

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

Civil Miscellaneous Writ Petition No. 645 Of 2018
(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

LIST OF DATES & SYNOPSIS

The petitioner association is being aggrieved from the action of the respondent no. 2 as the respondent no. 2 has passed the orders on 15.02.2018 (**Annexure-3**) which is totally in contrary to the Uttarakhand School Education Act, 2003 (**Annexure-10**), as well as, the guidelines laid down by the CBSE bye-laws dated 22.01.1988 (**Annexure-5**) and the circulars issued by the CBSE on 06.02.2014 (**Annexure-6**). The rights have been granted by the CBSE bye-laws and circular to the private un-aided schools to adopt the books of private publishers. In that eventuality the orders passed by the respondent no. 2 on 15.02.2018 (**Annexure-3**) is nothing else but the abuse of the process of law, as well as, the exercise of the powers which has no sanctity of the law. Thus, the petitioner association is before this Hon'ble court by way of filing the present writ petition.

Annexure-1 (26.10.2015)

The petitioner society has been registered in the name of NISA Education at New Delhi by getting the formalities be completed in getting the certificate of registration.

Annexure-2

The society has been registered with aims and objectives to protect the rights of the private schools who are the members of the society.

Annexure-3 (15.02.2018)

The respondent no. 2 has passed the orders vide which from the academic session of 2018-2019, all the recognized and government schools could only prescribe the books of NCERT.

Annexure-4 (2015-2016)

The respondent no. 2 has issued the instructions vide which w.e.f. academic session of 2005-2006 onwards the pattern of CBSE has been adopted thus, the rules are also been adopted ipso-facto.

Annexure-5 (22.01.1988)

The CBSE has issued the bye-laws which deal with the term of autonomous schools, as well as, the bye-laws regarding the affiliation. The bye-laws do not prohibit the prescription of NCERT books.

Annexure-6 (06.02.2014)

The CBSE has issued the circular vide which the rule 15.1 (d) has been clarified in which liberty has been granted to the CBSE affiliated schools to prescribe the books of private publishers also.

Annexure-7 (16.08.2017)

The CBSE has forbidden the prescription of the books of private publishers and the notification has been challenged by the Association of the Management of Private Schools before the Hon'ble bench of Madras High Court and on the basis of interim orders the CBSE has withdrawn the instructions and the matter was finally dispose off by the Hon'ble Madras bench.

Annexure-8 (27.02.2018)

The respondents have circulated the news item vide which the book sellers have also been directed to not to keep the books of private publishers. Raids would be

conducted and incase books of private publishers be found with the bookseller, action would be taken.

Annexure-9 (28.02.2018)

The concerned official of the respondent no. 2 at Phithoragarh has issued the orders for the private un-aided schools to not to prescribe any other book except the books of NCERT apart from issuing the other instructions.

Annexure-10 (22.04.2006)

The State of Uttrakhand has adopted the Act of Uttrakhand School Education Act, 2006 which provides the magnacarta for the respondents to act within the parameters of the rules and regulations provided in the Act of 2006.

Thus, the present writ petition before this Hon'ble court.

Place: Nainital
Dated: 07.03.2018

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioner

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

Civil Miscellaneous Writ Petition No. _____ of 2018
(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education having registered office at A-24-D, Ground Floor, Hauz Khas, New Delhi through its President Sh. Kulbhushan Sharma son of Sh. J.P. Sharma, age 51 years, resident of House No. 52-53, Vidhya Nagar, Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

Petitioner

VERSUS

1. The State of Uttarakhand, through its Principle Secretary, Govt. of Uttarakhand, Department of School Education, Secretariat, Dehradun.
2. The Director of School Education, Uttarakhand, Nanoor Khera, Dehradun, Uttarakhand.

Respondents

To,

The Hon'ble the Chief Justice and his other companion Judges of the aforesaid Hon'ble Court.

The humble petition of the petitioner above named most respectfully showeth:-

1. That this is the first and the only writ petition by the petitioner on the subject matter and no other petition or proceedings have been drawn by the petitioner before any other Court nor such proceedings are pending.
2. That the members of the petitioner society are the citizens of India. The president of the petitioner society is filing the present petition before this

Hon'ble Court is the citizen of India and the resident of the State of Haryana thus, fully competent to invoke the extraordinary writ jurisdiction of this Hon'ble court by way of filing the present writ petition under Article 226/227 of Constitution of India to get the grievances of its member schools be resolved with the crave indulgence of this Hon'ble court.

3. That the petitioner society has been registered in the name of NISA Education on 26.10.2015 at New Delhi and the Registrar of Societies, South District, Government of NCT of Delhi has issued the certificate of registration under his seal and signature on 26.10.2015 by giving the legal sanctity to the society. Copy of the certificate dated 26.10.2015 is being annexed and marked as **Annexure-1** to this petition.
4. That the society was registered having the aims and objectives to rake up the issues of the private schools so that the member schools of the society could carry out their functions without any problem apart from other aims and objectives for which the society was established. The copy of the memorandum of association of society is being annexed and marked as **Annexure-2** to this petition.
5. That the petitioner society is having a sphere in all the states of country and its members are not only trying to smoothen the problems of the private schools so that the management of the member schools could concentrate on the betterment of the students studying in their schools. The other objective of the petitioner society is to uplift the down trodden members of the society so that their status could be uplifted with the light of education in the society with intention to prove them as an asset for the country.

6. That the member schools of the petitioner society are being aggrieved from the letter issued by the respondent no.2 on 15.02.2018 in which he has issued the instructions that from the academic session 2018-19 all the recognised and Govt. schools will only prescribe the books of the NCERT. The letter issued by the respondent no.2 states that the office orders issued by them provides that all the schools situated in the State of Uttarakhand from the academic session of 2018-19 will prescribe the books of NCERT from class 1st to 12th. The member schools of the petitioner society who are the recognised schools of the State of Uttarakhand are being aggrieved from the letter issued by the respondent no.2 which has stated in his letter dated 15.02.2018 that the books of NCERT will only be a mode of a teaching. Copy of the letter dated 15.02.2018 is being annexed and marked as **Annexure-3** to this petition.
7. That the respondents have issued the instructions for the academic session 2015-16 in respect of class 9th to 12th in which it has been stated that in the State of Uttarakhand from the academic session of 2005-2006 onwards for the class 9th to 12th CBSE pattern has been adopted. The respondent no.2 has prescribed the books for the class 9th to 12th by mentioning the books to be taught to the students of class 9th to 12th studying in different schools of State of Uttarakhand. Copy of the instruction for the academic session 2015-16 is being annexed and marked as **Annexure-4** to this petition.
8. That the respondent no.2 while issuing the office orders on 15.02.2018 (**Annexure-3**) has ignored the relevant provisions of the Uttaranchal School Education Act 2006 which has been notified on 22.04.2006. The Act also contains the definition of the institution, recognition and

management. The definitions given in the Act are reproduced below for the kind perusal of this Hon'ble Court:-

(h) "Institution receiving Maintenance grant from the State funds" means a recognised institution receiving maintenance grant from State Government;

(l) "Management" in relation to any institution, means the Committee of Management constituted in accordance with the Scheme of administration, if any, and includes the Manager or other person vested with the authority to manage and conduct the affairs of the institution;

(o) "Recognition" means recognition for the purpose of adopting the curriculum prescribed by the Board, and for preparing candidates for admission to the Board's Examinations;'

The Act does not utter a single word which prohibits the management of private un-aided schools from prescribing the books of private publishers. The Act which does not bar the private unaided schools from prescribing the books of private publishers that the office order issued by the respondent no.2 does not have any effect upon the rights of the private unaided schools.

9. That the Act of 2006 has been taken from the Uttar Pradesh Basic Education Act 1972 after the states have been carved out from the Uttar Pradesh. The section 60 of the Act dated 22.04.2006 states regarding the

repealing of provisions of the different Acts of Uttar Pradesh including the Uttar Pradesh Basic Education Act 1972.

10. That the Central Board of School Education Affiliation Bye-laws circulated on 28.01.1988 deals with the affiliation of the school and the syllabus to be prescribed for middle schools and senior secondary schools. What is the definition of school and autonomous school given in rule 16 Chapter 4 which states that the autonomous schools have the opportunity to take initiative in the field of curriculum and evaluation. The CBSE Affiliation bye-laws does not prohibit the prescription of the books published by the private publishers and bye-laws does not state that the NCERT books have to be preferred viz-a-viz books of the private publishers. The CBSE bye-laws circulated on 22.01.1988 is being annexed and marked as **Annexure-5** to this petition.

11. That the respondent no. 2 has circulated the circular no. 20 of 2014 on 06.02.2014 in order to clarify the affiliation bye-laws published by the respondent no. 2. The circular has clarified the prescribing the books published by the private publishers by clarifying the rule 15.1 (d). The circular clearly states that:

“Rule 15.1 (d)

The school will follow the syllabus on the basis of curriculum prescribed by NCERT/CBSE and text books published by NCERT/CBSE for the Middle Classes as far as practicable or exercise extreme care while selecting books of private publishers. The content must be scrutinized to preclude any objectionable content that hurts the feeling of any class, community, gender,

religious group in society. If found prescribing books having such content, the school will have to take responsibility of such content.

Provided that the school would put a list of such books prescribed by it on its website with the written declaration duly signed by the Manager and the Principal to the effect that they have gone through the contents of the books prescribed by the school and own the responsibility.”

The rules published by the respondents clearly states that the books of private publishers could be prescribed which commensurate with the syllabus published by the NCERT thus, the orders passed by the respondents is nothing else but the abuse of the process of law. Copy of the circular circulated by the CBSE on 06.02.2014 is being annexed and marked as **Annexure-6** to this petition.

12. That the CBSE has also issued the same set of instructions as issued by the respondent no.2 in the State of Tamil Nadu. The Association of the management of private schools (CBSE) has preferred to file the Writ Petition NO.18200 of 2017 and WMP No.20411 and 20412 of 2017. The Hon’ble Bench of the Madras High Court was pleased to grant the interim stay on the instructions issued by the CBSE. The CBSE has withdrawn the instructions after the interim orders passed by the Madras Bench and the matter was finally disposed on 16.08.2017 by the Hon’ble Madras Bench by passing the detailed and comprehensive order. Copy of the order dated 16.08.2017 is being annexed and marked as **Annexure-7** to this petition.
13. That the School Educations Code of all the States are having the same set of instructions. The Director Secondary Education Haryana, has issued the letter on 26.10.2017 in which he has forbidden the Govt./Govt. Aided/

Unaided recognised schools from prescribing any books from the private publishers. The Association has also preferred to file the CWP No.26027 of 2017 before the Hon'ble Punjab and Haryana High Court by relying upon the rule 10 of the Haryana Education Code 2003. The Hon'ble Bench was pleased to grant the interim stay on the letter issued by the Director Secondary Education Haryana on 26.10.2017 by passing the following orders:-

“NISA Education NISA Education

Vs.

The State of Haryana and others The State of Haryana and others

Present: - Mr. Pankaj Maini, Advocate, for the petitioner.

The petitioner is aggrieved against the decision of the Secretary, Haryana School Education Board dated 26.10.2017 whereby he has ordered that in case any non-government recognized affiliated school is found using the books of the private publishers for the purpose of teaching then they would suffer a penalty of Rs.1 lac on first mistake.

It is submitted that the impugned order is contrary to the provisions of Rule 10 of the Haryana School Education Rules, 2003 in which it is provided that the Director of Affiliating Board, while specifying the syllabi (for the primary, middle, secondary and senior secondary stage), shall decide about the contents to be laid down. However, recognized un-aided schools may adopt any text books based upon such contents. He has further referred to Affiliation Regulations laid down by the Board of School Education Haryana, Bhiwani in which the same provision is made in the 'conditions for affiliation'.

Notice of motion for 22.11.2017.

Dasti.

Till then operation of the impugned order qua the petitioner shall remain stayed.

(RAKESH KUMAR JAIN)

NOVEMBER 15, 2017

JUDGE”

14. That the rule 10 of the Haryana Education Code 2003, grants the liberty to the private unaided schools from prescribing any books subject to the contents prescribed by the Education Department. The relevant provisions of rule 10 of Haryana Education Code 2003, are reproduced below for the kind perusal of this Hon’ble Court:

“10. Matter to be provided in the syllabi:

The Director or Affiliating Board as the case may be, shall, while specifying the syllabi (for the primary, middle, secondary and senior secondary stage) shall decide about the contents to be laid down. However, recognized un-aided schools may adopt any text books based upon such contents.”

The stay order passed by the Hon’ble Punjab and Haryana High Court in CWP No.26027 of 2017 is now pending for 15.03.2018.

15. That the letter issued by the respondent no.2 on 15.02.2018 (**Annexure-3**) is in violation of the law laid down by the Hon’ble Supreme Court of India in the matter of **T.M.A. Pai** case where the independence of the private institution are being upheld by the Hon’ble Apex Court. On one hand, the Hon’ble Supreme Court of India in its landmark judgment has upheld the independence of private institution so that they could excel in the field of

education, on the other hand, the different Hon'ble High Courts of Union of India are granting the stay on the letters issued by the respective education department by which they are forbidding the private unaided institution from prescribing the books of the private publishers by granting the stay or striking down the instructions issued by the education department of respective states by passing the orders in favour of the associations. The respondent no.2 has adopted the pattern of the CBSE in the instructions issued for the academic session 2015-16 (**Annexure-4**) in that eventuality the letter issued by the respondent no.2 on 15.02.2018 (**Annexure-3**) could not be sustained as CBSE has clearly provided for granting the independence to the private unaided schools in their proviso of 15.1 in circular dated 06.02.2014 (**Annexure-6**). The respondent no.2 cannot force the member schools of the petitioner association from prescribing the books of private publisher as the books of the NCERT are never available on time due to which not only the education of the students are being hampered. The books of the private publishers are much better in quality and the publishers take every cogent step to ensure that the contents published by them must be in commensurate to the contents of published in the NCERT books. The respondent no.2 cannot take away the rights of the private unaided schools by passing the orders in contravention of the proviso of the School Education Act 2006. Thus, the letter issued by the respondent no.2 on 15.02.2018 is liable to be struck down. The member schools of the petitioner associations are seeking the parity in terms of the orders passed by the other Hon'ble High Courts on the writ petitions filed by the associations of private unaided schools challenging the curtailments of their rights to prescribe the books of private publishers and the two sets of rules could not be applicable for different states.

16. That the conduct of the respondents could be perused from this aspect that they have circulated a news item on 27.02.2018 in which the orders of the respondent are being published in which it has been stated that the book sellers are being forbidden from selling the books of the private publishers and incase the books of the private publishers be found in the shop then action would be taken against the shopkeeper. The book sellers are directed to sell the books of the NCERT only. The passing of such type gage orders the respondents are violating the provisions of Article 19 and 300 of the Constitution of India. Copy of the news item dated 27.02.2018 is appended herewith as **Annexure-8**.
17. That the concerned official of the respondent no. 2 i.e. the Chief Education Officer, Phithoragarh has passed the orders on 28.02.2018 vide which he has passed the instructions and directions for the academic session of 2018-2019. Apart from giving the directions to the schools affiliated with them he has directed that all the public schools situated in District Phithoragarh will only prescribe the NCERT books. The book seller will not be prescribed in respect of books and other stationery items. The parents will not be forced to purchase the books from the book sellers. Copy of the orders dated 28.02.2018 is appended herewith as **Annexure-9**.
18. That the Utrakhand School Education Act, 2006 has given the functions of the State Council of Education Research and Training in Regulation 4 which are being reproduced here for the kind perusal of this Hon'ble court:
- “4. *Functions of the State Council of Educational Research and Training:*
- i. The Development functions regarding curriculum, syllabus, teaching and training material, teacher education,*

educational support and educational quality in the school education system shall be performed by the State Council of Educational Research and Training.

ii. The State Government may post Director/Additional Director for the State of Council of Educational Research and Training.

iii. Without prejudice to the generality of the preceding power, the following functions shall be discharged by the officers posted under sub-section (2)-

a. To prepare, modify and revise curriculum and syllabus for different stages of school education.

b. To prepare text books, reading material and other instructional material.

c. To prepare, modify and revise curriculum, syllabus and training material for teacher education;

d. To prepare curriculum and material for departmental examinations;

e. To send curriculum, syllabus, reading material and other material for the consideration of the Board;

f. To conduct researches of different kinds, or get them conducted, in the field of School Education and Teacher Education;

g. To publish curriculum, syllabus, reading material, other material, research work;

h. To extend material and different publications regarding School Education and Teacher Education;

- i. *To determine evaluation process for different stages of School Education, Teacher Education and Departmental Examination;*
- j. *To evaluate educational quality;*
- k. *To conduct pre service and in service training programmes;*
- l. *To induct new educational technology in the field of education and training;*
- m. *To administer general control over District Institutes of Education and Training;*
- n. *To prepare annual estimates and accounts for carrying out activities related to its functions and functions related to teacher education;*
- o. *To conduct and get conducted different projects;*
- p. *To establish coordination with Utrkhand Sabhi Ke Liye Shiksha Parishad, Sarva Shiksha Abhiyan and other projects to be conducted in the field of education;*
- q. *To cooperate with other authorities at National and Regional level in educational plans;*
- r. *To establish coordination with State Institute of Educational Management and Training, Institute of Advanced Studies in Education and College of Teacher Education;*
- s. *To provide educational support and guidance at all levels of school education;*

t. To submit to Board/State Government suggestions for educational improvement.”

The rule does not empower the respondents to act in a way in which the rights of the member schools of the petitioner association are being infringed. Even the Hon'ble Delhi High Court in its judgment have laid the law that the private un-aided schools could prescribe the books of private publishers and even they are having the rights to open the tuck shops in their schools to sell the books of the private publishers. The acts of the respondents are not only erroneous but illegal as they are outguessing their powers.

It is humbly prayed that the books of the NCERT are never available on time to the students which culminates in the outcome of the disruption of the studies of the students. Even the books published by the NCERT are not upto the mark and having various discrepancies are being found from time to time whereas, the books published by the private publishers are not only based upon the contents prescribed by the respondent no. 2, as well as, their material and their presentation is much more better in comparison to the books published by the NCERT. In a era of the competition, forcing the students to go for a particular sets of books is nothing else but curtailing the overall development and exploration of the mental development of the students. Copy of the Utrakhand School Education Act, 2006 notified on 22.04.2006 is appended herewith as **Annexure-10**.

19. That the following questions of law have been enumerated in the present writ petition for the kind perusal and adjudication by this Hon'ble Court:

- i. Whether the letter issued by the respondent no.2 on 15.02.2018 **Annexure-3** could be sustained in the eyes of law, where the respondent no.2 by himself has adopted the pattern of CBSE vide **Annexure-4** and CBSE circular dated 06.02.2014 **Annexure-6** provide the liberty to the private unaided schools from prescribing the books of any publishers as per the provision of regulation 15.1 of CBSE Bye-laws and the School Education Act, 2006 does not forbid the rights of the private unaided schools, thus the rights of the member schools of the petitioner association could not be curtailed by the respondent no.2 in terms of the letter dated 15.02.2018 **Annexure-3**?
 - ii. Whether the members schools of the petitioner association could claim the parity with the orders passed by the other Hon'ble High Courts against the Education Department of their respective states as well as the against the CBSE on the writ petitions filed by the association challenging the curtailments of their rights to prescribe the books of the private publishers viz-a-viz the books of the NCERT and the member schools of the petitioner association are also entitled to get the parity in terms of the orders mentioned in the writ petition?
 - iii. Whether the respondent no. 2 could issue such type of orders at this juncture of the academic session by out grassing its powers by violating the law laid down in **T.M.A. Pai's** case?
20. That the petitioner association has left with no other efficacious remedy except to approach this Hon'ble court by way of filing the present writ petition to get its rights protected as no revision or appeal is maintainable.

21. That the petitioner association is relying upon the following grounds to get the relief be claimed by them in this writ petition by invoking the crave indulgence of this Hon'ble court:

- i. That the petitioner association is being aggrieved from the orders passed by the respondent no. 2 on dated 15.02.2018 (**Annexure-3**) where the respondents have forbidden the prescription of the books of the private publishers by outguessing their powers in terms of the provisions of the Uttarakhand School Education Act, 22.04.2006 (**Annexure-10**), as well as, the instructions issued by the respondent no. 2 for the academic session of 2015-2016 (**Annexure-4**) vide which the pattern of the CBSE has been adopted from the academic session of 2005-2006 for the Class 9th to Class 12th then the CBSE guidelines are applicable upon the respondents (**Annexure-5 & Annexure-6**) which permits the private un-aided schools to prescribe the books of un-aided schools.
- ii. That the Hon'ble Madras High Court vide orders dated 16.08.2017 (**Annexure-7**) has granted the stay on the instructions of the CBSE prescribing the books of NCERT only and those instructions have been withdrawn by the CBSE, as well as, the Hon'ble Punjab & Haryana High Court in CWP No. 26027 of 2017 vide orders dated 15.11.2017 has stayed the same set of instructions issued by the Education Department, Haryana forbidding the prescription of private publishers. Thus, the same set of rules are to be adopted in the present case also.
- iii. That the respondent no. 2 could not bound the private un-aided schools by threatening them to prescribe the books of NCERT only

by going against the mandate of the law laid down in the matter of
T.M.A. PAI's case.

PRAYER

It is, therefore, most respectfully prayed that the Hon'ble Court may very graciously be pleased to:

- i. Issue a writ, order or direction in the nature of certiorari to quash the letter dated 15.02.2018 (**Annexure-3**) issued by the respondent no.2 as it is in contravention of the regulation 15.1 of the CBSE Affiliation Bye-laws dated 28.01.1988 and circular dated 06.02.2014 (**Annexure-6**) in which the regulation 15.1 grants the liberty to the private unaided schools to prescribe the book of private publisher by relying upon the contents of NCERT book;
- ii. Issue a writ of certiorari to quash the letter dated 15.02.2018 (**Annexure-3**) as it is in contravention of the Uttaranchal School Education Act 2006 (**Annexure-10**) which does not provide for any curtailment upon the rights of the private un-aided schools to prescribe the books of any private publisher as office order issued by the respondent no. 2 could not substitute the statutory provision of the Act;
- iii. Issue a writ of quo-warranto in favour of the petitioner association so that the implementation of the letter dated 15.02.2018 (**Annexure-3**) could be put under eclipse as until and unless Act be amended to incorporate the grant of rights to the respondents no.2 to pass such type of gag orders till then those orders have no legal sanctity;
- iv. Issue a writ of mandamus commanding the respondent no.2 to set aside the orders dated 15.02.2018 (**Annexure-3**) it is not only in the contravention

of the CBSE bye-laws and circular, as well as, the provisions of the School Education Act 2006 (**Annexure-10**), but also violates the rights of the members schools of the petitioner association to get the same parity of law as the other private association are getting before the other Hon'ble High Courts, thus the same set of rules be adopted qua the petitioner association in the present case.

- v. Award cost of this petition to the petitioner against the respondents.
- vi. Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Place: Nainital
Dated: 07.03.2018

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioner

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

AFFIDAVIT

IN

Civil Miscellaneous Writ Petition No. _____ of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and another

Respondents

Affidavit of Kulbhushan Sharma son of Sh. J.P. Sharma, age 51 years, resident of House No. 52-53, Vidhya Nagar, Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

(Deponent)

I, the deponent named above, do hereby solemnly affirm and declare as under:-

1. That the deponent is the President of the petitioner Society and is fully conversant with the facts and circumstances of the case.
2. That the deponent has read and understood the contents of the writ petition and the same be deemed to be part of this affidavit as well.

I, the deponent named above, solemnly affirm that the contents of para 1, 2, 3(part), 4(part) and 5 of the writ petition are correct to my knowledge and the contents of para 3(part), 4(part), 6, 7, 10(part), 11(part), 12 and 13, 16, 17 and 18 of the writ petition are deemed to be correct on the basis of record and the contents of para 8, 9, 10(part), 11(part), 14, 15, 16, 17, 18, 19, 20 and 21 of the writ petition are deemed to be correct on legal advice. Nothing false is contained therein nor has anything material been concealed. So help me God.

Deponent,

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. _____ Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Application for grant of interim relief for staying the implementation of the orders dated 15.02.2018 (**Annexure-3**) in order to protect the legitimate interest of the petitioner association

RESPECTFULLY SHOWETH:

1. That the petitioner association has approached this Hon'ble court by way of filing the present writ petition before this Hon'ble court by challenging the infringement of their rights to prescribe the books of private publishers.
2. That the grounds taken in the main writ petition may kindly be read as part and parcel of the contents of this application in order for the sake of brevity.
3. That the petitioner association is praying for granting the stay on the implementation of the orders dated 15.02.2018 (**Annexure-3**) as it is in violation of the settled preposition of law. The grounds is not required to be taken in detail as it would tantamount into the repetition of the grounds

in the present application which has already been taken in the main writ petition.

4. That the petitioner association would face the irreparable loss incase the stay on the implementation of the orders dated 15.02.2018 (**Annexure-3**) not be stayed by this Hon'ble court. No prejudice would be caused to the respondents incase this Hon'ble court deems fit to stay the implementation of the orders dated 15.02.2018 (**Annexure-3**).

It is, therefore, respectfully prayed that the stay may kindly be granted on the implementation of the orders dated 15.02.2018 (**Annexure-3**) in order to protect the legitimate interest of the petitioner association in the interest of justice.

Place: Nainital
Dated: 07.03.2018

(**PANKAJ MAINI**) (**SUDHIR KUMAR**)
Advocates
Counsels for the Petitioner

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

AFFIDAVIT

IN

I.A. No. _____ Of 2018

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Civil Miscellaneous Writ Petition No. _____ Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

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State of Uttarakhand and Another

Respondents

Affidavit of Kulbhushan Sharma son of Sh. J.P. Sharma, age
51 years, resident of House No. 52-53, Vidhya Nagar,
Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

(Deponent)

I, the deponent named above, do hereby solemnly affirm and declare as under:-

1. That the deponent is the President of the petitioner Society and is fully conversant with the facts and circumstances of the present application.
2. That the deponent has read and understood the contents of the application and the same be deemed to be part of this affidavit as well.

I, the deponent named above, solemnly affirm that the contents of para 1 to 4 of the application are correct to my knowledge. Nothing false is contained therein nor has anything material been concealed. So help me God.

Deponent

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

Civil Miscellaneous Writ Petition No. Of 2018
(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

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Notes

1. No Caveat has been received.
2. Similar Case NIL
3. The main law points enumerated in the present writ petition are at page No. 16 and 17 in para No 19 thereto.
4. Violation of Utrakhand School Education Act, 2006 (**Annexure-10**), Violations of the CBSE Bye-Laws dated 22.01.1988 (**Annexure-6**) and violation of the circular of the CBSE dated 06.02.2014 (**Annexure-7**).

Place: Nainital
Dated: 07.03.2018

(**PANKAJ MAINI**) (**SUDHIR KUMAR**)
Advocates
Counsels for the Petitioner

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Application for granting the stay on the implementation of the orders dated 15.02.2018 (**Annexure-3**) as the respondent no. 2 has passed the orders in contrary to those orders vide letter dated 20.02.2018 vide which the schools are directed to prescribe the books of SCERT only which tantamount to the letter issued by the respondent no. 2 vide Annexure P-3

RESPECTFULLY SHOWETH:

1. That the matter was listed before this Hon'ble court on 13.03.2018 and 14.03.2018 in which this Hon'ble court has directed the CBSE and NCERT to be made a party and they are also been directed to file their affidavits before the next date of hearing which was fixed for 03.04.2018.
2. That the Hon'ble Division Bench has preponed the matter from 03.04.2018 to 28.03.2018.

3. That it is pertinent to mention here that the respondent no. 2 has issued the tender for the books on 13.12.2017 and the last date for depositing the tender was 02.01.2018 which is appended herewith as **Annexure A** with this application.
4. That the respondent no. 2 has cancelled the tender deliberately as per for the information published in the news item and the students required 58 lacs books to carry out their studies smoothly. It shows the conduct of the respondents by creating the chaos by forbidding the private un-aided schools from prescribing the books of the private publishers and the respondents on the other hand are not able to provide the books to the students. Copy of the news item is appended herewith as **Annexure B**.
5. That the conduct of the respondents could be perused by this Hon'ble court from the letter dated 20.02.2018 which has been issued by the Chief Education Officer, Dehradun in which the schools are directed to prescribe the books of SCERT only. It shows that the respondents are passing the contradictory orders which are in contravention to their statutory duties fastened upon them. Copy of the letter dated 20.02.2018 is appended herewith as **Annexure C**.
6. That the orders passed by the respondent no. 2 on 15.02.2018 (**Annexure-3**) is liable to be put under eclipse and liable to be set aside on the basis of the submissions made above to protect the legitimate interest of the members schools of the petitioner association. The private publishers are following the curriculum of NCERT and also gives the disclaimer upon their books by stating that the contents are totally in commensurate to the contents of NCERT.

It is, therefore, respectfully prayed that the stay may kindly be granted on the implementation of the orders dated 15.02.2018 (**Annexure-3**) as the respondent no. 2 has passed the orders in contrary to those orders vide letter dated 20.02.2018 vide which the schools are directed to prescribe the books of SCERT only which tantamount to the letter issued by the respondent no. 2 vide Annexure P-3 in the interest of justice.

Place: Nainital
Dated: 25.03.2018

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioner

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

AFFIDAVIT

IN

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Affidavit of Kulbhusan Sharma son of Sh. J.P. Sharma, age
51 years, resident of House No. 52-53, Vidhya Nagar,
Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

(Deponent)

I, the deponent named above, do hereby solemnly affirm and declare as under:-

1. That the deponent is the President of the petitioner Society and is fully conversant with the facts and circumstances of the present application.
2. That the deponent has read and understood the contents of the application and the same be deemed to be part of this affidavit as well.

I, the deponent named above, solemnly affirm that the contents of para 1 to 6 of the application are correct to my knowledge. Nothing false is contained therein nor has anything material been concealed. So help me God.

Deponent

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

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Total Court Fee:

Place: Nainital
Dated: 25.03.2018

(PANKAJ MAINI) (SUDHIR KUMAR)
Advocates
Counsels for the Petitioner

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Application under section 151 of CPC praying for allowing the petitioner association to place on record the Annexure-9 and Annexure-10 (Colly) alongwith the application/petition filed by the petitioner association under Article 215 of Constitution of India, the petitioner association may kindly be permitted to place on record the photocopies of the Annexure-9 and Annexure-10 (Colly) without appending the certified copies of the aforesaid annexure

RESPECTFULLY SHOWETH:

1. That for the sake of brevity, the submissions made in the main petition/application may kindly be read as part and parcel of the present application.
2. That the petitioner association is appending the orders passed by this Hon'ble court on 13.04.2018 vides which interim orders were granted as

Annexure-9. The petitioner association is also appending the orders passed by the concerned officials of the respondents on 16.07.2018 and 09.08.2018 as Annexure-10 (Colly). These documents are necessary for the adjudication of the present case by this Hon'ble court. The petitioner association may kindly be permitted to place on record the Annexure-9 and Annexure-10 (Colly). The petitioner association may kindly be permitted to place on record the photocopies of Annexure-9 and Annexure-10 (Colly) without appending the certified copies of the aforesaid annexure.

It is, therefore, respectfully prayed that the petitioner association may kindly be allowed to place on record the Annexure-9 and Annexure-10 (Colly) alongwith the application/petition filed by the petitioner association under Article 215 of Constitution of India, the petitioner association may kindly be permitted to place on record the photocopies of the Annexure-9 and Annexure-10 (Colly) without appending the certified copies of the aforesaid annexure in the interest of justice.

Place: Nainital
Dated: 10.10.2018

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioners

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

AFFIDAVIT

IN

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Affidavit of Kulbhushan Sharma son of Sh. J.P. Sharma, age
51 years, resident of House No. 52-53, Vidhya Nagar,
Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

(Deponent)

I, the deponent named above, do hereby solemnly affirm and declare as under:-

1. That the deponent is the President of the petitioner Society and is fully conversant with the facts and circumstances of the present application.
2. That the deponent has read and understood the contents of the application and the same be deemed to be part of this affidavit as well.

I, the deponent named above, solemnly affirm that the contents of para 1 to 2 of the application are correct to my knowledge. Nothing false is contained therein nor has anything material been concealed. So help me God.

DEPONENT

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Petition under Article 215 of Constitution of India praying for initiation of the contempt proceedings against the official respondents for violating the orders passed by this Hon'ble court on 13.04.2018 (**Annexure-9**) vide which the interim orders were passed in favour of the petitioner association by this Hon'ble court alongwith bunch of writ petitions and the official respondents in order to dilute the orders passed by this Hon'ble court have passed the orders on 16.07.2018 and 09.08.2018 (**Annexure - 10 (Colly)**) culminating in the contempt of the orders passed by this Hon'ble court on 13.04.2018 (**Annexure-9**)

RESPECTFULLY SHOWETH:

1. That the petitioner association on behalf of its member schools have approached this Hon'ble court by way of filing the CWP No. 645 of 2018 in which this Hon'ble court was pleased to pass the comprehensive orders

on dated 13.04.2018 vide which the interim orders were passed in favour of the petitioner association and in other bunch of writ petitions after considering all the aspects. The relevant paras of the orders passed by this Hon'ble court while passing the interim orders are being reproduced for the kind perusal of this Hon'ble court:

“16. The intention behind the prescription of NCERT books, to the exclusion of all other books, in Government Order dated 23.08.2017, is apparently to familiarize students with the books which are written keeping the competitive professional courses in mind. The counter affidavit filed by the State as well as CBSE also emphasize this aspect, where it has been said that the CBSE course is also competition oriented and therefore by taking lessons in NCERT books students would have a competitive edge over other students, something which they were lacking earlier. Another reason for the State Government to prescribe the NCERT books is that these books are not only well researched and are prepared keeping in mind the guidelines of CBSE, but more importantly, they are also available to the students at an extremely reasonable and cheap price. The concern of the Government therefore also seems to be to lessen the burden of the students and their parents, who are compelled to purchase books of private publishers at an extremely high price. We shall therefore also be examining whether the restrictions imposed by the Government in pursuit of its above object has a rational with the means adopted towards its fulfillment. But this shall be done at the final hearing stage.

17. *At this stage, however, it must be said that from the information which has been given to the Court at the Bar, and the relative prices of books disclosed before this Court show that there is a huge difference in the price of these books. Relatively NCERT books are much cheaper.*
18. *The point raised by the State Government in its order dated 23.08.2017 therefore about NCERT text books being cheaper and well researched, and the students having a competitive edge, etc. are all good reasons, even praiseworthy. But then, what is good need not be compulsory.*
19. *Considering the importance of the matter, this Court presently adjourns the matter and fixes 03.05.2018, as the date for the final hearing of the matter. Meanwhile, parties shall exchange their pleadings.*
20. *After hearing the rival submissions, my prima facie opinion, relevant for the disposal of the interim relief application, is as follows:*
21. *Till the next date of listing, the petitioners would make efforts as far as possible, to comply with the order dated 23.08.2017, but the petitioners shall not be coerced into it by the State or its authorities. I say this because whereas we all want the best books at reasonable price for the students, yet no one can be coerced into it. The subsequent orders dated 15.02.2018, 06.03.2018 and 09.03.2018, since prohibit any other books save NCERT books, are prima facie violative of the fundamental rights of the petitioners under Article 19 (1) (a) and 19 (1) (g) of the Constitution of India, and to the*

extent these orders make this prohibition of books, these orders shall remain stayed. The petitioners, however, can make other books available to the students, but as far as possible, at competitive rates (i.e. in relation to price of NCERT books), as a genuine concern has been raised at the Bar by learned counsel for the State that the books published by the private publishers are unreasonably priced and in many cases, out of reach of students. These books, i.e. other than NCERT books, however, must meet the requirements and guidelines of CBSE curriculum and syllabus prescribed by the CBSE, and NCERT. The schools shall also publish this on their website.

22. *List this case on 03.05.2018 in the daily cause list for final hearing.*

(Sudhanshu Dhulia, J.)

13.04.2018”

The copy of the orders dated 13.04.2018 is appended herewith as

Annexure - 9.

2. That the respondents have passed the orders on 16.07.2018 in which the concerned official of respondent no. 2 at Pithoragarh has directed the private schools affiliated with the petitioner association to prescribe only the books published by the NCERT and incase any school found to get the books of private publishers be used in their schools then their recognition be cancelled by taking the action under Right to Education Act. Then on 09.08.2018, the orders were passed by the concerned officials of respondent no. 2 at Dehradun in which the respondents have directed the member schools of the petitioner association to prescribe the books whose

costing must be incommensurate to the cost of the NCERT books. The orders dated 09.08.2018 further states that the schools are prescribing the refresh books where the cost of those books are much more in comparison to the cost of the NCERT books which is not in the interest of the children and their parents. Thus, the concerned official of Dehradun has constituted the committee to evaluate the syllabus of public schools by comparing it with the syllabus mentioned in NCERT. Copies of the orders dated 16.07.2018 and 09.08.2018 are appended herewith as **Annexure-10 (Colly)**.

3. That it is humbly submitted that the orders passed by the concerned officials of the respondent no. 2 in different districts are not only in violation of the interim order passed by this Hon'ble court on 13.04.2018 (**Annexure-9**) but also contemptuous to the orders passed by this Hon'ble court while granting the interim orders in favour of the petitioners in all the writ petitions including the writ petition filed by the petitioner association. In the mid-session the officials of the respondent no. 2 are creating the chaos for the members of the petitioner association, as well as, the other petitioners whose petitions are also clubbed together by passing such type of orders. The petitioner association is praying for initiation of contempt proceedings against the respondent no. 2 for failing to rein in its erring officials to not to violate the orders passed by this Hon'ble court on 13.04.2018 (**Annexure-9**) by initiation of contempt proceedings under Article 215 of Constitution of India. The provisions mentioned in the Article 215 of Constitution of India are reproduced below for the kind perusal of this Hon'ble court:

“215. High Courts to be courts of record Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

4. That it is humbly submitted that various judgments have clearly upheld that the Article 215 of Constitution of India have given them the orders to act as the court of original records, as well as, the powers of Hon’ble Supreme Court of India, as well as, Hon’ble High Courts cannot be curtailed down as upheld in the matter of **J. Uma Vs. Dr. G. Narendrakumar**, the interpretation of the Article 215 of Constitution of India describing the powers of High Court are being laid down by the Hon’ble Madras High Court on 11.04.2018 in contempt petition no. 209 of 2018 in WPM No. 3 of 2015 in WP No. 12942 of 2015.

In another matter, the Hon’ble Punjab & Haryana High Court in the matter of **Court on its own motion Vs. Kuldip Singh on 30.05.2003 given in Criminal Law Journal 2003 (4483)**. In paras 31 to 35 of the judgment, the powers of Hon’ble Supreme Court of India in Article 129 of the Constitution of India and the powers of Hon’ble High Courts in Article 215 of Constitution of India are being described:

“31. The aforesaid enunciation of law makes it abundantly clear that the proceedings were initiated in the present case on the filing of the written statement on 13-7-1998, It is not disputed that the contemner had produced the interpolated order dated 9-1-1998 before the authorities on 21-2-1998. Clearly, therefore, the proceedings were initiated within the period stipulated under Section 20 of the Act. Furthermore, we are of the considered opinion that the limitation provided

under Section 20 of the Act would not be applicable to the proceedings initiated by the High Court under Article 215 of the Constitution of India. The powers under Article 215 of the Constitution have been held to be untrammelled and the limitation provided under Section 20 of the Act would not be applicable. Therefore, the period of one year under Section 20 of the Act cannot be a bar to the initiation of contempt proceedings by the High Court in exercise of its powers under Article 215 of the Constitution of India. Accepting such an interpretation would mean that the High Court would be helpless in initiating any proceedings for a blatant contempt of Court which the contemner somehow manages to conceal from the High Court for a period of one year from the date when the contempt is committed. It is a settled proposition of law that the "contemner should not be allowed to enjoy and/or retain the fruits of his contempt." This principle has been laid down by the Hon'ble Supreme Court in the case of Mohd. Idris v. R.J. Babuji . It was reiterated by the Hon'ble Supreme Court in the case of Delhi Development Authority v. Skipper Construction Company (P) Ltd. . In paragraph 21 of the judgment it is held as follows:--

"21. There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a

constitutional power and when exercised in tandem with Article 142, all such objections should give away. The Court must ensure full justice between the parties before it."

32. *Article 129 of the Constitution of India states that the Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. This article is identical to Article 215 of the Constitution of India which makes every High Court a Court of record and grants all the powers of such a Court including the power to punish for contempt of itself. The Division Bench while initiating the present proceedings exercised the powers under Article 215 of the Constitution of India. For these added reasons, we hold that the proceedings initiated against the contemner do not suffer from any legal or factual bar. The ambit of the jurisdiction of the Supreme Court under Article 129 and the High Court under Article 215 of the Constitution of India, respectively, was considered by the Supreme Court in the case of Pritam Pal v. High Court of Madhya Pradesh, Jabalpur through Registrar , in this judgment, it has been held as under:--*

"22. From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted

and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfetterd and not subjected to any limit.

33. *After discussing the legal position in England and the United States of America, the Supreme Court held as follows :-*

"The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D. N. Taneja v. Bhajan Lal and, therefore, the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself."

34. *We are fully conscious of the aforesaid observations of the Supreme Court. It is, no doubt, true that the powers of the High Court under Article 215 of the Constitution being summary in nature, have to be exercised with great care and caution. These powers are to be exercised to maintain innocence and purity of the stream of justice. It is axiomatic that greater the power, greater the caution in the exercise thereof. Therefore, we have adopted a very cautious approach during these proceedings. We have given the petitioner every opportunity and liberty to project his case. We are of the considered opinion that the proceedings initiated by this Court are not barred by the limitation prescribed under Section 20 of the Act.*

35. *Learned counsel for the contemner had also argued that there is no proof of forgery having been committed by the contemner. It is too late in the day for the contemner to raise such a plea. A perusal of the order passed by the Division Bench dated 10-1-2000 clearly show that it was not disputed before the Bench that the petitioner had interpolated the certified copy of the order obtained from this Court and added the words "and stay granted" therein when no such order had, in fact, been passed by this Court. Having not disputed the aforesaid position before the Division Bench on 10-1-2000, the contemner cannot be permitted to say that there is no proof of forgery or interpolation. Even apart from this, the sequence of events as narrated in the earlier part of*

the judgment, would make it abundantly clear that the contemner was the only party to gain by the interpolation of the term "and stay granted" in the order dated 9-1-1998. Furthermore, a perusal of the order as interpolated clearly shows that the words "and stay granted" have been incorporated in the order dated 9-1-1998 which simply reads as follows:--

"Notice of motion for 16-2-1998."

Thus, the prayer made by the petitioner association for initiation of the contempt proceedings against the official respondents may kindly be considered in terms of the orders passed by them on 16.07.2018 and 09.08.2018 (**Annexure -10 (Colly)**).

It is, therefore, respectfully prayed that the contempt proceedings may kindly be initiated against the official respondents for violating the orders passed by this Hon'ble court on 13.04.2018 (**Annexure-9**) vide which the interim orders were passed in favour of the petitioner association by this Hon'ble court alongwith bunch of writ petitions and the official respondents in order to dilute the orders passed by this Hon'ble court have passed the orders on 16.07.2018 and 09.08.2018 (**Annexure - 10 (Colly)**) culminating in the contempt of the orders passed by this Hon'ble court on 13.04.2018 (**Annexure-9**) in the interest of justice.

Place: Nainital
Dated: 10.10.2018

(**PANKAJ MAINI**) (**SUDHIR KUMAR**)
Advocates
Counsels for the Petitioners

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

AFFIDAVIT

IN

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Affidavit of Kulbhushan Sharma son of Sh. J.P. Sharma, age
51 years, resident of House No. 52-53, Vidhya Nagar,
Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

(Deponent)

I, the deponent named above, do hereby solemnly affirm and declare as under:-

1. That the deponent is the President of the petitioner Society and is fully conversant with the facts and circumstances of the present application.
2. That the deponent has read and understood the contents of the application and the same be deemed to be part of this affidavit as well.

I, the deponent named above, solemnly affirm that the contents of para 1 to 4 of the application are correct to my knowledge. Nothing false is contained therein nor has anything material been concealed. So help me God.

DEPONENT

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

I.A. No. _____ Of 2018

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(Under Article 226 of the Constitution of India)

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VERSUS

State of Uttarakhand and Another

Respondents

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Total Court Fee:

Place: Nainital
Dated: 10.10.2018

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioners

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

I.A. No. _____ Of 2019

IN

I.A No.9554 of 2018

in

WPMS No. 645 Of 2018

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Application under the proviso of Article 226 of
The Constitution of India praying for
restraining the respondents from passing the
orders in contrary to the directions issued by
this Hon'ble Court vide orders dated
13.04.2018 as the respondents are not only
passing the ambiguous orders vide orders dated
02.03.2019 in order to grant the in due benefit
to some of the publisher by hurting the rights
of the member schools of the petitioner
association.

Respectfully showeth:-

1. That the matter was listed before this Hon'ble Court on 15.03.2019 and the Hon'ble Court was pleased to send the matter to some other bench. The respondents under the garb of those orders are patently plotting the orders passed by this Hon'ble Court on 13.04.2018. On 02.03.2019 the

respondents have issued the orders by giving the reference of the orders passed by this Hon'ble Court that all the schools situated in the state of Uttarakhand will strictly followed their directions to prescribed the books published by the NCRT. The students of those school could be prescribed the books of other publishers if their cost is more or less equal the cost of NCRT books, as well as, those books are based upon the syllabus and guidelines prescribed by CBSE or NCRT. Copy of the orders passed by the respondent on 02.03.2019 is appended herewith as **Annexure-A1**.

2. That some of the private publishers by conniving with the government official have circulated the list of their books by showing that the books published by them are in accordance with the letter dated 02.03.2019 circulated by the respondents as well as the orders passed by this Hon'ble Court on 13.04.2018. The list circulated by some of the private publishers is appended herewith as **Annexure A-2**.
3. That it is humbly submitted that the Govt officials in connivance with some of their private publishers are trying to create chaos for the member schools of the petitioner association by issuing the conflicting orders in contrary to the directions issued by this Hon'ble Court on 13.04.2018, as well as, in order to hoodwink this Hon'ble Court so that they could wriggle out from the contempt proceeding initiated by the petitioner association. The respondents are passing such type of conflicting orders which needs the crave indulgence of this Hon'ble Court, so that the respondents could be restrained to infringe the rights of the member schools of the petitioner association. The members schools of the petitioner association are entitled to prescribe the books of private publishers by following the orders passed by this Hon'ble Court in toto but the respondents in order to grant the in due benefit to their blue eyed publishers are allowing them to publishing

the list of their books by using the words which could create the confusion and they could get the benefit under that situation.

It is, therefore, respectfully praying for restraining the respondents from passing the orders in contrary to the directions issued by this Hon'ble Court vide orders dated 13.04.2018 as the respondents are not only passing the ambiguous orders vide orders dated 02.03.2019 in order to grant the in due benefit to some of the publisher by hurting the rights of the member schools of the petitioner association, in the interest of justice.

Place: Nainital
Dated: 24.09.2019

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioners

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

I.A. No. _____ Of 2019

IN

I.A No.9554 of 2018

in

WPMS No. 645 Of 2018

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Affidavit of Kulbhusan Sharma son of Sh. J.P. Sharma, age
51 years, resident of House No. 52-53, Vidhya Nagar,
Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

(Deponent)

I, the deponent named above, do hereby solemnly affirm and declare as under:-

1. That the deponent is the President of the petitioner Society and is fully conversant with the facts and circumstances of the present application.
2. That the deponent has read and understood the contents of the application and the same be deemed to be part of this affidavit as well.

I, the deponent named above, solemnly affirm that the contents of para 1 to 4 of the application are correct to my knowledge. Nothing false is contained therein nor has anything material been concealed. So help me God.

DEPONENT

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

I.A. No. _____ Of 2019

IN

I.A No.9554 of 2018

in

WPMS No. 645 Of 2018

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Application under section 151 of CPC praying for allowing the petitioner association to place on record the Annexure A-1 and Annexure-A-2 alongwith the application filed by the petitioner association under Article 226 of Constitution of India, the petitioner association may kindly be permitted to place on record the photocopies of the Annexure A-1 and Annexure A-2 without appending the certified copies of the aforesaid annexure.

RESPECTFULLY SHOWETH:

1. That for the sake of brevity, the submissions made in the main petition/application may kindly be read as part and parcel of the present application.
2. The petitioner association is appending the Annexure A-1 and Annexure A-2. These documents are necessary for the adjudication of the present

case by this Hon'ble court. The petitioner association may kindly be permitted to place on record the Annexure A-1 and Annexure A-2. The petitioner association may kindly be permitted to place on record the photocopies of Annexure A-1 and Annexure A-2 without appending the certified copies of the aforesaid annexure.

It is, therefore, respectfully praying for allowing the petitioner association to place on record the Annexure A-1 and Annexure-A-2 alongwith the application filed by the petitioner association under Article 226 of Constitution of India, the petitioner association may kindly be permitted to place on record the photocopies of the Annexure A-1 and Annexure A-2 without appending the certified copies of the aforesaid annexure, in the interest of justice.

Place: Nainital
Dated: 24.03.2019

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioners

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

I.A. No. _____ Of 2019

IN

I.A No.9554 of 2018

in

WPMS No. 645 Of 2018

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

Affidavit of Kulbhusan Sharma son of Sh. J.P. Sharma, age
51 years, resident of House No. 52-53, Vidhya Nagar,
Nanhera, P.O. Kuldeep Nagar, Ambala Cantt.

(Deponent)

I, the deponent named above, do hereby solemnly affirm and declare as under:-

1. That the deponent is the President of the petitioner Society and is fully conversant with the facts and circumstances of the present application.
2. That the deponent has read and understood the contents of the application and the same be deemed to be part of this affidavit as well.

I, the deponent named above, solemnly affirm that the contents of para 1 to 4 of the application are correct to my knowledge. Nothing false is contained therein nor has anything material been concealed. So help me God.

DEPONENT

IN THE HON'BLE HIGH COURT OF UTTRAKHAND AT NAINITAL

I.A. No. _____ Of 2018

IN

Civil Miscellaneous Writ Petition No. 645 Of 2018

(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

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Total Court Fee:

Place: Nainital
Dated: 24.03.2019

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioners

IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Miscellaneous Writ Petition No. 645 Of 2018
(Under Article 226 of the Constitution of India)

District : Dehradun

NISA Education

Petitioner

VERSUS

State of Uttarakhand and Another

Respondents

**WRITTEN ARGUMENTS ON BEHALF
PETITIONER ASSOCIATION**

RESPECTFULLY SHOWETH:

1. That the petitioner association has approached this Hon'ble court to get the letter dated 15.02.2018 (Annexure-3) be quashed as it is in contravention of the Regulation 15.1 CBSE Affiliation Bye-Laws dated 28.01.1988 (Annexure-5) and Circular dated 06.02.2014 (Annexure-6) as the Bye-Laws granted the liberty to the member schools of the petitioner association to prescribe the books of private publishers.
2. That the second prayer made by the petitioner association is quashing of the letter dated 15.02.2018 (Annexure-3) being in contravention of the Uttranchal School Education Act, 2006 as the statutory act does not curtail the rights of the private un-aided schools to prescribe the books of any private publisher reason being office order cannot substitute the statutory provisions of law.
3. That the circular issued by the respondent no. 2 on 06.02.2014 (Annexure-6) gives the rights to the schools to adopt the books of private

publishers by relying upon the curriculum prescribed by the NCERT or CBSE. The proviso of Rule 15.1 (d) is reproduced below for the kind perusal of this Hon'ble court:

“Rule 15.1 (d)

The school will follow the syllabus on the basis of curriculum prescribed by NCERT/CBSE and text books published by NCERT/CBSE for the Middle Classes as far as practicable or exercise extreme care while selecting books of private publishers. The content must be scrutinized to preclude any objectionable content that hurts the feeling of any class, community, gender, religious group in society. If found prescribing books having such content, the school will have to take responsibility of such content.

Provided that the school would put a list of such books prescribed by it on its website with the written declaration duly signed by the Manager and the Principal to the effect that they have gone through the contents of the books prescribed by the school and own the responsibility.”

The Hon'ble Supreme Court of India in the matter of matter of **TMA PAI's** case has upheld the independence of the private institution. Once the Hon'ble Supreme Court of India has interpreted the law, the respondents cannot make their own interpretation as per their whims and wishes by passing the office orders without amending the statutory provisions of law.

4. That the Uttarakhand School Education Act, 2006 has given the functions of the State Council of Education Research and Training in Regulation 4 which are being reproduced here for the kind perusal of this Hon'ble court:

“4. Functions of the State Council of Educational Research and Training:

- i. The Development functions regarding curriculum, syllabus, teaching and training material, teacher education, educational support and educational quality in the school education system shall be performed by the State Council of Educational Research and Training.*
- ii. The State Government may post Director/Additional Director for the State of Council of Educational Research and Training.*
- iii. Without prejudice to the generality of the preceding power, the following functions shall be discharged by the officers posted under sub-section (2)-*
 - a. To prepare, modify and revise curriculum and syllabus for different stages of school education.*
 - b. To prepare text books, reading material and other instructional material.*
 - c. To prepare, modify and revise curriculum, syllabus and training material for teacher education;*
 - d. To prepare curriculum and material for departmental examinations;*
 - e. To send curriculum, syllabus, reading material and other material for the consideration of the Board;*
 - f. To conduct researches of different kinds, or get them conducted, in the field of School Education and Teacher Education;*

- g. To publish curriculum, syllabus, reading material, other material, research work;*
- h. To extend material and different publications regarding School Education and Teacher Education;*
- i. To determine evaluation process for different stages of School Education, Teacher Education and Departmental Examination;*
- j. To evaluate educational quality;*
- k. To conduct pre service and in service training programmes;*
- l. To induct new educational technology in the field of education and training;*
- m. To administer general control over District Institutes of Education and Training;*
- n. To prepare annual estimates and accounts for carrying out activities related to its functions and functions related to teacher education;*
- o. To conduct and get conducted different projects;*
- p. To establish coordination with Utrakhand Sabhi Ke Liye Shiksha Parishad, Sarva Shiksha Abhiyan and other projects to be conducted in the field of education;*
- q. To cooperate with other authorities at National and Regional level in educational plans;*
- r. To establish coordination with State Institute of Educational Management and Training, Institute of*

*Advanced Studies in Education and College of
Teacher Education;*

- s. To provide educational support and guidance at all
levels of school education;*
- t. To submit to Board/State Government suggestions for
educational improvement.”*

The rule does not empower the respondents to act in a way in which the rights of the member schools of the petitioner association are being infringed. Even the Hon'ble Delhi High Court in its judgment have laid the law that the private un-aided schools could prescribe the books of private publishers and even they are having the rights to open the tuck shops in their schools to sell the books of the private publishers. The acts of the respondents are not only erroneous but illegal as they are outguessing their powers.

5. That the National Curriculum Framework granted the rights to the schools to adopt the multiple books and the stand of the respondents is also the same that the syllabus of the CBSE etc is based upon the National Curriculum Framework, 2005. If that is so, the respondents cannot go beyond the scope of the National Curriculum Framework, 2005. This Hon'ble court vide orders dated 13.04.2018 has granted the interim orders in favour of the petitioner association and other similarly situated petitioners who have approached this Hon'ble court. The respondents have violated the interim orders passed by this Hon'ble court at each and every instance which prompted the petitioner association to initiate the contempt proceedings under Article 215 of the Constitution of India which is also before this Hon'ble court for final disposal vide IA No. 9554 of 2018.

6. That the court of appeal in the matter of **Regina Vs. North and East Debon Health Authority, Ex Party Coughlan** decided on 16.07.1999 has given the interpretation regarding the unfairness where amounting to abuse of power:

“Applicant’s case transferred to local authority but no alternative placement identified-Applicant’s expectation-Authority’s clear promise that facility would be home for life-built National Health Service facility-E. –G. –Health authority-Health authority- Health authority transferring long-Judicial Review-National Assistance Act 1948 (11&12 Geo 6 c 29), s 21 (as amended by Local Government Act 1972 (c 70), ss 195 (6), 272 (1), Children Act 1989 (c 41), s 108 (5) and National Health Service and Community Care Act 1990 (c 19), ss 42, 66) National Assistance Act 1948, s 21, as amended: see post, p231A-National Health Service Act 1977 (c 49), ss 1 , 3 National Health Service Act 1977, s 1: see post, p229E-Provisiona of Nursing Care-Severely disabled applicant moved from hospital to purpose-Subsequent decision to close facility-term nursing care of severely disabled patient to local authority-Whether contrary to applicant’s legitimate expectation-Whether health authority having sole responsibility to provide nursing care-Whether lawful-Whether unfairness amounting to abuse of power.”

7. That the Hon’ble Supreme Court of India in the matter of **Barium Chemicals Vs. Company Law Board** has describe the definition of:

“Maxims- Delegatus non potest delegare—Meaning and scope of. But the maxim delegates non potest delegare must not be pushed

too far. The maxim does not embody a rule of law. It indicates a rule of construction or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negative by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.”

8. That the Hon’ble Supreme Court of India in the matter of **Naraindas Indurkhya Vs. State of M.P. and others** have upheld the rights of the private schools curtailing the exorbitant powers of the State:

“A. *Constitution of India, Articles 162 and 19(1) (g) and Schedule 7, List 2, Entry 11 – Madhya Pradesh Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhiniyam, 1973, Section 4 & 4(1), Proviso- Education-Prescription of school text books by the State Government – Before Act of 1973 coming into being State Government empowered to do so under Article 162 of the Constitution – Exercise of such power by Article 19(1) (g) of the constitution – Any executive action of State Government encroaching up private rights would have to be supported by legislative authority.*

B. *M.P. Prathamik, Middle School Tatha madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhiniyam, 1973, Section 4(1)-Education – Prescription of school text books by the State Government – Section 4(1) no vesting*

arbitrary and uncontrolled direction upon State Government therefore-Object being to ensure uniformity of standard and excellence in instruction – Achievable only if standardised text books are used in schools – Exercise of power by State Government is to provide best possible text books – Section 4(1) not violating Article 14 of the Constitution.

C. M.P. Prathamik, Middle School Tatha madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhiniyam, 1973, Section 4(1), Proviso – Education- Prescription of text books – State Government issuing notification prescribing text books- Prior consultation with Education Board therefore becoming necessary – Absence thereof making such notification invalid – Function of Board exercisable by its chairman through mechanism of Regulations.

D. M.P. Prathamik, Middle School Tatha madhyamik Shiksha (Pathya Pustakon Sambandhi) Vayvastha Adhiniyam, 1973, Section 4(1) – Education-Prescription of text books on languages – Section 4(1) authorising State Government to prescribe text books – Board issuing notification therefore – Notification becoming futile ineffective – Not having binding effect on schools to use only those text books.”

9. That the Hon’ble Supreme Court of India in the matter of **Uday Singh Dagar Vs. Union of India 2007 AIR (S.C) 2599** have upheld the ratio descendi:

“Interpretation of Statutes – Repeal statute – Where there is a repeal of an enactment and simultaneously re-enactment where the re-enacted enactment manifests an intention incompatible with or contrary to provisions of the repeal statute has to be ascertained upon consideration of all the relevant provisions of the re-enacted enactment this is no longer respondent integra.”

It is, therefore, respectfully prayed that the orders passed by the respondents are totally in contrary to the settled preposition of law thus, liable to be set aside on the basis of the submissions made above in the interest of justice.

Place: Nainital
Dated: 08.04.2019

(PANKAJ MAINI) **(SUDHIR KUMAR)**
Advocates
Counsels for the Petitioner