of Right to Education Rules, 2010 which stipulates that the School is not run for profit to any individual, group or association of individuals or any other persons.

17. The CBSE claims that in consonance of the aforesaid provisions, it had issued a circular dated 12th April, 2016 directing all the affiliated schools to prescribe NCERT/CBSE books with a caution that coercing the students and their parents to buy books of private publishers is an unhealthy practice which is educationally unsound as it is the NCERT textual materials which are used as the base for preparing question papers in the Board Examinations.

18. It is further claimed in the counter affidavit that despite issuance of various communications to all the affiliated schools to refrain from indulging in commercial activities by way of selling text books of publishers other than those of NCERT/CBSE and other stationery items, uniform etc., the CBSE continued to receive complaints from

parents and other stakeholders that the schools were still indulging in the aforesaid commercial activities. The CBSE contends that in these circumstances, the impugned circular dated 19.04.2017 had been issued by it reiterating its directions to the affiliated Schools to desist from the unhealthy practice of coercing students/parents to buy text books, uniforms, note-books, stationery, shoes, school bags etc., from the shops within the school premises or from selected vendors only.

19. It is further averred that with an aim to encourage availability of NCERT books and to prevent commercialization of education, circular dated 9th August, 2017 was issued by the CBSE, advising the schools to register and place their demand for NCERT books through the online link-www.ncertbooks.ncert.gov.in.

20. The further case of the CBSE is that since it was receiving various communications from stakeholders, seeking clarification on the scope of the circular dated 19.04.2017, a clarificatory circular dated 24/25.08.2017 was issued permitting the schools to open small tuck shops for sale of NCERT books, stationery and other material required by the students. The aforesaid circular was further clarified vide circular dated 18.12.2017 clearly specifying that only NCERT books and stationery items like pen, pencil, copy, register, notebook, eraser, sharpener, blank sheets and art and craft materials etc. could be sold in these shops and that sale of books of other publishers was specifically prohibited in these shops. Vide this circular, the schools were also directed not to charge any price higher than the maximum retail price of these items. The issuance of these two circulars dated 24/25.08.2017 and 18.12.2017 is sought to be justified by the CBSE on

the ground that permitting the sale of small and petty stationery items in school premises, was done only with an intent to fulfill the urgent/contingent requirement of the students during school hours. Thus, the CBSE while defending its action of permitting the sale of stationery items in the schools, has claimed that it was found that these items were fulfilling the everyday needs of the students and were of low value and, therefore, would not lead to commercialization of education, unlike sale of books of other publishers, which had high probability of being used as tools to economically exploit the students and their parents by coercing them to purchase the same from school specified vendor.

21. Arguing for the Petitioners, Mr.Tanmay Mehta submits that since para 5 of the impugned circular dated 19.04.2017 suggests that it does not per se prohibit the sale of books, uniforms, stationery etc. in Schools and only prohibits the schools from forcing or coercing parents to purchase products from the said vendors within the school only, the Petitioner would be satisfied if directions were to be issued to CBSE to clarify the circular in terms of prayer (c) of the writ petition. He, thus, seeks a clarification to the effect that the impugned circular dated 19.04.2017 does not per se prohibit the sale of books, both NCERT and non NCERT, stationery and uniform by the shops within the school premises but only prohibits the schools from forcing the parents/students to purchase these products only from the vendors within the school, meaning thereby that the running of these shops in the schools should be permitted subject to an option being available to

the parents/students to buy these items from vendors outside the school premises.

22. While drawing my attention to the language used in Para 1 of the impugned circular dated 19.04.2017, Mr.Mehta submits that the Petitioners are aggrieved because immediately upon issuance of the aforesaid circular, schools all across Delhi had taken a view that the circular absolutely prohibits the operation of shops in the schools, irrespective of whether or not, there was any coercion and accordingly all the vendors running shops in the schools were instructed to cease operations and vacate the premises, compelling the Petitioners to challenge the circular dated 19.04.2017.

23. Before elaborating his submissions in support of his challenge to the impugned circular, the learned counsel for the Petitioners submits that while issuing the impugned circular and treating the sale of these essential items in the schools premises as ‘commercialization’ activity by the Schools, the CBSE/Respondent no.1 has overlooked the most vital fact that, these items being sold in the school premises, are only for the students of the school and are being sold through these shops in the schools for the last many years and can by no stretch of imagination, be treated as ‘commercialization’.

24. Mr. Mehta further submits that though the Affiliation Bye-laws of Respondent no.1/CBSE as well as the provisions of the Rules under the Right to Education Act, 2010 prohibit commercialization in the schools, but the crucial fact which the Respondents have failed to consider is that the operation of a shop selling products including text books, both NCERT and non-NCERT, stationery items and uniform

exclusively to the students studying in the school, cannot be treated as commercialization. He submits that the context in which the term 'commercialization' is used in the Byelaws and Right to Education Act and Rules, cannot include an activity intrinsically connected with educational activities.

25. The learned counsel for the Petitioner further submits that while issuing the impugned circular, Respondent no.1 has also ignored the fact that the presence of these small shops in the school, actually benefits the entire student community as it not only provides convenience but also promotes equality by ensuring that there is uniformity in the products being sold and used by the children. He further submits that the impugned circular completely ignores the need of students who are hostellers/boarders, who generally have time restrictions and ought not to be compelled to travel long distances to buy books, uniform and stationery items and therefore contends that the decision of the CBSE is *ex facie* discriminatory and violative of Article 14 of the Constitution.

26. In response to the objection raised by the Respondents that the Petitioners had no locus to challenge a circular issued by the CBSE to the Heads of the Affiliated Schools, Mr.Mehta contends that the Petitioner and its constituent members have a fundamental right to carry out their trade and business under Article 19(1)(g) of the Constitution of India and the same can only be subject to reasonable restrictions imposed by the State under Article 19(6) of Constitution of India. He submits that by prohibiting shops in the Schools, the Respondents have virtually banned the vendors who are members of

Petitioner no.1/Association of School Vendors, from carrying out their trade and business. He submits that even though the impugned circulars are not addressed to the vendors or members of Petitioner No.1- Association, but the direct effect thereof is imposition of wholly unjustified restrictions on the right of the vendors to carry out their trade and business. In support of his submission that since the impugned circular is directly impacting the trade activities of the members of Petitioner No.1, they would have the locus to challenge the same, Mr.Mehta relies on the decision of Supreme Court in the case of *Benett.Coleman and Co. And Ors. Vs.Union of India & Ors.* reported as (1972) 2 SCC 788. He also places reliance on an order dated 19.05.2017 passed by this Court in the writ petition earlier filed by the Petitioners i.e. W.P.(C) 4322/2017, to contend that this Court has already upheld the Petitioner's locus by opining that even if it was not directly addressed to them, they did have a valid grievance qua the impugned circular. Mr.Mehta further contends that in any event, the two other Petitioners i.e., Petitioner Nos.2 and 3 are parents of children studying in CBSE Affiliated Schools and they were vitally affected by the impugned circulars as their children were, without any justifiable reason, being deprived of availing the facility of buying books and uniform in their schools.

27. Learned counsel for the Petitioner submits that merely because some schools may have been found violating the prescribed norms and guidelines, it was absolutely unfair on the part of the CBSE to direct the closure of all shops being run in schools across the country. He submits that the CBSE instead of regulating the schools, has taken a

wholly arbitrary and unreasonable decision to shut down the shops in all the Affiliated Schools. The submission, thus, is that a complete prohibition, merely on account of the possibility of misuse, was violative of the fundamental rights of the Petitioners under Article 19(1)(g) of the Constitution. Mr. Mehta also contends that Article 19(6) of the Constitution of India permits only imposition of reasonable restrictions by the State on the right of a citizen to practice any profession/business/trade and does not permit a complete prohibition. In support of his submissions, he places reliance on the decisions of the Supreme Court in the case of State of Bombay vs. F.N.Balsara reported as AIR 1951 SC 318, Ajit Kumar Nag vs. General Manager reported as (2005) 7 SCC 764 and Ramlila Maidan in RE reported as (2012) 5 SCC 1.

28. The last submission of Mr.Mehta is that, even otherwise once the CBSE itself, has, after realizing the daily needs of the students, issued the circular dated 25.08.2017 in partial amendment of its circular dated 19.04.2017 thereby permitting the sale of NCERT textbooks and stationery items in the school shops, there was no justification to prohibit the sale of only non-NCERT books and uniforms in those shops. He submits that uniform is an equally essential item for the students in the schools and contends that availability of non-NCERT reference books in those shops would only add to the convenience of the students and their parents. He submits that there is no intelligible differentia for permitting the sale of some items needed by the students while prohibiting the sale of other equally essential items in these shops in the schools and contends that this

action of CBSE prohibiting sale of non-NCERT books and uniform in the school, had no nexus with the purported object of preventing commercialization in the schools and was thus clearly violative of Article 14 of the Constitution of India.

29. On the other hand, Mr.Dahiya learned counsel for the Parents-Students Welfare Association, in support of his challenge to the circular dated 24/25.08.2017, permitting the sale of NCERT textbooks and stationery items in the school shops, contends that this subsequent circular virtually supersedes the earlier circular dated 19.04.2017, the legality whereof had already been tested, before this Court in the case of *Sunil Pokhriyal Vs. The Directorate of Education & Ors.* i.e. W.P(C) 1954/2017. Mr.Dahiya submits that the circular dated 24/25.08.2017, by permitting sale of textbooks and stationery items, through the school shops, is promoting commercialization which is specifically prohibited not only by the affiliation bye-laws of CBSE but also by Rules under the RTE Act. Placing reliance on decision of Supreme Court in the case of *Ex Capt K.Balasubramaniam & Ors.* titled as (1991) 2 SCC 708 and in the case of *Subhash vs. State of Maharashtra* titled as 1995 Supp(3) SCC 332, Mr.Dahiya submits that it is a well settled legal position that a circular cannot supersede a statutory rule or bye-laws. He, therefore, submits that the impugned circulars dated 24/25.08.2017 and 18.12.2017, being inconsistent with the statutory Rules and Bye-laws prohibiting commercialization in the schools, are liable to be quashed.

30. Learned counsel for DOE, Mr.Gautam Narayan, also opposes the petition and submits that it is the obligation of the affiliated schools

to not only follow the Affiliation Bye-laws of the CBSE but also to follow the provisions of DSEAR as well as the RTE Act and Rules. He submits that any kind of commercialization in the schools has to be curbed and thus supports the impugned circulars issued by the CBSE/Respondent no.1.

31. Arguing for the CBSE, Mr.Amit Bansal, while seeking dismissal of both the writ petitions, submits that the impugned circulars have been issued in consonance with and to effectively implement Rule 14(B) of Affiliation Bye Laws of the Board which provides that, the school shall not use its building and infrastructure for any commercial activity. He submits that Rule 19.1(ii) of Affiliation Bye Laws, clearly mandates that the school should run as a community service and not as a business and contends that no kind of commercialization can be permitted in the schools. While reiterating the stand taken in the CBSE's counter affidavit, Mr.Bansal submits that the CBSE had received complaints against schools from parents, students, social activists and other stakeholders, from all over India, alleging that commercial activities were being undertaken by schools in their premises by way of coercion to buy books, essentially of private publishers, uniforms, etc from the shops located in the school premises. He submits that parents and students were especially aggrieved by prescription of costly books of private publishers and uniform by the school and their sale from the shops located in school premises, whose prices were arbitrarily fixed by the school vendors. He further submits that in order to alleviate the grievances of the students and parents and in keeping with its duty to curb unhealthy

practices in the field of education, the CBSE had initially issued circular dated 12.04.2016 directing the schools not to prescribe too many books of private publishers or to coerce the students and their parents to buy books of private publishers and further requested them to procure NCERT books for its students from various sale counters of NCERT. He submits that despite the issuance of circular dated 12.04.2016, the CBSE continued to receive complaints from parents and other stakeholders about the schools indulging in commercial activities by way of selling books of private publishers, uniforms, etc., the Respondent no.1/CBSE had no other option but to issue the impugned circular dated 19.04.2017, thereby directing the schools not to sell books, stationery and uniform etc. in the shops in the schools.

32. Mr.Bansal further submits that the CBSE has acted in a most reasonable and fair manner which is evident from the fact that upon realising the difficulties likely to be faced by the students and parents upon directing complete prohibition of the sale of essential items in the shops in the schools, the CBSE had issued circulars dated 24/25-08-2017 & 18.12.2017 permitting the sale of NCERT books and stationary items in school. He, thus, contends that the prohibition on the sale of non-NCERT books and uniform in the school shops, was essential and fully justified and was taken after due consideration of all the relevant factors. Placing reliance on a decision of a Division Bench of this Court in the case of **CBSE v.Tushar Welfare** reported as *127 (2006) DLT 409*, he contends that the scope of judicial review in a case of policy decision like the present one, was extremely limited and once a decision is taken by the CBSE consisting of experts in the field

of education, it is not proper for this Court to interfere with its functioning.

33. Mr.Bansal has also placed reliance on the decision of the Supreme Court in the case of *Rai Sahib Ram Jawaya Kapur & Ors.v. State of Punjab* reported as AIR 1955 SC 549 in support of his plea that the Petitioner had no locus to challenge the impugned circular dated 19.04.2017 as a mere prospect of being able to sell books in the schools could not be treated as a right to property. He thus contends that the petition is liable to be rejected outrightly for want of locus.

34. Having heard the learned counsel for the parties, before I deal with the rival contentions raised by the parties, it would be appropriate to refer to Section 19(1) of DSEAR,1973, Rules No.14(B)(1) & 19.1(ii) & (iii) of CBSE Affiliation Bye-laws as also the circulars dated 01.04.2017, 19.04.2017, 24/25.08.2017 and 18.12.2017 issued by CBSE which are reproduced hereinbelow:-

“19. Affiliations.—(1) For the purpose of any public examination every recognised higher secondary school shall be affiliated to one or more of the Boards or Council conducting such examination and shall fulfill the conditions specified by the Board or Council in this behalf.

xxxxx

14(B) The school shall not use its building and infrastructure for any commercial activity but multiple use of school building is allowed for the limited purposes of :-

1. Promotion of Education and Skill Development including Vocational Education;

xxxxx

19. ROLE/AIMS OF SOCIETY/TRUST/# COMPANY REGISTERED UNDER SECTION 25 OF THE COMPANIES ACT, 1956.

1. The Society / Trust/# Company Registered under section 25 of the Companies Act, 1956 running the school has a critical and key role to play in providing a good and healthy climate to the school to fulfil its aim and objects, to enable the staff provide quality education and to be a centre for educational excellence. To achieve this aim, the role and responsibilities of the Society/ Trust/# Company Registered under section 25 of the Companies Act, 1956 are defined as under:

(i) xxxxx

(ii) It shall ensure that the school is run as a community service and not as a business and that commercialization does not take place in the school in any shape whatsoever.

(iii) It shall ensure that the funds accruing from the school are spent for the benefit of the school and for its expansion.

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No.CBSE/RO/DDN/PA/NCERT/2017

DATED:01.04.2017

To,

*The Principles/Heads of the Institutions
All the CBSE Affiliated Schools
Under jurisdiction of CBSE, RO-Dehradun*

SUB: Use of NCERT textbooks by the Schools affiliated with the Board – Reg.

Madam/Sir,

The CBSE has always been emphasizing on the usage of NCERT Books in its affiliated schools, since NCERT textual materials are the base for preparing test items in the Board Examination and the Question Paper of the CBSE is set in accordance to the prescribed syllabus of the subject. NCERT books are reasonably priced, scientifically designed and are in conformity with National Curriculum Framework 2005. They also keep in view the integrated nature of learning from Class I onwards.

The Board has been issuing circulars from time to time for usage of NCERT books since the syllabus prescribed by the CBSE recommends the textbooks published by NCERT for classes IX-XII for all the major subjects. For Classes I-VIII, as per Rule 15-1(d) of the Affiliation Bye-Law “The schools will follow the textbooks published by NCERT for the Middle Classes as far as practicable”. The same was disseminated to the affiliated schools vide the Circular No.20/2014 dated 06.02.2014 followed by Circular No. Acad-41/2015 dt. 20.07.2015 and Circular No. Acad 13/2016 dt. 12.04.2016 (available on www.cbseaff.nic.in; www.cbse.nic.in).

Recently, the Board also took the initiative of providing NCERT text books for all classes (from I to XII) through the empanelled distributors/vendors of the NCERT. An online INDENT was raised for procuring the requirement of NCERT books by the affiliated schools. I am sure, your school must have submitted the requirement of NCERT Books through the Online Indent and most of the school must have received/procured the NCERT books from the vendor as per their requirement. The schools who have still not implemented the usage of NCERT text books in their schools are once again requested to follow the guideline issued by the Board and ensure

to use only genuine NCERT textbooks in their schools from the Session 2017-18 onwards up to the maximum possible extent (for the middle classes i.e., I to VIII). It may be noted that the NCERT books are being published after due research by team of experts.

Despite of the initiatives taken by the CBSE to implement the usage of NCERT Books in its affiliated schools, it has been often brought to the knowledge of the Board, by means of Print Media, complaints/grievances of parents, RTI by General Public or Social Activist, Telecommunications and other sources that schools are not following to the guidelines/directions issued by the CBSE and several schools are exerting pressure on children and their parents to buy an excessive number of textbooks predominantly published by Private Publishers other than NCERT which are costly, voluminous and unscientifically designed which should not be brought into the practice.

Therefore, it is once again reiterated that the principal/Head of Instt. Must pay personal attention towards implementation of usage of NCERT Books in their school. It may be marked that this office may make surprise visits in the schools to ensure, if the NCERT textbooks are used or not. Also, in the event of receipt of any complaint regarding non-implementation of NCERT Books through any source, this office will be bound to initiate action against the defaulters as per rules of the Board. Also, **the parents should not be coerced to buy the textbooks of private publisher/additional textbooks by the school authorities and the schools must mandatorily use the NCERT textbooks in their schools.**

Principals/Head of Instt. Are also requested to widely disseminate this information on the Notice Board at the prominent places in the school premises for awareness of the students/parents and stake holders about the worth of the NCERT Books.

The above instruction must be strictly complied with please.

Yours faithfully
-Sd-
(Ranber Singh)
Regional Officer

XXXXX

No.CBSE/AFF/CIRCULAR/10/2017
DATED:19.04.2017

To
The Managers and
Heads of all CBSE affiliated schools

Subject: Advisory to schools not to indulge in commercial activities by way of selling of books, stationery, uniforms, school bag etc and to adhere to the provisions of Affiliation Bye-Laws of the Board.

The Board, time and again have issued advisories to all its affiliated schools not to indulge in commercial activities by way of selling of text books, note books, stationary items, uniforms etc. and to adhere to the provisions of Affiliation Bye-Laws of the Board. However, it has been brought to the notice of the Board through various complaints received from parents and other stakeholders that still schools are indulging in commercial activities by way of selling of books and uniforms etc within the school premises or through selected vendors.

2. *Rule 19.1 (ii) of CBSE Affiliation Bye-Laws mandates that the society/Trust/Company registered under section 25 of the Companies Act, 1956 shall ensure that the school is run as a community service and not as a business and that commercialization does not take place in school in any shape whatsoever.*

3. Further, all the schools affiliated to CBSE are required to follow directions given in circular No.Acad/13/2016 dated 12.04.2016 regarding use of NCERT/CBSE textbooks but often the Board receives reports and complaints regarding the pressure exercised by schools on children and their parents to buy textbooks other than NCERT/CBSE.

4. The Board has taken serious view of the above violations. Hence, once again your attention is drawn that Educational Institutions are not commercial establishments and their sole purpose is to provide quality education.

5. Therefore, the schools are directed to desist from the unhealthy practice of coercing parents to buy textbooks, notebooks, stationery, uniforms, shoes, school bags etc. from within the premise or from selected vendors only.

6. The school management shall ensure strict compliance of the above.

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Sd-

(K.SRINIVASAN)

DEPUTY SECRETARY (AFFILIATION)

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**“No.CBSE/AFF/CIRCULAR/16/2017/1293271
DATED:24/25.08.2017**

To

All the Heads of Schools affiliated to the CBSE

Sub: Placing of indent for the requirement of textbooks published by NCERT through NCERT website-reg.

The CBSE, vide circular
No.CBSE/AFF/CIRCULAR/10-/2017 dated

19.04.2017 has issued instructions to follow the directions given in circular No.ACAd/13/2016 dated 12.04.2016 along with the advice to schools to desist from forcing the parents to buy the books and stationery items from the commercial shops located inside the school premises.

2. the NCERT, in order to augment the availability of NCERT books for the students of CBSE affiliated schools, has called for indent through their website for purchase of books as per the requirement assessed by the schools. The academic branch of CBSE vide circular no. Acad-29/2017 dated 09.08.2017 advised the schools to register and place their demand for NCERT books required for academic year 2018-19 through the online link www.ncertbooks.ncert.gov.in.

3. In view of the above, the schools are allowed to place indent for purchase of NCERT books directly through NCERT website for distribution among their students and for this purpose, a 'tuck Shop' may be opened inside the premises of the schools. The stationery and other materials required by the students are also allowed to be sold from this 'Tuck Shop'. To this extent, the circular No.CBSE/AFF/CIRCULAR/10/2017 dated 19.04.2017 stands amended.

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Sd-

(K.SRINIVASAN)

DEPUTY SECRETARY (AFFILIATION)

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**“No.CBSE/AFF/CIRCULAR/16a/2017
DATED:18.12.2017**

To

All the Heads of Schools affiliated to the CBSE

Sub: Clarification related to Board's circular dated 25.08.2017 regarding placing of indent for NCERT books –reg.

- Ref:**
1. **Circular** No.Acad/13/2016 dated 12.04.2016
 2. **Circular** No.CBSE/AFF/circular/10/2017 dated 19.04.2017
 3. **Circular** No.Acad-29/2017 dated 09.08.2017
 4. **Circular** No.CBSE/AFF/circular/16/2017/1293271 dated 25.08.2017

This is in continuation to Board's circular No.CBSE/AFF/CIRCULAR/16/2017/1293271 dated 25.08.2017, wherein the schools were allowed to place indent for purchase of NCERT books directly through NCERT website for distribution among their students and for this purpose, a 'Tuck Shop' may be opened inside the premises of the schools.

2. *In this connection, the CBSE vide circular No.Acad/13/2016 dated 12.04.2016 has directed the schools not to force children and their parents to buy textbooks other than NCERT/CBSE textbooks. The Board has also issued circular No.CBSE/AFF/CIRCULAR/10/2017 dated 19.04.2017 directing the schools affiliated with Board to desist from the unhealthy practice of coercing parents to buy text books and stationery items from within the premises or from selected vendors only.*

3. *The NCERT, in order to augment the availability of NCERT books for the students of CBSE affiliated schools, has called for indent through their website for purchase of books as per the requirement assessed by the schools. The Academic unit of CBSE vide circular NoT.Acad-29/2017 dated 09.08.2017 advised the schools to*

register and place their demand for NCER books required for academic year 2018-19 through the online link www.ncertbooks.ncert.gov.in.

4. The Board is in receipt of various communications from stakeholders seeking clarification on the scope of the circular. Accordingly, it is clarified that vide circular dated 25.08.2017, the schools can open small outlets for supply of only NCERT books and shall not sell books of any other publishers. Besides, the schools are also permitted to provide stationery items to its students such as pen, pencil, copy, register, notebooks, eraser, sharpener, blank sheets, art & craft materials etc. The price charged for all these items should not be more than maximum retail price (m.r.p). Parents are free to buy textbooks and stationery items from within the premises or from any other vendor of their choice. Further, it may be noted that selling books other than NCERT books in these shops, will be considered a violation of this circular, and will attract action against the school.

-Sd-

(ANURAG TRIPATHI)
SECRETARY, CBSE”

35. Upon consideration of the rival submissions made by the parties, I find that besides the issue of locus of the Petitioners to challenge the impugned circulars issued by Respondent No.1/CBSE, three inter-related issues arise for consideration in the present case.

The first issue relates to the term ‘commercialization’ used in the context of school affiliation bye-laws of CBSE as well as the various circulars issued by the C.B.S.E. It is necessary to first decide

as to what can be termed as 'commercialization' in the context of schools as it is the common case of the parties that commercialization is prohibited by the Affiliation Bye-laws of CBSE, the provision of the RTE as well as the provisions of DSEAR. While the learned counsel for the Petitioner in the first petition would contend that opening of shops in the school for selling items for convenience of the students & parents, would not amount to commercialization, it is the stand of the Parents-Student Welfare Association-the Petitioner in the second writ petition, as well as that of both the Respondents, that the said activity of sale of books, uniform, stationery etc. by the affiliated schools through shops within their premises, clearly falls within the ambit of the term 'commercialization'. However, an inter-related question which arises is as to whether the imposition of absolute prohibition of sale of non-NCERT books and uniform in the school shops, is a 'reasonable restriction' as contemplated under Article 19(6) of the Constitution of India or whether it is violative of the Petitioner's fundamental right under Article 19 (1) (g) of Constitution of India as is contended by the learned counsel for the Petitioner.

36. The second issue which arises for consideration is, as to whether, there is any justifiable basis, for the classification sought to be done by the CBSE by placing uniforms and non NCERT books in a category different than NCERT books and stationery items. The admitted case of the parties being that vide circulars dated 25.08.2017 and 18.12.2017, the CBSE has not only permitted opening of 'Tuck shops' in the affiliated schools, but has also permitted the sale of

NCERT books and all stationery items therein while prohibiting the sale of non-NCERT books and uniform in these shops.

37. The third issue, which is the only issue, raised by the learned counsel for Parents-Students Welfare Association is, as to whether a circular issued by the CBSE can override the provisions of the Affiliation Bye-laws of Board and other statutory rules.

38. The first issue, as to whether the sale of the aforementioned items in the school shops, would amount to 'commercialization' or not, cannot in my view, be decided in isolation or as an abstract proposition, as is sought to be contended by the learned counsel for the Respondents. The question will necessarily have to be decided with reference to the context, in which the term 'commercialization' is being used. When the provisions of Affiliation Bye Laws of CBSE, Delhi School Education Act and Rules as also that of the Right to Education Act and Rules, prohibit 'commercialization', it obviously would mean that the school premises ought not to be permitted to be used for any purpose other than for education. The question, thus would be, as to whether the term 'education' would mean only 'classroom teaching' or as to whether it would encompass all the ancillary activities necessary to provide 'education' in the schools.

39. In my considered opinion, the use of the school buildings for purposes of education, would put a corresponding duty on the school management to ensure that the students are provided with all necessary facilities so as to help them pursue education in the school. The availability of books, both NCERT and non NCERT, stationery items and uniform in the School premises would only add to the

convenience of the parents and the students. The admitted case of the parties is that the aforesaid items in the school shops would be available only to the students of the school and not to outsiders and, therefore, I see no element of commercialization in sale of these essential items in the school shops. If the sale of books and uniform in the school shops without any coercion on the students/parents to buy the same from these shops, is treated as 'commercialization', there is no reason as to why even the sale of food items in canteen facilities would also not be treated as 'commercialization'. Such an interpretation would lead to a wholly absurd situation where on the analogy sought to be propounded by the Respondents, a request for prohibition of sale of food items may also be raised. This, in my opinion, cannot be the intent of the provisions in the bye-laws or the Rules, relied on by Respondents, while prohibiting commercialization in schools. The term 'commercialization' in schools, would thus mean only carrying out of activities wholly unconnected with education. The availability of uniform, non-NCERT reference books or even food items for sale only to the students of the school, in my opinion, does not fall in the category of and cannot at all be considered as 'commercialization'.

40. Once it is found that the sale of these items in the school shops without coercing the students/parents to buy them only from those shops, cannot be termed as 'commercialization', the connected issue would be as to whether the CBSE, upon receipt of complaints that the students/parents were being coerced by the school to buy the said items from these shops, could have outrightly prohibited their sale in

these school shops or whether it ought to have only regulated the same by ensuring that stringent action is taken against those erring schools, which coerce the student/parents to buy these items from the school shops only. The question, thus, would be as to whether the mischief sought to be curbed by the petitioners, warranted a complete prohibition or a reasonable restriction by CBSE. It may be appropriate to refer to the decision of the Supreme Court in the case Ramlila Maidan Incident, IN RE reported as (2012) 5 SCC 1, on which reliance has been placed by the learned counsel for the Petitioner. In the aforesaid decision, the Supreme Court observed as under:-

“32. For adjudging the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorized, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, amongst others, enter into the judicial verdict. [See: Chintamanrao v. State of M.P.]”

33. The courts must bear a clear distinction in mind with regard to `restriction' and `prohibition'. They are expressions which cannot be used interchangeably as they have different connotations and consequences in law. Wherever a `prohibition' is imposed, besides satisfying all the tests of a reasonable `restriction', it must also satisfy the requirement that any lesser alternative would be inadequate. Furthermore, whether a restriction, in effect, amounts to a total prohibition or not, is a question of fact which has to be determined with regard to facts and circumstances of each case.”

41. Thus, if the prohibition of the sale of the non NCERT books and uniform etc. within the School premises by the CBSE is considered in the light of the observations of the Supreme Court in the aforesaid decision, I find no justification on the part of the Respondent no.1/CBSE to altogether prohibit the sale of the aforesaid items in the School instead of regulating their sale by imposing reasonable restrictions. Even though learned counsel for the Respondent No.1/CBSE, by placing reliance on this judgment, has taken pains to urge that in policy matters wherein the experts in the CBSE have taken a decision, this Court should exercise judicial restraint from interfering with the said policy, I am unable to accept the said plea since I find that in the facts of the present case, the impugned decision does not relate to any academic matter or is in any way related to maintenance of standards of education to be imparted to the students of the affiliated schools and, therefore, I see no reason not to examine whether the impugned circulars are unfair or unreasonable, irrational and arbitrary. Reliance may be placed on the decision of the Supreme Court in **Manohar Lal Sharma Vs. Union of India & Anr.** reported as (2013) 6 SCC 616, wherein, in para 14, it was held as under:-

“14. On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned Policy that allows FDI up to 51% in multi-brand retail trading does not appear to suffer from any of these vices.”

Reference may also be placed on the decision of the Supreme Court in UGAR Sugar Works Ltd. Vs. Delhi Administration & Ors. reported as (2001) 3 SCC 635, wherein the Supreme Court while reiterating the well settled position that Courts in exercise of their powers of judicial review, do not ordinarily interfere in the policy decision unless the policy is found to be vitiated on the grounds of mala fide, unreasonableness, arbitrariness or unfairness etc., has in Para 24 held as under:-

“24. The argument that since MSF laid down for the year 1994-1995 were not changed till 1998-99, there was no need to increase MSF requirements in 1999-2000 or to further increase the same in the year 2000-2001 for the lowest price tag brand of liquor from 60,000 cases (7.2 lakh bottles) to 75,000 cases (9 lakh bottles) for the current year, suffers from the basic infirmity that it invites the court to enter into an area of testing the executive policy, not on grounds whether it is “just, fair and reasonable”, but whether the object could not have been achieved by fixing a lower MSF requirement. In other words the court is being invited to prescribe MSF requirements in exercise of its power of judicial review. That is not permissible and we must decline the invitation to enter that area. It is not within the province of this Court to lay down that the executive policy must always remain static, even if its revision is “just, fair and reasonable”. What is relevant is to find out whether the executive action is mala fide, unreasonable or irrational as a criterion. As already observed the court in exercise of its power of judicial review cannot sit in judgment over the policy of administration except on the limited grounds already noted. Each State is empowered to formulate its own liquor policy keeping in view the interest of its citizens. Determination of wide-scale acceptability of a particular brand of liquor, on the basis of National

Sales Figures, does not strike us as being unreasonable, much less irrational. The basis for determination is not only relevant but also fair. No direction can be given or expected from the court regarding the “correctness” of an executive policy unless while implementing such policies, there is infringement or violation of any constitutional or statutory provision. In the present case, not only is there no such violation but on the other hand, the State in formulating its policy has exercised its statutory powers and applied them uniformly. “

42. In my view, the decision of the Respondents to prohibit the sale of items, needed by the students in the Schools, merely on the premise that the availability of these items in the school shops for sale, could be misused as the students and parents could be forced to buy the same only from the School shop, appears to be wholly arbitrary and quite irrational. It appears that the Respondents while issuing the aforesaid circulars, have not at all considered the various relevant factors including the fact that it may be more in the interest of students that the option to buy books, both NCERT and non NCERT, stationery and uniform items from the school shops should be available to them.

43. For all the aforesaid reasons, I have no hesitation in coming to the conclusion that the prohibition imposed vide the impugned Circulars, does not satisfy the test of ‘reasonable restrictions’ under Article 19(6) of the Constitution of India.

44. In relation to second issue regarding the justifiable basis for classification by CBSE by placing uniforms & non-NCERT books in a category different than NCERT books and stationery items, I find

merit in the submissions made by learned counsel for the Petitioner that once the Respondent has itself permitted the sale of NCERT books and stationery items in the School, there is no justification or reason as to why sale of only non NCERT books and uniform should be prohibited in the School. There is no reason for placing the NCERT books and stationery items in the permissible category while placing the non NCERT books and uniform in the non-permissible category. There is no valid reason for this classification which is discriminatory on the face of it as it cannot be denied that all these items including uniform, are essential requirements of the students.

45. Reference may also be made to the decision of the Supreme Court in case of *S. Seshachalam & Ors. Vs. Chairman, Bar Council of Tamil Nadu & Ors.* reported as (2014) 16 SCC 72, wherein the Supreme Court held, that Article 14 forbids class legislation but it does not forbid reasonable classification of persons, objects and transactions by legislature for purpose of achieving specific ends. The classification must however not be arbitrary, artificial or evasive and there must be a nexus between the basis of classification and object of the act and if it is found that there is no reasonable basis for classification, then such classification may be declared discriminatory. Paras 21 & 22 of the aforesaid decision of the Supreme Court reads as under:-

“21. Article 14 of the Constitution of India states that:

“14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 14 forbids class legislation but it does not forbid reasonable classification. The classification, however, must not be “arbitrary, artificial or evasive” but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. But classification must not be “arbitrary, artificial or evasive”. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfil the following two conditions: firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.”

46. In so far as the third issue as to whether the impugned Circulars dated 24th/25th August, 2017 and 18th December, 2017 issued by the CBSE could override the provisions of the statutory bye-laws and rules, I find that though there can be no doubt about the legal position, as enunciated by various decisions of the Supreme Court as also of this Court, that a circular or an Office Memorandum cannot override the statutory provisions, but the issue which arises in the present case is as to whether the impugned circulars actually violates any statutory provision as is sought to be contended by learned counsel for the Parents-Students Welfare Association. The learned counsel for the Parents-Students Welfare Association submits that the CBSE by permitting opening of 'tuck shops' to sell NCERT books and stationery items in the school premises, is promoting commercialization in the schools and thereby violating the statutory provisions of CBSE Affiliation Byelaws, RTE Act and Rules as also the DSEAR. This issue is interlinked with the first and foremost issue that whether permitting sale of items required/used by the students in the school shops can be termed as 'commercialization'. However, once I have come to a conclusion that the sale of these items in the School, does not amount to any kind of commercialization, the issuance of the said circulars permitting the said sale in the school shops in any manner, cannot be said to be contrary to the statutory bye-laws and rules which prohibit commercialization. No other ground has been urged by the learned counsel for Parents and Students Welfare Association.

47. Before I conclude, I must also deal with the submission of learned counsel for the Respondent wherein he has sought to challenge the *locus standi* of the Petitioners to impugn the circulars issued by CBSE. I find, that, even though the impugned circulars may not be issued directly to the Members of the Petitioner no.1/Association of School Vendors, there can be no doubt about the fact that the said circulars directly impact their right to sell books in the Schools thus they would necessarily be an aggrieved party. I find that the decision of the Supreme Court in the case of **Rai Sahib Ram Jawaya Kapur & Ors. vs. State of Punjab** reported as AIR 1955 SC 549 on which reliance has been placed by learned counsel for Respondent no.1, is not at all applicable to the facts of the present case and on the other hand, the decision of the Supreme Court in the case of **Indian Express Newspaper (Bombay) Pvt. Ltd. Vs. Union of India** reported as (1985) 1 SCC 641, on which reliance has been placed by learned counsel for the Petitioner, actually deals with the issue of impact of the impugned actions as arising in the present case. In the said decision, the Supreme Court while dealing with the question of impact of imposition of the import duty on newsprint under the Customs Tariff Act, 1975 on the cost and circulation of newspapers as well as on the right to freedom to practice any trade/occupation/profession under Article 19(1)(g) of the Constitution of India, of the Petitioners therein, observed as under:-

“102. The question in the present cases is whether the tax has been shown to be so burdensome as to warrant its being struck down? The petitioners have succeeded in showing a fall in circulation but whether it is a direct

consequence of the customs levy and the increase in price has not been duly established. It may be due to various circumstances. The fall in circulation may be due to the general rise in cost of living and the reluctance of people to buy as many newspapers as they used to buy before. It may be due to bad management. It may be due to change of editorial policy. It may be due to the absence of certain feature writers. It may be due to other circumstances which it is not possible to enumerate. Except the synchronising of time, there is nothing to indicate that the slight fall in circulation is directly due to the levy of customs duty. One curious feature of the case is that the petitioners have made no efforts to produce their balance sheets or profit and loss statements to give us a true idea of how burdensome the customs levy really is. On the other hand, the Government also has made no efforts to show the effect of the impact of the levy on the newspaper industry as a whole. All these years, the very exemption which they “granted was an indication that the levy was likely to have a serious impact on the newspaper industry. Even now the exemption given to the small and medium newspapers shows that there is bound to be an impact. No effort has been made on the part of the Government to show the precise nature of the impact. On the other hand, the case of the Government appears to be that such considerations are entirely irrelevant, though the outstanding fact remains that for several years, the Government itself thought that the newsprint deserved total exemption. On the material now available to us, while it is not possible to come to the conclusion that the effect of the levy is indeed so burdensome as to affect the freedom of the press, we are also not able to come to the conclusion that it will not be burdensome. This is a matter which touches the freedom of the press which is, as we said, the very soul of democracy. This is certainly not a question which should be decided on the mere question of burden of proof. There are factors indicating that the present levy is heavy is perhaps heavy enough to affect circulation. On such a vital issue, we cannot merely say that the petitioners have not placed sufficient

material to establish the drop in circulation is directly linked to the increase of the levy when, on the side of the Government, the entire exercise is thought to be irrelevant. Hence there appears to be a good ground to direct the Central Government to reconsider the matter afresh in the light of what has been said here.”

48. Be that as it may, even if I were to accept the plea of the Respondent that the Petitioner/Association of School Vendors does not have any *locus standi* to challenge circulars of CBSE, I cannot lose sight of the fact that the other two Petitioners i.e., Petitioner nos. 2 and 3, who are the parents of school going children, are being deprived of opportunity to buy the Non NCERT reference books and uniform from the shops within the School premises as a direct consequence of the impugned circulars. The objection raised by the Respondents regarding the *locus standi* of the Petitioners, is thus liable to be rejected.

49. For the aforesaid reasons, the Writ Petition No.7414/2017 filed by the Petitioners/Association of School Vendors is allowed and the circular dated 19th April, 2017 issued by CBSE is quashed and set aside. It is further directed that the Petitioners shall not be prohibited from selling of non NCERT books and uniforms also in the tuck shops which have been allowed to be set up in the CBSE affiliated schools for selling NCERT books and stationery items vide circular dated 24th/25th August, 2017. The conditions in circular dated 18.12.2017 prohibiting sale of Non-NCERT books in the school shops also stand quashed. The Respondents would however be free to take regulatory

steps to ensure that the students and parents are not coerced in any manner, to buy any items from these shops.

50. The writ petition No.10052/2017 filed by the Parents-Students Welfare Association is dismissed. Parties to bear their own costs.

REKHA PALLI, J

FEBRUARY 21,2018

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