

**BEFORE THE H.P. ELECTRICITY REGULATORY COMMISSION SHIMLA**

**PETITION NO. 17 OF 2003**

**In the matter of:**

A.J.Singh, Headmaster,  
Pinegrove School Kasauli Road,  
Dharampur, Tehsil Kasauli,  
District Solan, H.P.

...Petitioner

**Versus**

1. The H.P. State Electricity Board,  
Vidyut Bhawan, Shimla-4,  
through its Secretary.
2. The Asstt. Executive Engineer,  
HPSEB, Elect. Sub Division,  
Subathu, Tehsil Kasauli, District  
Solan, H.P.

...Respondents

**PETITION against arbitrary levy of  
commercial rates for schools  
affiliated to the CBSE/ICSE by the  
Chief Engineer (Commercial).**

...

Present

:For petitioner

:Shri Vishal Panwar, Adv.

:For respondents

:Shri Anil Tanwar, Adv.

:For consumers

Shri D.N.Bansal, CE(Comm.)  
:Shri P.N.Bhardwaj  
(U/S 26 of ERC Act,1998)

**S S Gupta,  
Chairman**

**ORDER**

1. The petition essentially revolves around the question of interpretation of the words 'recognition' and 'affiliation' upon which the petitioner Pinegrove School has sought to build his entire case of levy of appropriate schedule of tariff.

2. Shri Vishal Panwar, the learned counsel for the petitioner read out Annexures II, III, V, VI, XI, XIV (page 22), XVI (page 26), XVII (page 28), XVIII of the petition and Annexure XXIII of the rejoinder to support his contention that the Pinegrove School

had been existing since 1991 and had been paying the domestic tariff rate until October, 2001 when the tariff was changed to commercial tariff with effect from November 1, 2001. The learned counsel further went on to plead that his school is affiliated to CBSE and is engaged in charitable activities. All CBSE/ICSE schools have to be owned by registered societies which means that no individual can own a school and the society is always working for the betterment of the human resources development in the country and, therefore, no school affiliated to CBSE/ISCE can be termed as a private or a commercial school. The petitioner is registered under the Registration of the Societies Act, 1860 meant for charitable societies only. The school is registered under Section 12-A of the Income Tax Act and is totally exempt from income tax which concession is extended only to non-commercial organizations. He further went on to plead that under no stretch of imagination, his school can be regarded as private un-recognised school. Particular emphasis was placed by the learned counsel on Annexure XI being the true copy of the letter dated 7-3-2002 from the Secretary, HP Board of School Education, Dharamshala to the address of the Manager, Pinegrove School and Annexure XVI being letter of April, 1992 from the Director of Education, Himachal Pradesh, Shimla to Shri A.J.Singh, Headmaster of the said school. Both the letters are reproduced herebelow:

“HIMACHAL PRADESH BOARD OF SCHOOL EDUCATION DHARAMSHALA

From:

The Secretary,  
HP Board of School Education,  
Dharamshala-176 213.  
No.HB(39)Affiliation/2002-7295

To

The Manager,  
Pinegrove School,  
Kuthar Road, Subathu-173 206.  
District Solan.  
Dated: 07.03.2002

Subject:- Regarding recognition.

DearSir,

With reference to your letter No. PGS/Word/Edn/02 dated NIL on the

subject captioned above, I am directed to inform you that the State Govt./HP Board of School Education does not issue the recognition certificates as such.

All schools affiliated with the CBSE are recognised by the Central Government after obtaining due NOC from the respective State Govts. and only then they are allowed to appear in CBSE examinations.

Yours faithfully,

Sd/-  
Additional Secretary,  
for Secretary”

“No. EDN-H(5)C(10)/68/85-----  
DIRECTORATE OF EDUCATION,  
HIMACHAL PRADESH SHIMLA-1.

Dated Shimla-171001, the April 1992

To

Sh. A.J.Singh,  
Headmaster  
Pine Grove School  
(Dharampur-Kasauli Road),  
Distt.Solan.

Subject:- NO OBJECTION CERTIFICATE FOR AFFILIATION TO CENTRAL BOARD SECONDARY EDUCATION, NEW DELHI.

Memo:-

Reference your office letter No. PGS/12/91-220 dated 3<sup>rd</sup> December 1991 on the subject cited above

No objection Certificate is sent herewith for your information and necessary action.

Encl:-1

Sd/-  
DIRECTOR OF ECUDATION,  
HIMACHAL PRADESH,SHIMLA-1.”

3. Shri D.N.Bansal, Chief Engineer (Commercial), HPSEB read out the clauses of applicability in respect of Non-Domestic Non-Commercial supply (NDNCS) and Commercial supply (CS) at pages 149 and 151 of the tariff order for the year 2001-02 issued by HPERC as hereunder:

**“SCHEDULE-NON-DOMESTICNON-COMMERCIAL SUPPLY**

**NDNCS**

**1. Applicability**

This schedule is applicable to the following consumers:

- a) Govt./Govt. recognised Educational Institutions viz. Schools, Universities; I.T.Is, Hostels and residential quarters attached to the educational institutions.
- b) Religious places such as Temples, Gurudwaras, Mosques, Churches etc.
- c) Orphanages, Sainik Rest Houses, Working Women Hostels, Anganwari workers training centers and houses for destitute and old people.
- d) Free Hospitals and Leprosy Homes run by charity and un-aided by the Government.
- e) Sarais and Dharamsalas run by Panchayats and Municipal Committees or on donations and those attached with religious places, subject to the condition that only nominal and token amount to meet the bare cost of upkeep and maintenance of the building etc. is being recovered and no rent as such is charged.”

**“SCHEDULE-COMMERCIAL SUPPLY**

**CS**

**1. Applicability**

This schedule is applicable to consumers for lights, fans, appliances like pumping sets, central air conditioning plants, lifts, heaters, embroidery machines, printing press, power press and small motors in all commercial premises such as

shops, business houses, cinemas, clubs, banks, offices, hospitals, petrol pumps, hotels/motels, servicing stations, nursing homes, rest/guest houses, research institutions, coaching institutions, museums, dry cleaning, garages and auditoriums, departmental stores, restaurants, lodging and boarding houses, private un-recognised educational institutions, Panchayatghar and Patwar Khanna etc.

This schedule will also include all other categories, which are not covered by any other tariff schedule.

**NOTE:-** Resale and sub-metering to tenants, adjoining houses and to other parties is strictly prohibited.”

Shri Bansal sought to draw a clear and significant distinction between the “government/government recognised education institutions viz. schools, universities, ITIs, hostels and residential quarters attached to the educational institutions” as covered under the ‘applicability clause’ of the Schedule NDNCS and the ‘private unrecognised educational institutions’ covered under Schedule commercial supply (CS). Shri Bansal further added that the Government/Government recognised schools charged only the nominal fee, the staff were paid the government approved pay scales while those merely affiliated but private and unrecognised ones were engaged in the business of education purely on commercial principles levying higher school and boarding fees besides paying much lower pay scales to their staff and teachers.

4. Mr. Anil Tanwar, the learned counsel for respondent – HPSEB referred to Supreme Court judgment reported in AIR 1978 SC 344 - Civil Appeal No.1804 of 1977, D/-9-1-1978 – titled “The Principal and others - Appellants V. The Presiding Officer and others, Respondents”. Attention was drawn to paras 1, 5, 6, 7 and 8 of the said judgment to prove the significant difference between affiliation and the recognition. The relevant para 6 of the order dealing with the point ‘whether the school was a recognised private school’ reads as under:

“Para 6. From the above definitions, it is clear that no school can be treated as a ‘recognised school’ unless it is recognised or acknowledged by the ‘appropriate authority’. In case of the School in question, it is the Administrator or the officer authorised by him who could accord recognition to it. A perusal of letters dated April 6, 1976, February 1, 1977 and June 6, 1977 of the Directorate of Education, New Delhi (at

pages 90, 95 and 162 of the record) makes it clear beyond any shadow of doubt that the School was not recognised in terms of the Act till the end of April, 1977 and it was only with effect from May 1, 1977 i.e. long after the relevant date viz. August 8, 1975 that the approval or recognition was accorded to it vide letter No. F.21 (15) Z-XI (B)-1968/2003 dated June 6, 1977 of the Directorate of Education, Rajinder Nagar, New Delhi. This position has been admitted even by respondent No.2 in para 4 of the Supplementary Affidavit filed by him before this Court. Even according to para 2 of the said affidavit, the recognition of the School by the competent authority was not there on the relevant date. The observation of the Tribunal in regard to the point under consideration appear to be based on a misconception of the true legal position. It seems to think that since the name of the School figured in the list of the Higher Secondary and Middle Schools in the Union Territory of Delhi for 1974-75 prepared by the Statistical Branch of the Directorate of Education of the Delhi Administration, the School must be treated as a 'recognised school'. This is clearly a wrong assumption. The fact that the name of the School finds a mention in the aforesaid list is not enough to clothe it with the status of a 'recognised school'. It appears to us that since the School was affiliated to the Board, the Delhi Administration caused its name to be included in the aforesaid list. The fact that the School is affiliated or attached to the Board is also of no consequence and cannot justify the conclusion that the School is a 'recognised school'. There is a significant difference between 'affiliation' and 'recognition'. Whereas 'affiliation', it may be noted is meant to prepare and present the students for public examination, 'recognition' of a private school is for other purposes mentioned in the Act and it is only when the School is recognised by the 'appropriate authority' that it becomes amenable to other provisions of the Act. Again the fact that the School was in existence at the commencement of the Act cannot confer on it the status of a recognised school and make it subject to the provisions of the Act and the rules made thereunder. To clothe it with that status, it is essential that it should have been a 'recognised private school' as contemplated by the Act."

5. The learned counsel for the respondents contested the plea of the petitioner contained in para-5 and para-7 of the petition that the school is recognised merely because it is affiliated to the CBSE and that no school affiliated to CBSE/ICSE can be termed as private or commercial school by heavily relying upon the above judgement of Hon'ble Supreme Court. Mr. Tanwar submitted that the said school was charging

exorbitant fee, and certainly was not charitable in its activities. The HPSEB was simply following the tariff order so announced by the HPERC on Oct 29, 2001.

6. Shri P.N.Bhardwaj authorised by the Commission to represent the interest of the consumers under Section 26 of ERC Act, 1998 submitted that the clear definitions had been provided in the tariff order of 29-10-2001 for applicability of NDNCS and CS charges. The school is a commercial organisation and a private one. It was charging exorbitant fees and levies from the students. He, however, did not ascribe to HPSEB's charge of commercial tariff rate in respect of the residential houses attached to the school.

7. Shri Tanwar, the Ld. counsel for respondent Board concluded by saying that there is a significant difference between affiliation and recognition and whereas the affiliation is meant to prepare and present the students for public examination, recognition of a private school is for other purposes mentioned in the related Act and it is only when the school is recognised by the appropriate authority that it becomes amenable to other provisions of the Act. No school can be treated as recognised school unless it is recognised or acknowledged by the appropriate authority as laid down by the Hon'ble Supreme Court. The Respondent Board, nevertheless, offered that the houses attached to the school can be provided with supplies on Schedule domestic supply (DS) as prayed by the petitioner provided the individual occupiers apply for connections for domestic use directly to the HPSEB.

8. Shri Anil Tanwar, the Ld. Counsel for the respondent Board pleaded, though, in the conclusion of his wrap up that the petition filed by Shri A.J.Singh, Headmaster, Pinegrove School Kasauli Road, Dharampur, Tehsil Kasauli, District Solan, H.P against the alleged arbitrary levy of commercial rate for school affiliated to CBSE/ICSE by the Chief Engineer (Commercial) of the HPSEB is ex facie unmaintainable as it has been filed by Shri A.J.Singh and not by the school. The Commission is also aware that the petition has not been filed under any relevant provisions of the Electricity Regulatory Commissions Act or the regulations made thereunder. The Commission, nevertheless, in exercise of its inherent powers, having already proceeded with the matter deems it covered under the HPERC Complaint Handling Mechanism and Procedure notified by the Commission on Feb.8, 2002 under para 4.0 Table 4.1-c "Electricity Supply - Overall Standards in Operation" "responding to consumer's query

regarding charges/payment” as well as Schedule to the HPERC’s Conduct of Business Regulations, 2001 under Part-C. Miscellaneous ‘Complaint against the working of a Utility by the end user/consumer’.

9. After hearing the learned counsels for the parties and the consumer representative, the Commission is convinced that the petitioner has no case whatsoever. The school is undoubtedly a private unrecognised school. It is not recognised by the appropriate authority which in the case of CBSE affiliated school should rightly be the Central Government. Hon’ble Supreme Court’s judgment supra is relevant in its entirety in the facts and circumstances of the case particularly in determination of the point of ‘recognition’ vis-à-vis ‘affiliation’ and can be totally relied upon without a demur. Again, the school is not a government or government aided or government recognised school. Per contra, it has to be a private school. Pinegrove School is not, therefore, Government/Government recognised school eligible for Schedule NDNCS of the Tariff Order. This is, undoubtedly, a private unrecognised educational institution appropriately differentiated under Schedule commercial supply (CS) of the tariff order of Oct.29, 2001.

10. In view of the foregoing discussion, the petition is dismissed. The parties to bear their own costs. Respondent – HPSEB, however, shall, subject to such terms and conditions, as may be applicable, provide supplies to the residential quarters attached to the institution if the individual applications are made by the individual occupiers of such quarters for domestic use as offered by respondent HPSEB.

It is so ordered.

Announced today the 2<sup>nd</sup> day of July,2003. The file be consigned to record room.

**(S S GUPTA)**  
**CHAIRMAN**