Part V

CHAPTER IX

SCHOOL EDUCATION

This chapter is confined to the problems of the secondary schools. Further, it is confined to the institutional problems, rest of the matters have been discussed in their appropriate places.

I

Opening a School

The High Courts of Bombay[1] and Gujarat[2] have held that imparting education is occupation, profession or business and it was a fundamental right guaranteed under article 19(1)(g). For the effective exercise of this right recognition of a school is essential. However, this right is subject to reasonable restrictions in the interest of the public. The state cannot exercise this right arbitrarily. In refusing to grant recognition the authority is to give a hearing to the school and also reasons for its refusal.[3] Where the rules relating to recognition do not prescribe

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1. Sakharkherda Edu.Society v. State, A.I.R. 1968 Bom. 91.

2. Sharda Edu.Trust v. State of Gujarat, 17 Guj.L.R. 298 (1976).

3. Ibid.

standards for the guidance of the authority for granting of recognition and also for natural justice to be followed, the rules will be held to be unconstitutional, under article 14 of the Constitution.[4]

In State of Maharashtra v. Lok Shikshan Sanstha,[5] the Supreme Court found that the rules did not suffer from vagueness when they provided : (a) that the school is actually needed in the locality and does not involve any unhealthy competition with any existing institution; (b) the management is competent and reliable; and (c) there is financial stability. The court also found the procedures to be reasonable when the matter of recognition was actually to be considered by a district committee, whose members were familiar with the requirements of particular areas, the committee was required to give reasons and the deputy director was to act on the recommendations of the committee. There was also provision for an appeal from the order of the deputy director to a higher authority. The court also held that the principles of natural justice were not violated merely because no right of hearing was provided for an applicant. The application form was really elaborate and complete requiring all the necessary information which the district committee had to consider.

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4. Supra note 1.
5. A.I.R. 1973 S.C. 588.

No one has the right to open a school whenever or whenever he decides to do so.[6] It is open to the authorities to refuse recognition if the school is not financially sound or fulfilling the requisite conditions.[7] Where the authority refuses to grant recognition without a reasonable ground the court will give relief to the school. In one case permission to start a school was refused on the ground that the school did not own a building. However, a building was available on lease or licence to the petitioner to start the school.[8] The Gujarat High Court quashed the order refusing the permission on the ground that allowing only privileged classes who owned a building to open a school resulted in hostile discrimination prohibited under article 14.

The education department while giving permission to open a school must observe the procedure prescribed under the educational law.[9] Any violation thereof may give locus standi[10] to the nearby school to challenge the order. However, the court would not proceed with the writ jurisdiction simply because such permission would affect the income of the nearby school.[11]

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6. Ibid
7. Vicar St.Mary's Church v. State, A.I.R. 1978 Ker.227.
8. Santoshi Education Trust v. State, A.I.R.1981 Guj.85.
9. Rama Nand Uchch Vidyalay v. State, A.I.R.1977 Pat.36.
10. Madhavan Pillai v. State of Kerala, A.I.R.1965 Ker. 301.
11. A.V.V.Prasarak Samiti v. State, A.I.R.1980 Kant.221.

The right to open school will also include the right to continue the school. The Punjab Local Authorities (Aided Schools) Act, 1959 in section 5 provided for taking away the management of the school straightaway after publication of a notification to that effect. The Supreme Court[12] interpreted the said provision to have the effect of taking away the property right of the school and held that as there was no provision for compensation as required under article 31(2) of the Constitution, the section was unconstitutional.

The right to start a school also includes the right to close down the school. The Kerala educational authorities did not allow the petitioner to close down his school. Under section 7(6) of the Kerala Education Act, the manager of a school could close down the school after giving one year's notice, but the rules made thereunder gave discretion to the director to grant or refuse permission for closing down the school. The rules were held to be ultra vires. The court stated that "it is a right inherent in the owner of any institution or establishment to close it down, if he finds it impossible or even inconvenient for him to continue to run it".[13]

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12. Municipal Committee, Amritsar v. State of Punjab, A.I.R. 1970 S.C.2182.

13. P.Krishnakumar v. State, A.I.R.1973 Ker.14.

The above right gives the manager of a private school to follow his own way of teaching. In this he could not be compelled to do away with the religious instructions in the school.[14] If the school is unrecognised the authorities cannot impose on it the condition laid down in the Education Act and the rules made thereunder.[15] The Board of Education recognised a junior high school as the higher secondary school but the school authorities maintained a distinction between the junior school and its higher secondary portion for the purposes of salary of the teachers.[16] The Allahabad High Court held that once a recognition was given to the school as higher secondary it ceased to be junior high school and the state educational law was applicable to the school as a whole. It would be incongruous to say that the institution after its recognition comprised two parts, junior high school and high school. In Commissioner, Lucknow Division v. Prem Lata,[17] the college imparted education in junior high school (classes VI to VIII), higher secondary and intermediate stage. It was a recognised school. Subsequently, the school started classes I to V and nursery classes. The U.P. Intermediate Education Act, 1921 did not cover the pre-junior high

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14. Abdurahiman v. State, 1978 K.L.T. 275.

15. The Principal v. Presiding Officer, A.I.R. 1978 S.C. 344.

16. Brij Bhusan Lal v. State, A.I.R. 1978 All.475.

17. A.I.R. 1977 S.C. 334.

school stage. On these facts it was held that the Act was not applicable to the school as far as pre-junior high school stage was concerned. "A school by extending its operation to fields beyond that covered by the Act cannot extend the ambit of the Act to include in its sweep these new fields of education which are outside its scope".[18]

II

Grant-in-aid

In Ram Autar v. Sub Divisional, E.O.,[19] a private school started getting grant-in-aid. Under the provisions of the relevant Act, the educational authorities took action for constituting the managing committee of the school. It was held that this did not amount to the acquisition of the school, particularly because the law provided for the constitution of a managing committee in which all persons interested in the school could get due representation. There is no question of paying any compensation by the state in such a case.

The Goa, Daman and Diu Grants-in-Aid Code in rule 94 authorised the appropriate authorities to issue warning to those schools which violated the grants-in-aid conditions. A principal of a college did not abide by the order issued by the authorities for which a warning was issued and later on the grants were stopped. The court, interpreting the provisions of rule 94, held that when there was a

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18. Id. at 335-36.

19. A.I.R. 1966 Pat. 245. Also Katra Education Society v. State of U.P., A.I.R. 1966 S.C.1307.

provision for warning it meant that the party so warned would be given an opportunity to submit its explanations in the matter. In the present case as no such opportunity was given the court quashed the order.[20] The court also set aside the withholding of grants-in-aid where the action of the authorities was arbitrary and discriminatory attracting article 14.[21] The Orissa High Court justified the order of stopping the grants where a school did not submit the necessary financial statement.[22] Schools get the grants to spend it on the permitted heads. If it did not pay the rent and the grant in that regard remains unutilised it could be attached by a decree of court of law.[23] If the school has violated the grant-in-aid code in terminating the services of a teacher contrary to the provisions of the code, the matter is between the school and the government, and the teacher cannot claim the enforcement of the provisions of the code as they are merely administrative instructions.[24]

In order to finance the school the government takes the help of educational cess. The state legislature levies it on land revenue, or as a part of the profession tax.

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20. Mario v. Principal, L.H.School, A.I.R. 1972 Goa 21.

21. Birla Higher S.School v. Lt.Governor, (1973)1 I.L.R. Delhi 634; Amratlal v. State, A.I.R.1972 Guj. 260.

22. Lakshna Mohapatra v. State, A. I.R.1975 Ori.201.

23. M.E.School Committee v. Nobele Raj, A.I.R.1975 Mad.19.

24. Regina v. St.A.H.E.School, A. I.R. 1971 S.C.1920.

The state legislation authorises the municipal or other local authorities to impose such tax within the limitation prescribed under the Act. In Ram Chand v. Malkapur Municipality,[25] the petitioner challenged the constitutionality of the imposition of education cess. The petitioner argued that the imposition was ultra vires the state power and offended article 45 of the Constitution which provided for free compulsory education. The Bombay High Court rejected both contentions. As regards competence of the Maharashtra legislature, the court held that it came within entry 11 of List III which provided for "education" and the cess was levied for promotion of education. The court also supported the legislation incidentally falling under entry 49, List II which authorised the state to impose taxes on lands and buildings. So far as the question of violation of the directive principle was concerned the Bombay High Court observed that article 45 provided for free compulsory education for children until they completed the age of fourteen years but there was no prohibition on collection of taxes for that purpose. This obligation could not, according to the court, be fulfilled unless the state had the necessary funds for carrying out that purpose. The Maharashtra Education (Cess) Act, 1962 was adjudged by the court as constitutionally valid.

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25. A.I.R. 1970 Bom. 154; Vanlila Vadilal v. Mahendra Kumar, A.I.R. 1965 Guj. 163.

III

Management Committee

It is normally easy to identify a managing committee. A committee having general and financial control over the affairs of the school has been regarded as the management committee.[26]

The courts have required that the eledtion of the members of the managing committee should be according to the statutory provision and any violation thereof will be bad.[27] The statute provided clear ten days' notice for the meeting of the committee to elect the members, but when only six days' notice was given, it resulted in quashing the election.[28]

The constitution of a fresh or an ad hoc committee in place of the existing management committee has generated a good deal of case law. The main attacks were the violation of either the statutory provision or breach of natural justice.

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26. C.P.Kelkar v. S.B.Ghotgekar, 12 Lab. & Ind. Cas. 619 (1979).

27. Syed Md. Salim v. Board, Sec. Edn., A.I.R. 1972 Pat. 437; Kamarcharan Sahu v. Ramachandra Behera, 46 CLT 65 (1978).

28. Harischandra Singh v. State, A.I.R.1971 Pat.406.

When the term of the existing committee came to an end and no fresh committee was constituted the committee so continuing was declared as functus officio and the education department was allowed to constitute an ad hoc committee. The court in such cases ruled out any application of natural justice.[29] However, the action of the government will be bad where the managing committee was dissolved without giving a hearing to it, when the Act specifically provided for such a course.[30]

In a Patna case,[31] elections to the managing committee were held, but there was some dispute whether the elections were properly held or not. Under the relevant rule, the President of the Board of Secondary Education was empowered to decide these disputes. The President purporting to act under this rule stayed the functioning of the committee. It was held that the President had no such power, as no such power had expressly been given to him. There is nothing like inherent power in such a matter. However, the same High Court has held that the power of control and superintendence given to the educational,

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29. Paikpara Raja Manindra M.H.School v. State of W.B., A.I.R. 1980 NOC 43 (Cal.); Mishrilal Rai v. State, A.I.R. 1973 Pat. 117.

30. Ram Chandra v. State, A.I.R. 1974 Pat.180.

31. Adarsh Unchh Vidyalaya v. S.E.Board, A.I.R. 1973 Pat. 335.

authorities includes the power to dissolve a managing committee, and the court in this case upheld their action in dissolving the committee on the grounds that the members were fighting among themselves and there were charges of embezzlements and irregularities by the management.[32] It has been held that there is an implied power with the educational authorities to appoint an ad hoc committee after the expiry of the terms of the managing committee.[33]

The power to dissolve an existing committee is to be exercised after giving a reasonable opportunity of being heard to the committee.[34]

The G.T.Girls High School case[35] shows the inside politics of constituting an ad hoc committee. In this case some politically motivated teachers and politicians made representation against the existing committee of the school. The Director of Public Instructions visited the school and passed the order that "the

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32. R.R.S.H.School v. State, A.I.R. 1973 Pat.450. See also Katra Ed.Soc. v. State of U.P., supra.

33. Mishrilal Rai v. State, supra note 29. See Ram Chandra v. State, supra note 30.

34. Godavaris Mahabidyalaya v. Dir. of Public Instruction, A.I.R. 1982 Ori.101; Ram Chandra v. State, supra note 30; Dukhan Ram v. State, A.I.R. 1972 Pat. 465; B.C.Mohanty v. D.I. of Schools, A.I.R. 1971 Ori. 259.

35. G.T.Girls High School, Hoskote v. State, A.I.R. 1980 Kant. 165.

society exist only by namesake " and constituted a new committee which was challenged in the present case. The court struck down the order on the ground that no opportunity was given to the society. The court decried the political interference when it said: "The action of the Department is not only high handed and contrary to law, but also appears to have been at the instance of those who had political influence and such improper exercise of power by the authority should be strongly condemned by Court".[36]

It is not necessary for the education department to constitute an ad hoc committee in all cases. If circumstances are such that some immediate arrangement is necessary the authority may appoint an administrator.[37] It is necessary that such person should be an educated person.[38]

The power of appointing a teacher or headmaster is in the hands of the managing committee in the first instance. The educational authorities cannot direct the committee in the first instance to appoint a particular person as headmaster. However, the power is subject to the Act and the rules made thereunder.[39] There is nothing wrong when the statute provides that the appointment made by the

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36. Id. at 166.

37. S.S.Prasad v. Bd.of Sec.Ed., A.I.R.1973 Pat.89.

38. Jadbendra v. State of West Bengal, A.I.R.1978 NOC 107 (Cal.); Durga Chand v. Administrator, A.I.R.1971 Del.73.

committee is to be approved by the educational authority.[40] In J.N.Mishra v. State,[41] where the statute required that the educational officer "shall send approval within fortnight" it was held that the provision was not mandatory. The court quashed the order of the education officer in this case where the managing committee selected a person as their first preference but the education officer appointed another candidate, wrongly assuming him to be equally recommended, by applying extraneous considerations. How far the "power of approval" includes the power of appointing a person, other than the one selected by the managing committee, will depend upon the statutory language.

Similarly, the power to take disciplinary action against the teacher is primarily vested in the management. The fact that under the statute prior approval of the educational authority is required does not vest in the authority the right to impose the punishment. Essentially the power of punishment is with the manager.[42] The court would not grant an injunction restraining the management

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39. K.P.Sethumadhavan v. Distt. Educational Officer, 1974 K.L.T. 469.

40. Katra Education Society v. State of U.P., supra.

41. A.I.R. 1973 Pat. 377.

42. K.P.N.Menon v. State of Kerala, 1974 K.L.T.714.

from suspending a teacher and initiating disciplinary action against him.[43]

IV

Prescribing text-book

The state government has the responsibility to see that school education is programmed in such a way that it attains the goal of excellence. In order to achieve this object the education board prescribes syllabi and books. These books may be of a private publisher or nationalised text-books. The educational authorities have to pick and choose. The state may take over the business in text-books in its own hands. Following its earlier decision in Ram Jawaya v. State of Punjab,[44] the Supreme Court held in Naraindas v. State of M.P.,[45] that the state government can enter the business of publishing and selling text-books through the exercise of its executive power without legislation. Similarly, the state government can prescribe text-books of any publisher for both the government-managed schools and private-managed schools to whom it gives grant-in-aid, and no legislation for

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43. V.D.Tripathi v. Vijay Shankar, A.I.R.1976 All.97.

44. A.I.R. 1955 S.C.549.

45. A.I.R. 1974 S.C. 1232.

the purpose is necessary. In Naraindas, the court held that no fundamental right of a publisher is violated when the government exercises such a power.

Though the executive may exercise the power to prescribe and publish text-books without legislative support, yet a statutory board like the Board of Secondary Education, created to conduct examinations and prescribe courses of instructions, does not have such an inherent power without legislative authorisation. The power to prescribe a course of instruction does not imply the power to prescribe text-books.[46] Where the state government was to prescribe text-books after consulting the Board of Higher Secondary Education, such consultation was held to be essential. The exercise of power will be bad if the board is not consulted.[47]

The court in Naraindas did not accept the plea that merely giving discretionary power to the state government in the matter was arbitrary. The government, according to the court, was required to select best books of high quality and merit for maintaining uniformity and excellence in standards. This was not arbitrary and article 14 was not attracted.

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46. Ibid.

47. Ibid.

Once a text-book of a private publisher is prescribed, he does not get the right that his book should not be withdrawn. There may be administrative instruction to that effect but it will not override the right of the government to withdraw the book so prescribed.[48] In State of Madhya Pradesh v. Ram Ragubir Prasad,[49] the respondent's book was withdrawn and the government prescribed its own book. The respondent claimed that the action of the state government did not conform with the statutory provision and it should be held invalid. Section 4(1) of the Madhya Pradesh Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pushtakon Sambandhi Vyavastha) Ahinium, 1973 provided that the state government could prescribe the text-books according to syllabi. In the present case the government prescribed its own book for "Rapid Reading" without prescribing the syllabi first. As the government failed to comply with the statutory process the court declared the action of the government to be invalid. However, as the students were preparing for their examinations on the basis of this book, the court directed its continuation for the current year only and ordered the government to follow the procedure prescribed under the Act for the next year. The court emphasised the necessity of publication of the syllabi. Publication, according to the

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48. State of T.N. v. Krishna Murti, (1972)1 S.C.W.R. 324.

49. A.I.R. 1979 S.C. 888.

court required, wider publicity than a minimal communication to the departmental officialdom. The court insisted that the state government should not treat it as a ritual of little moment.

In Om Prakash v. Board of School,[50] the Himachal Pradesh High Court had to tackle another problem in this area. The chairman, board of school did not approve petitioner's book for class I. The petitioner contended that the statutory requirement was for three reviewers for the approval of the book; whereas in the present case there were only two reviewers; and that the chairman while approving the book did not apply his mind. The court rejected both the grounds. The court held that due to emergency only two reviewers could be appointed and that "the court will not say on this aspect that there was no emergency". As regards the application of the mind by the chairman the court held that there was application of mind. However, the fact shows that the chairman simply appended his signature on the note put up by the deputy secretary. The court took the stand that "the selection of text-book was the administrative business of the Board", and accordingly did not need a reasoned order.

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50. A.I.R. 1975 H.P. 1.