11

EDUCATION LAW

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I INTRODUCTION

DURING THE year 2009, the Indian judiciary, through many important decisions, unequivocally reiterated the ancient Indian principle namely, "education is liberation."[1] Interpreting liberally, the court held that right to education shall include right to a provision for sports. However, it deprecated the tendency to establish educational institutions for profiteering. It also showed its concern to the menace of ragging and misuse of students' union elections for ulterior motive by the politicians. It heavily attacked on admitting students for academic programmes that were not recognized. The courts also dealt with the problems of autonomy of educational institutions. It gave liberal interpretation while dealing with rights of teachers and their service conditions. It also dealt with the issues of weaker sections and minorities and their rights and duties regarding education.

II RIGHT TO EDUCATION

Right to education an inalienable human right

In *Avinash Mehrotra* v. *Union of India*,[2] the apex court while dealing with right to education under article 21A of the Constitution held that it was an inalienable human right and shall remain as a tool for betterment of civil institutions and protection of civil liberties. It reiterated its decision in *R.D. Upadhyay* v. *State of A.P.*[3] wherein it was held that education was essential to the life of the individual as much as health and dignity and the state must provide it comprehensively and completely to satisfy its highest duty to citizens. However, unlike other fundamental rights, the right to education places a burden not only on the state but also on the parent/ guardian under articles 21A and 51A(c). The purpose of both the articles is one and the same, *i.e.* compulsory education of children, free from fetters

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1 For details, see Rama Nath Sharma, *History of Education in India* (1996).

2 (2009) 5 SCR 913 : (2009) 6 SCC 398.

3 AIR 2006 SC 1946. See also *Election Commission of India* v. *St. Mary's School* (2008) 2 SCC 390; *Bandhua Mukti Morcha* v. *Union of India* (1997) 10 SCC 549.

of cost, parental obstruction or state inaction. The court also referred its earlier decision in *Ashoka Kumar Thakur* v. *Union of India*[4] to come to the conclusion that educating a child required more than a teacher in a class room with a blackboard and a book. Indeed it requires child to study in a quality school.

Abolition of child labour through universalisation of elementary education

In *Court On Its Own Motion* v. *Govt of NCT of Delhi,*[5] the division bench of the Delhi High Court acknowledged the long standing contention of educational experts that child labour cannot be abolished unless the elementary education was compulsorily universalized. The court approved the action plan for total abolition of child labour in Delhi. The action plan aims at universalizing elementary education through two strategies, namely (i) an 'area based approach' for elimination of child labour, wherein all children in the age group of 6 to 14 years would be covered whether they were in school or out-of-school; and (ii) an approach to be adopted in the context of migrant child labour which involves a process of identification, rescue, repatriation and rehabilitation of child labour. Explaining the objectives of the 'area based approach', the court observed that it was to mobilize and build consensus on the issue of total abolition of child labour through universalisation of elementary education. It attempted to mobilize and build consensus by holding public meetings and rallies by involving municipal councilors, RWAs, *etc.* It also aimed at enrolment of all children in the age group of 6 to 14 years in schools and their withdrawal from work, while at the same time ensuring their retention in schools. Further it sought to integrate older children withdrawn from work in classes according to their age through programmes of various courses and accelerated learning. This objective was sought to be achieved by setting up 'transitional education centres' or 'non-residential bridge course centres' or 'residential bridge course camps' as well as by holding 'short term camps.' This approach also aimed to build local institutions for the protection of child rights by forming 'committees and forums of liberation of child labour,' as well as strengthening of *vidyalaya kalyan samitis* and by implementing training and retention programmes on issues relating to child labour and child rights to education along with tasks and roles of specific stakeholders.

Education includes sports

The importance of games and sports in the development of children cannot be undermined. Indeed sports should be considered as an essential ingredient of education. Thus in *Narinder Batra* v. *Union of India*,[6] the High Court of Delhi held that the right to education under article 21A and

4 (2008) 6 SCC 1.
5 2009 (163) DLT 641.
6 W.P.(C) 7868/2005(02/03/2009) cited in MANU/DE/0372/2009.

schedule VII, list II, entry 33 of the Constitution should include encouragement of sports. It emphasised that the right to education should be given an expanded meaning so as to bring within its fold the requirement of encouragement of sports and provisions for all facilities at the national level.

III STUDENTS' RIGHTS

Guidelines for controlling ragging

The evil of ragging has been attracting the attention of the courts and lawmakers for long. But it is unfortunate that the menace of ragging is still continuing. In *University of Kerala* v. *Council of Principals of Colleges in Kerala*,[7] the Supreme Court considered the necessity of framing regulations for controlling ragging in educational institutions. Such regulations should be framed by Medical Council of India and Bar Council of India in consultation with university grants commission and it shall be binding on educational institutions. The court also directed that these guidelines should be distributed to the students at the time of admission along with the consequences that would flow from not observing the guidelines.

Regarding the immediate actions to be taken against the alleged offenders, the court observed:[8]

> A question raised was regarding giving opportunity to the offender before taking actions like expulsion *etc*. Delay in taking action in many cases would frustrate the need for taking urgent action. In such cases if the authorities are *prima facie* satisfied about the errant act of any student, they can in appropriate cases pending final decision, suspend the student from the institution and the hostel if any and give opportunity to him to have his say. Immediately, the police shall be informed and criminal law set into motion. If it comes to the notice of the university or controlling body that any educational institution is trying to shield the errant students, they shall be free to reduce the grants in aid and in serious cases deny grants in aids.

Another bench of the Supreme Court also considered the issue of controlling the ragging in educational institutions in *University of Kerala* v. *Council, Principals' of Colleges in Kerala*.[9] The court felt that not only students, but even the faculty should be sensitized towards the ills of ragging and its prevention. In this context, the court noticed that the ministry of human resource development, Government of India in consultation with the

7 AIR 2009 SC 2223.
8 *Id.* at 2229.
9 (2009) 7 SCC 726.

university grants commission and other similar regulatory bodies was in process of setting up a 'central crisis hotline' and 'anti-ragging database'. The court directed that once such database/crisis hotline was operative, state governments should amend their anti-ragging statutes to include provisions for penal consequences to be imposed by institutional heads. It also ordered that a committee, comprising of one or more eminent psychiatrists/ psychologists/mental health specialists, a documentary maker and educationalists from various fields be appointed, to ascertain psychological impact of ragging on students and to recommend measures for its implementation.

Students' union elections

On an earlier occasion,[10] the Supreme Court had accepted in *toto* the recommendations of the J.M Lyngdoh Committee[11] on students' union elections in colleges/universities with some minor modifications as an interim measure and had further directed that recommendations of committee shall be followed in all colleges and universities. However, in *University of Kerala* v. *Council, Principals'of Colleges in Kerala*,[12] the apex court not only considered the conduct of the students' union elections in the context of Lyngdoh Committee report but also went on to consider the larger issue of judicial legislation and its permissibility. The court found that the said *interim* order of Supreme Court, *prima facie*, would amount to judicial legislation which was not legally permissible. It, therefore, felt that committee's report should have been sent to appropriate legislature or its delegate. The court through two separate opinions directed that the issues may be decided by a constitution bench of five judges. Katju J. opined:[13]

> (O)nce the Committee's Report was received by the Court, the Court should have thereafter, instead of passing a judicial order directing implementation of the recommendations, sent it to the appropriate Legislature or its delegate (which in this case is the University which can make delegated legislation in the form of Statutes or Ordinances). It is for the Legislature or the concerned authorities to make a law accepting the Report in *toto* or accepting it in part, or not accepting it at all but it is not for the Court to pass judicial orders for implementations of the recommendations by the Committee, because that would really amount to legislation by the judiciary.

10 *University of Kerala* (1) v. *Council, Principals of Colleges, Kerala* (2006) 8 SCC 304.

11 Constituted by the Supreme Court in 2005 to frame Guidelines on students' union elections in solleges/universities. The committee submitted its report to the ministry of human resources development on May 23, 2006. The report of the committee can be downloaded from http://www.education.nic.in/higheredu/Lyngdohcommitteereport.pdf .

12 (2010) 1 SCC 353.

13 *Id.* at para 9.

He added:[14]

> Learned Solicitor General submitted that when there is a pressing social need the Court can validly pass an order such as the one passed by this Court on 22.9.2006 in the public interest. I am afraid I have some reservations about this proposition, and that for two reasons. Firstly, there are hundreds of pressing social needs *e.g.* the need to control price rise, abolish unemployment and poverty *etc.* Should the Courts start dealing with all these social problems? Secondly, once the Court starts doing legislation, as the order dated 22.9.2006 has really done, where does this end, and is this not encroaching into the domain of the legislature or executive? In *Divisional Manager, Aravali Golf Club*,[15] we have pointed at the grave dangers for the judiciary in this.

In view of above, Katju J referred the following questions of law, "preferably to be decided by an authoritative Constitution Bench to be nominated by the Chief Justice of India:"[16]

1. Whether the Court by an interim order dated 22.09.2006 can validly direct implementation of the Lyngdoh Committee's Report?
2. Whether the order dated 22.09.2006 really amounts to judicial legislation?
3. Whether under our Constitution the judiciary can legislate, and if so, what is the permissible limits of judicial legislation. Will judicial legislation not violate the principle of separation of powers broadly envisaged by our Constitution?
4. Whether the judiciary can legislate when in its opinion there is a pressing social problem of public interest or it can only make a recommendation to the legislature or concerned authority in this connection?
5. Whether Article 19(1)(c) and other fundamental rights are being violated when restrictions are being placed by the implementation of the Lyngdoh Committee report without authority of law?
6. What is the scope of Articles 141 and 142 of the Constitution? Do they permit the judiciary to legislate and/or perform functions of the executive wing of the State?

Asok Kumar Ganguly J, agreeing with Katju J, on referring the above questions to a constitution bench, disagreed on certain issues and added his

14 *Id.* at 360-361.
15 *Divisional Manager, Aravali Golf Club* v. *Chander Hass* (2008) 1 SCC 683.
16 *Supra* note 14, para 16.

own perception on those questions, which according to him "may be a shade at a variance with Brother Katju, J."[17] Ganguly J cautioned against a rigid adherence to the doctrine of separation of powers.

No automatic continuation in hostel on re-admission

Does a student have a right to automatic continuation in the hostel on his/her readmission in the course of study? In *University of Delhi* v. *Anoop Prakash Awasthi*,[18] the High Court of Delhi found that automatic continuation in hostel on re-admission was impermissible. The court held that the rules prescribed that right of student to continue in hostel was conditional one and on re-admission student had to apply within the prescribed time.

IV ADMISSION TO EDUCATIONAL INSTITUTIONS

Deficiency in service by a dental college in giving admission

There have been instances when students fall prey to the misrepresentation of fake colleges especially in professional courses. In *Buddhist Mission Dental College & Hospital (II)* v. *Bhupesh Khurana*,[19] the college admitted students without either affiliation from the university or recognition from Dental Council of India. Contrary to the promise made in the prospectus, there were no qualified teaching staff, no anatomy museum, library had hardly any relevant book, laboratory was ill-equipped, as most of the necessary instruments/equipments were either not available and those which were available were very few in number and grossly inadequate for the students who were admitted in each session. In view of this, the Supreme Court found that there was misrepresentation and fraud on behalf of the dental college and it clearly amounted to deceit, unfair trade practice and deficiency of service and, therefore, awarded compensation.

The extent of state control in admissions

The autonomy of unaided educational institutions in the matter of admissions was questioned in several cases. In *Modern Dental College & Research Centre* v. *State of Madhya Pradesh*,[20] the Supreme Court considered the issue of the extent of state control in admission to educational institutions and held that exercising absolute power by the state was improper. The court observed that since the unaided professional colleges had to generate their own funds, they must be given more autonomy than aided institutions. The court relied on *P.A. Inamdar* v. *State of Maharashtra*,[21] *Islamic Academy of Education* v. *State of Karnataka*[22] and

17 *Id*. at para 18.
18 2009 (160) DLT 183.
19 (2009) 2 SCR 275 : (2009) 4 SCC 473.
20 (2009) 9 SCR 845 : 2009(7) SCC 751.
21 (2005) 6 SCC 537.
22 (2003) 6 SCC 697.

T.M.A. Pai Foundation v. *State of Karnataka*[23] to observe that greater autonomy must be granted to private unaided institutions as compared to private aided institutions. However, this did not mean that the private unaided professional institutions had absolute autonomy in the matter.

The court then dealt with as to which body can decide whether the private unaided institutions have failed to satisfy the triple tests, laid down in *Inamdar*.[24] The court opined that there was a lacuna in *Inamdar* to the extent that there was no mention as to which body will decide whether the private institutions had satisfied or not the triple tests. The court observed that it could not be left to the unilateral decision of the state governments to say that the private institutions had failed to meet the triple tests because that will be giving unbridled, absolute and unchecked power to the state government. In view of this, the court directed that admissions in the private unaided medical/dental colleges in the state of Madhya Pradesh will be done by first excluding 15 per cent NRI seats and allotting half of the remaining 85 per cent seats to be filled in by an open competitive examination by the state government and the remaining half by the association of the private medical and dental colleges. The state government as well as the association of private medical and dental colleges will hold their own separate entrance examination for this purpose. In the case of 'NRI seats, they will be filled as provided by law.

Fixing higher percentage of marks for admission

Is a state empowered to fix higher percentage of marks for admission to the courses of various colleges in the state despite the lower percentage fixed by the central government notification? This issue arose in *B. Mayuri* v. *Government of India*.[25] Here, as per central government notification, qualifying marks for an academic program was 50 per cent but the state had fixed the qualifying marks for the same program at 60 per cent. The apex court held that the state was empowered to fix higher percentage of marks for admission to the courses of various colleges in the state.

Admission of children with disability

A division bench of the Delhi High Court in *Social Jurist, A Civil Rights Group* v. *Govt. of N.C.T. of Delhi*[26] considered the issue of admission to children with disability and held that no child shall be denied admission in any school, run by state government or local bodies, on the

23 (2002) 8 SCC 481. The following are the triple tests as laid down by the court. (i) The test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (iii) that there is no in-road on the protection conferred by article 30(1) of the Constitution, that is, by framing the regulation the essential character of the institution being a minority educational institution, is not taken away.

24 *Supra* note 21.

25 (2009) 13 SCALE 90.

26 2009 (163) DLT 489.

ground that the school does not have necessary facility for children with disability. It was also directed that each school should have at least two special teachers. Further, necessary teaching aids and reading materials should be provided in every school within six months. The court also directed the authorities to start short-term orientation program for principals and educational administrators so as to sensitize them towards the needs of children with disability.

V FEE FIXATION

Fee fixation in unaided schools

Transfer of funds by unaided educational institutions to their parent society/trust for establishing and maintaining other institutions has been a subject matter of dispute in the apex court. In *Action Committee, Un-Aided Pvt. Schools* v. *Director of Education, Delhi*,[27] the Supreme Court considered petitions to review its decision in *Modern School* v. *Union of India*[28] regarding the criteria for fixing fee under the Delhi School Education Act, 1973. In the majority judgment given by Kapadia and Cyriac Joseph JJ, the apex court clarified its decision in *Modern School* case to a limited extent and thereafter dismissed the review petitions. The court held that the Delhi School Education Act, 1973 and rules framed thereunder could not come in the way of school managements in establishing more schools. The court clarified the issue of transfer of funds to the effect that so long as there was a reasonable fee structure in existence and so long as the transfer of funds were from one institution to the other under the same management, there could not be any objection from the state. Sinha J, who gave minority opinion, proposed more autonomy for the managements in fixation and collection of fees and also review of many of the directions in the *Modern School* case.

VI DEGREE AND QUALIFICATION

Relevance of entry-level qualification

In *All India Council for Technical Education* v. *Surinder Kumar Dhawan*,[29] the Supreme Court had an occasion to consider a case where an educational course had been created and continued only through a fiat of the court without any prior statutory or academic evaluation or assessment or acceptance.

The brief facts of the case were that the *YMCA Institute of Engineering* (YMCA Institute) affiliated to Haryana state board of technical

27 (2009) 12 SCR 631 : (2009) 10 SCC 1.
28 (2004) 5 SCC 583.
29 (2009) 3 SCR 859; (2009) 11 SCC 726.

education had been conducting post-graduate diploma courses of four years duration in various engineering disciplines with entry level qualification of 10+1. All India Council of Technical Education (AICTE) permitted *YMCA Institute* for converting this programme into an advance diploma program of four years duration. *YMCA Institute* also started B.Tech from the academic year 1997-98 with permission of the affiliating university and AICTE. Thereafter, the state approved a one-year bridge course consisting of two extended semesters, for advance diploma holders to acquire B.Tech degree. But permission was refused by AICTE since it had taken a decision not to permit bridge courses for diploma holders and also not to permit those who had passed 10+1 examination (instead of 10+2 examination) to take the bridge course. Challenging the said decision of the AICTE, a writ petition was filed in the High Court which ordered that candidates who had completed 10+1+4 years advance diploma programme be permitted to take the bridge course and acquire the degree of B.Tech. The Supreme Court found such an order by the High Court was not sustainable. It observed that granting approval for a new course required examination of various academic/technical facts which can be done only by an expert body like AICTE. This function cannot obviously be taken over or discharged by judiciary. In this case, for example, by a writ of *mandamus* of the court, a bridge course was permitted for four-year advance diploma holders as a one-time measure. Thereafter, by another *mandamus* in another case, what was a one-time measure was extended for several years. Again, by another *mandamus*, it was extended to those who had passed 10+1 examination instead of the required minimum of 10+2 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an *ad hoc* measure. But together, they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. The Supreme Court warned that the courts should guard against such forays in the field of education. It also clarified that the High Court was in error in assuming that the entry-level qualification was not relevant once a candidate secured the post/advance diploma.[30] While deciding the case the court opined:[31]

> The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be

30 To arrive at this decision, the court relied on its earlier decisions in *Dr. J.P. Kulshreshtha* v. *Chancellor, Allahabad University* (1980) 3 SCC 418; *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupeshkumar Sheth* (1984) 4 SCC 27; *State of Tamil Nadu* v. *Adhiyaman Educational & Research Institute* (1995) 4 SCC 104; *Government of Andhra Pradesh* v. *J.B. Educational Society* (2005) 3 SCC 212.

31 *Supra* note 29, paras 14-17.

> interpreted, applied or enforced, with reference to or connected with education, courts will step in.

No post-graduation without graduate degree even in open university

It is always illogical to think that somebody can obtain a postgraduate degree without obtaining a graduate degree, except *honoris causa*. In *Annamalai University* v. *Secy. to Govt. Infn. & Tourism Dept.*,[32] the Supreme Court laid down the criteria for introduction of a programme granting post-graduate degrees to candidates without a degree. The appellant university under the open university system had been granting postgraduate degrees to candidates although they had not completed three years degree course. Granting of such postgraduate degrees were against the provisions of UGC Act, 1956.

The court also considered whether the alternative system envisaged under open university scheme was a substitution to the formal system. The court answered it in negative. It added that the distinction between a formal system and informal system was in the mode and manner in which education was imparted. The UGC regulations applied equally to open universities and other formal conventional universities. In the matter of higher education, it was necessary to maintain minimum standards.

Screening test for doctors having foreign degrees

The merit and reliability of medical qualifications granted by universities and medical institutions outside India has been a matter of debate in India. In *Yash Ahuja* v. *Medical Council of India*,[33] the apex court held that a citizen of India who obtains medical qualification from abroad shall not be entitled to be enrolled as a medical practitioner in India unless he qualifies the prescribed screening test even if it is recognized for enrolment as medical practitioner in that country. The court rejected the contention that if such a screening test is made mandatory to the citizens of India, who have obtained medical qualifications from abroad, a serious anomaly would arise as all those who are similarly placed as the appellants, but are not Indian citizens, would be entitled to be enrolled as a medical practitioner in India without undergoing any screening test. The court held:[34]

> It is not the case of the appellants that students of …other countries prosecuting medical studies in Manipal College of Medical Sciences, (Nepal) were/are not fulfilling the minimum eligibility requirements for admission to medical courses prescribed in their respective countries. The appellants failed to bring on record the

32 (2009) 3 SCR 355 : (2009) 4 SCC 590.
33 (2009) 14 SCR 667 : (2009) 10 SCC 313.
34 *Id.* at 335.

> facts, which would prima facie show that the standards of medical education prescribed either by the Government of Nepal or by the Nepal Medical Council are on a par with the standards of medical education available in India. Under such circumstances, there was no scope for Parliament of India to prescribe that students of Nepal or students of other countries prosecuting medical studies in Manipal College of Medical Sciences should also qualify the screening test prescribed before they are enrolled on the medical register maintained by the State Medical Council or get their names entered in the Indian Medical Register. The plea based on so-called discrimination has no substance and is, therefore, rejected.

De-recognition of a foreign university

Almost in similar vein, the Delhi High Court supported the pre-screening and post-screening test rather than de-recognition of foreign medical institutions. In *Ishan Kaul* v. *Medical Council of India*,[35] the court held that the medical council was not empowered under the law to de-recognize a foreign university. The court considered the fact that large numbers of Indian students were studying medicine in foreign universities. The court also observed that the Parliament through amendment in the Medical Council Act, 1956, provided for pre-screening and post-screening tests and not for de-recognition of medical institutions.[36]

Exclusion of vocational course

The Delhi High Court in *Rajender Kumar* v. *State Council of Education Research and Training*,[37] held that qualifications in vocational courses were is no way less meritorious and holders of such qualifications should be eligible for further degrees. The court found that exclusion of vocational course students from the eligibility criteria for admission to elementary teachers education course was improper. The court held:[38]

> NCTE has not excluded vocational stream students from applying for teacher training courses, nor are they barred from being elementary teachers, provided they fulfill the other requirements. If the SCERT'S exclusionary condition were to be applied, these vocational stream students, otherwise deemed eligible, to act as elementary teachers, would be unable to do so, as they would be denied admission to the elementary teacher education (ETE) course itself.

35 2009 (6) AD (Del) 26.

36 To arrive at this decision, the court referred to the decisions in *Sanjeev Gupta* v. *Union of India* (2005) 1 SCC 45 and *Medical Council of India* v. *Indian Doctors from Russia Welfare Association* (2002) 3 SCC 696.

37 2009(157) DLT 757.

38 *Id.* at 767.

VII EDUCATIONAL INSTITUTIONS

Fifth standard – if part of primary school?

The question whether primary education should be limited to classes 1 to 4 only and class 5 should be excluded from the description of primary education was considered by the Supreme Court in *Administrative Officer, Municipal School Board, Kagal* v. *Kagal Taluka Kala Krida Shaikshanik and Sanskrutik Mandal*.[39] In the context of Bombay Primary Education Act, 1949, a primary school, which was originally admitting students to classes 1 to 4, started admitting students to class 5. Aggrieved by this, another school which originally operating classes 5 to 10 approached the court. The High Court by way of *interim* orders directed the closure of class 5 and transfer students of class 5 to other schools. These *interim* orders of the High Court were challenged before the Supreme Court through a writ petition. The apex court *prima facie* found that primary education did not mean education from classes 1 to 4 only and there was no basis for High Court, at the admission stage of writ, to assume that primary education ended with class 4. Primary education boards of municipal council were empowered to open standards as natural growth in the primary schools being run by them. The court held that there was absolutely no basis for the High Court at the stage of admission of the writ petition to assume that the starting of class 5 was unauthorized or illegal.

Examination board not a service provider under consumer protection law

The Supreme Court in *Bihar School Examination Board* v. *Suresh Prasad Sinha*[40] had an occasion to clarify that when the examination board conducted an examination in discharge of its statutory function, it did not offer its 'services' to any candidate, nor did a student who participates in the examination conducted by the board, hired or availed of any service from the board for a consideration. It further clarified that the examination fee paid by the student was not the consideration for availing any service, but it was the charge paid for the privilege of participating in the examination.

Tax exemption to educational entities

In *Assam State Text Book Production and Publication Corporation Limited* v. *Commissioner of Income Tax*,[41] the Supreme Court considered the question of tax exemption under the Income Tax Act, 1961, to the appellant-corporation as an educational institution. As per the order of the tax tribunal, the appellant-corporation was entitled to the said exemption. But on appeal, this decision was set aside by the High Court, holding that

39 2009 (2) JT 186.
40 (2009) 13 SCR 1239 : (2009) 8 SCC 483.
41 (2009) 14 SCALE 175 : (2009) 319 ITR 317.

publishing and sale of textbooks constituted a profit earning activity. The Supreme Court set aside the order of the High Court and remitted back to the assessing officer to consider it *de novo* in the light of *CIT* v. *Rajasthan State Text Book Board*[42] and *Secondary Board of Education* v. *ITO*.[43] Considering the historical background in which appellant-corporation was constituted, the policy of the state in extending tax benefits to even corporation/boards that were related to education and also the share-holding pattern of corporation, the apex court held that the corporation was entitled for tax exemption.

Exemption from tax for charitable activity

The High Court of Delhi considered the issue of tax exemptions to educational institutions under the head 'charitable purposes' under section 2(15) of the Income Tax Act, 1961. In *ICAI Accounting Research Foundation* v. *Director General of Income Tax (Exemptions)*,[44] the High Court considered the claim of the petitioner for exempting them from tax since their functions were charitable in nature. The petitioner was constituted for imparting, spreading and promoting knowledge, learning education and understanding in various fields relating to the profession of accountancy. The court found that the purpose and object of petitioner was to impart, spread and do research in the accounting and related fields and since the foundation was involved in education, it met the description 'charitable purpose.' The court also held that mere undertaking of projects from local bodies, did not alter the character of an institution because the said activities were nothing but research and consultancy work.

Wrong exclusion from grant-in-aid scheme

Providing and not providing grant-in-aid to educational institutions had been dealt with several times by the courts. The courts have decided about the discretion of the state in taking decisions relating to grant-in-aid. In *State of Uttar Pradesh* v. *Committee of Management, Mata Tapeshwari Saraswati Vidya Mandir*,[45] the apex court considered the same question once again. By a notification dated 7.9.2006, benefit of grant-in-aid was provided to thousand unaided high schools. The respondents were running an unaided junior high school that was upgraded to a high school and later also as an intermediate college. But they were excluded from the benefit of the notification dated 7.9.2006. A writ petition against such exclusion was allowed by the High Court which directed the petitioner to consider the case of the respondents. The High Court had found that if it was intention of state

42 244 ITR 667 (Raj).
43 86 ITR 408 (Ori).
44 2009 (7) AD (Del.) 586.
45 (2009) 8 SCR 68 : (2009) 15 SCR 1276 : (2010) 1 SCC 639.

government to extend aid to unaided high schools, it ought not to have excluded those institutions that continued to run junior high school but had been upgraded as high school and intermediate college. Accepting this reasoning of the High Court, the Supreme Court held that this was a "violation of the equality clause enshrined in article 14 of the Constitution."

Right to de-affiliation

In *Bharati Vidyapeeth* v. *Guru Gobind Singh Indraprastha University*,[46] the High Court of Delhi considered the justifiability of non-granting of no objection certificate (NOC) for de-affiliation and found it improper. The petitioner, a registered trust involved in imparting higher education, was affiliated to the respondent. Later on, the petitioner was declared to be a deemed university by the competent authority under section 3 of the UGC Act, 1956. On getting the deemed university status, the petitioner applied for issuance of NOC for de-affiliation from the respondent. NOC was not granted by the respondent despite an undertaking by the petitioner for reserving 85 per cent seats to students from Delhi region. Aggrieved by this order, the petitioner filed a writ for directing the respondent to grant de-affiliation. The court held that the petitioner was entitled for de-affiliation as per the precedent.[47] The court ruled,[48]

> Once a declaration under Section 3 has been made, the State Government on account of its own local and parochial considerations cannot prevent the flight of the institution from the State level to the National level. The fact that the State may have genuine concerns (keeping in view the interests of the local population) when an institution gets transformed from a mere locally affiliated institution to a deemed University is a different matter. The State may be able to justify extracting its pound of flesh from an institution, which, to begin with receives the patronage of the State Government when it is established and also follows the policies and guidelines framed by the State Government, but later is declared to be a deemed University under Section 3 of the UGC Act and is therefore freed from the clutches of the State Government in the matter of, inter alia, allocation of seats. However, once a declaration is made under Section 3, the State Government cannot seek to block the declaration from taking effect, and continue to exercise its authority over the institution in

46 2009 (158) DLT 176.

47 The court relied on the law laid down in *State of Tamil Nadu* v. *Adhiyaman Educational & Research Institute* (1995) 4 SCC 104; *Jaya Gokul Educational Trust* v. *Commissioner & Secretary to Government Higher Education Department, Kerala* (2000) 5 SCC 231and *Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar* (1963) Supp 1 SCR 112: AIR 1963 SC 703.

48 *Supra* note 46 at para 47.

respect of matters which are specifically provided for under the UGC Act, and by the UGC under its regulations and guidelines.

Defamation of IIPM and the gag orders

In *Indian Institute of Planning & Management* v. *Outlook Publishing (India) Pvt. Ltd*.,[49] the petitioner was engaged in imparting education in India for over three decades. The respondents published two articles in their magazine *outlook* questioning the claims of the petitioner as to their campus placements, partnerships with foreign institutions, *etc*. The petitioner claimed that said articles were aimed at tarnishing their image and sought for interim injunction. The court *vide* its order dated 05.03.2009, restrained the respondents from publishing any defamatory article against the petitioner. Respondents, however, sought for vacation of the impugned order. The High Court modified the earlier interim order against the respondents and permitted it to publish articles allegedly against the petitioner but subject to a condition that the respondents will publish the counter view of the petitioner, if received.

VIII STAFF AND SERVICE CONDITIONS

Employee of the school or the *samiti* running the school

Can a person employed by the management *samiti* in its school be treated as an employee of the *samiti* running a school or employee of the school? The apex court in *Samarth Shiksha Samiti* v. *Bir Bahadur Singh Rathour*[50] considered this question. The appellant *samiti* has been running several recognized schools. *Samiti* appointed the respondent as a lower division clerk and posted him in one of its school. As per the terms and conditions of his appointment, during his service period, the respondent could be transferred to the *samiti* or to any of the schools managed by the *samiti*. Later, the respondent was promoted and posted in the same school. Thereafter, he was transferred from the school to the office of *samiti*. Subsequently, an order of suspension was issued against the respondent by the *samitit* which was challenged by the respondent alleging that his services were governed not by the rules and regulations of the *samiti* but by the Delhi School Education Act, 1973 and the rules framed thereunder. The court held that the respondent was an employee of the *samiti* and not of the school and that the respondent's service would not be governed by Delhi School Education Act, 1973 but by the rules of the *samiti*.

Requirement of routing the transfer application through management not mandatory

In *Ram Deen Maurya* v. *State of Uttar Pradesh*,[51] the Supreme Court found that under the U.P. Aided College Transfer of Teachers Rules, 2005,

49 2009 (159) DLT 601.
50 (2009) 3 SCC 194.
51 (2009) 6 SCR 703 : (2009) 6 SCC 735.

routing of an application for transfer through the management was a requirement but its non-compliance would not make the application invalid. The state government rejected the petitioner's application for transfer from one college to another on the ground that the NOC obtained from both colleges was not in order. The High Court upheld this order of the state government. The Supreme Court noticed that the petitioner had obtained NOC from both the colleges. The court held that even though routing a transfer application through the management was a requirement under the rules, its non-compliance would not make the application invalid since it was only directory and not mandatory.

Losing seniority on voluntary transfer

In *Surendra Singh Beniwal* v. *Hukum Singhi*[52] the Supreme Court considered the issue of computation of seniority on voluntary transfer under U.P. Intermediate Education Act, 1921. The respondent no. 1 (R1) was appointed as lecturer on 15.01.1981 in college 1 and was transferred to college 2, on his request. After transfer, R1 was placed at the bottom of the seniority list in college 2, in conformity with section 61(2)(b) of the Act. The appellant, a lecturer who was appointed on 06.11.1989 in college 2, was promoted as principal on *ad hoc* basis. Aggrieved by this, R1 approached the court contending that as per section 61(2)(c) of the Act, the service rendered prior to the transfer in college 1 shall be treated as service rendered in college 2. The court gave harmonious interaction to clauses (b) and (c) of section 61(2) of Act and held that clause (c) dealt only with matters other than seniority like pension benefits.

Transfer of a teacher out of Delhi not possible

High Court of Delhi in *Jitender Singh Tyagi* v. *Director of Education*[53] held that the transfer of a teacher outside Delhi was not permissible when the appointment was made under the Delhi School Education Act, 1973.

Powers of management committee to appoint a teacher

The Supreme Court considered the power of management committees to appoint a teacher in college/school under the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 in *Shesh Mani Shukla* v. *D.I.O.S. Deoria.*[54] The district inspector of schools on intimation about a vacancy from the management committee recommended the name of the respondent no. 3 (R3) to be appointed as a teacher. But the management committee, instead of appointing him, advertised the post again and appointed the appellant contending that R3 was not a suitable candidate.

52 (2009) 6 SCR 880 : (2009) 6 SCC 469.
53 2009(157) DLT 589.
54 (2009) 11 SCR 841 : (2009) 15 SCC 436.

However, the district inspector of schools did not approve the appointment of the appellant, insisting the management to accept the joining of R3. The appellant, however, continued to work in the school as an *ad hoc* employee. The Supreme Court found that the action of the management committee in holding selection was unsustainable.

No secret ballot to select a head master

In *P. Thurai Pandian* v. *K. Subramanian*,[55] the apex court held that selection of a head master of a school through secret ballot was not a fair procedure because a head master should not only possess the educational qualifications but also should have seniority and administrative ability.

Termination without enquiry for misbehavior with a girl student

In *R.S. Misra* v. *Union of India*,[56] the High Court of Delhi held that termination of a teacher from service was legal since it was on the ground of misbehavior with a girl student. Misbehavior with a girl student and making indecent remark was found by the court as a sufficient ground for dispensing with the regular enquiry. Thus, dispensing with regular enquiry was held as valid and justified in the present case.

Retrenchment on closure of a school

In *Anjali Sood* v. *Director of Education*,[57] a writ petition was filed by the teachers to quash the notice of retrenchment and also to absorb them in any other two schools under the same management. The High Court of Delhi quashed the notice. The court held that the closure of school was merely as a ruse to retrench and get rid of the petitioners despite having vacancies in other two schools. The court also held that the non-compliance of its earlier order to pay all salary and allowances to petitioners on the ground that the school was closed and there was no collection of fee from student was not sustainable. Rule 46 of Delhi School Education Rules, 1973, dealt with grant of permission for closure of school. The court found that rule 46 could not be compared with the provisions dealing with prior and *post facto* approval in respect of disciplinary matters of teachers and employees of school. The court also was of the view that rule 46 did not encroach on the autonomy of the society running the school.

Increasing working hours of teachers

In *Suman Khattar* v. *Navyug Education Society*,[58] the High Court of Delhi dealt with an increase in the working hours of the teachers. The court found that a writ challenging the circular increasing the working hours of teachers was not maintainable because the relevant rules under which such

55 (2009) 12 SCR 372 : (2009) 9 SCC 636.
56 2009 (9) AD (Del.) 147.
57 2009 (161) DLT 214.
58 2009 (159) DLT 592.

a circular was issued was not challenged. The court held that since the rules were not challenged, impugned circular, which fits within the rules, cannot be held to be arbitrary or unreasonable.

Director of pre-university education is not a court

Can the director of pre-university education be called as a court and an action for contempt initiated against people who disobeys its order? In *Jagadguru Annadanishwara Maha Swamiji* v. *V.C.Allipur,*[59] the Supreme Court held that the director of pre-university education was not a court and hence contempt of court proceedings cannot be initiated against someone who disobeyed its order. To call it a court, a body must exercise the judicial functions of the state. Its decisions must be final and it can take evidence in terms of the provisions of the Evidence Act, 1872. The court opined that the director of pre-university, education was an authority created under a statute and, by no stretch of imagination, it can be described as a court.

IX WEAKER SECTIONS AND EDUCATION

Educational interests of students of weaker sections

What is the extent of the duty of the state to promote educational and economic interests of weaker sections of its population and protect them from social injustice and exploitation? The Supreme Court in *Avinash Singh Bagri* v. *Registrar IIT, Delhi*[60] held that the socially and economically backward categories are to be taken care of at every stage even in the specialized institutions like IITs. They must take all endeavours by providing additional coaching and bring the reserved category students at par with general category students.

Considering the question of expulsion and cancellation of admission of scheduled caste and scheduled tribe students of IIT on the ground of poor performance, the court observed that in certain instances students were not fully responsible for their expulsion and one more opportunity to continue the course should be granted. The court also observed that scheduled castes and scheduled tribes were separate class by themselves and creamy layer principle was not applicable to them.

Judicial review of not giving reservation

The Supreme Court in *Gulshan Prakash* v. *State of Haryana*[61] considered the scope of judicial review of power of the state government to provide or not to provide reservation in admissions to educational institutions. The court found that the state government was the best judge

59 (2009) 5 SCR 8 : (2009) 4 SCC 625.
60 (2009) 13 SCR 258 : (2009) 8 SCC 220.
61 (2010) 1 SCC 477.

to grant reservation in admissions to the scheduled caste/scheduled tribe/ backward class categories at post-graduate level. The facts of the case revealed that the prospectus was issued without providing any reservation for scheduled caste/scheduled tribes in postgraduate medical courses in state government. The court was of the view that every state can take its own decision with regard to reservation depending on various factors. It was also held that since the state government decided to grant reservation at MBBS level, that did not mean that it was bound to grant reservation at postgraduate level also. The court reiterated that article 15(4) of the Constitution was an enabling provision. However, the court has made it clear that irrespective of the above conclusion, state was free to reconsider its earlier decision, if they so desire, and if circumstances so warrant in the future.

X MINORITY EDUCATIONAL INSTIUTIONS

Prior approval for filling the post in minority institution

In *Kolawana Gram Vikas Kendra* v. *State of Gujarat*,[62] the Supreme Court held a minority institution could appoint staff without any interference from the state even if it receives 100% government grant. The requirement of prior approval was necessitated because it was for the state to see as to whether there were actually posts available in the said institution as per the strength of students. Another reason was to assess whether the candidates, who were sought to be appointed, were having the requisite qualifications as per law. The court held that this requirement did not amount to unconstitutional interference with the internal working of the minority institution.

62 (2009) 15 SCR 272 : (2010) 1 SCC 133.