14
EDUCATION LAW

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I INTRODUCTION

THE LAW relating to education received purposeful and liberal interpretation by the Supreme Court and several high courts during the year under survey. The content of the right to education as a fundamental right was well enthroned including the right to quality education as part of right to education. Similarly the right to education was also interpreted as a right to education without being discriminated on the grounds of economic, social or cultural backgrounds. Availability of drinking water and toilet facilities were also read into as part of the fundamental right under article 21A. The right of students, educational institutions and the staff of the educational institutions were meaningfully interpreted in the context of changing circumstances.

II RIGHT TO EDUCATION

Right to quality education

Right to education declared as a fundamental right by the Constitution of India has to be a right to quality education. This was clarified by the Supreme Court in *State of Orissa* v. *Mamata Mohanty*[1] stating that article 21A had been added by amending the Constitution with a view to facilitate the children to get proper and good quality education. Considering the importance of selecting the most suitable persons as teachers in order to maintain excellence and the standard of teaching in the institution, the court observed that paucity of funds could not be a ground for the state not to provide quality education to its future citizens. It stressed that providing quality education is necessary for democracy to survive and also for the progress of the nation.

In *State of Tamil Nadu Siddhu Matriculation Hr. Sec School* v. *K. Shyam Sunder*[2] interpreting article 21-A the Supreme Court clarified that the right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of their economic, social and cultural background. The Supreme Court was considering Tamil Nadu Uniform System of School Education (Amendment) Act, 2011. The Parent Act[3]

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1 (2011) 3 SCC 436.

2 2011(8) SCC 737.

3 Tamil Nadu Uniform System of School Education Act, 2010.

was enacted in 2010 to enforce uniform education system for all children. It provided for common syllabus. Aggrieved by uniform system, writ petitions were filed challenging the validity of the Act. High Court though upheld the validity of the Act but struck down three provisions of the Act. Judgment of the high court was upheld by the Supreme Court. Pursuant to court's directions, uniform syllabus was given effect for the academic years 2010-11 to class I-VI, as provided by the Act itself. Meanwhile, there was a change of government after the general elections in the state. The new government passed an amendment to the Act and took a decision not to implement the uniform system of school education. Constitutional validity of the said decision of government was challenged in the present case. Amendment Act, in fact nullified the earlier judgment of the high court which was duly approved by Supreme Court. The Supreme Court in the present case found that the Amending Act of 2011, was tantamount to a subversion of law and that the legislature could not have annulled the effect of said judgments by the Amending Act.

Reiterating the importance of basic education, the court held that:[4]

> The State Government should have acted bearing in mind that "destiny of a nation rests with its youths". Personality of a child is developed at the time of basic education during his formative years of life. Their career should not be left in dolorific conditions with uncertainty to such a great extent. The younger generation has to compete in global market. Education is not a consumer service nor can the educational institution be equated with shops…

Drinking water in schools as a part of the right to education

The Supreme Court of India has treated the non-availability of potable drinking water in primary schools as a violation of the fundamental right of children under article 21A of the Constitution of India. In *Environmental & Consumer Protection Foundation* v. *Delhi Administration,*[5] the court entertained a public interest litigation regarding the basic facilities in primary schools in all states and union territories.

In another order in *Environmental & Consumer Protect. Found.* v. *Delhi Administration,*[6] the Supreme Court ensured the provision of potable drinking water and other facilities in the primary schools in Delhi and directed that the same be followed in the primary schools in all other States as well.

In order to get comprehensive information regarding basic facilities such as potable drinking water, toilets both for boys and girls, electricity, boundary walls, mid day meal facility and whether the primary schools have requisite number of teachers, the court directed all the district collectors and magistrates in the country to submit a report to the chief secretary/administrator of their respective state/union territory within four weeks and the concerned chief secretaries/administrators were directed to file comprehensive affidavits before the court within six weeks. The court found that this had become imperative because free and compulsory education had become a fundamental right under article 21-A of the Constitution of India and in order to implement this fundamental right of the children, this exercise was absolutely necessary.

4 *Supra* note 2 at 776.
5 2011(1) SCALE 709.
6 2011(2) SCALE 440.

Through yet another order in *Environmental & Consumer Protect. Found.* v. *Delhi Administration,*[7] the Supreme Court reiterated that the deficiencies in infrastructural facilities in schools of various states and inordinate delay in filling up of posts of teachers violate right to education under article 21. Affidavits filed by various states showing status of basic infrastructure facilities provided in the school. Directions to states were issued to remove said deficiencies expeditiously.

Lack of toilets in schools violates article 21A

With regard to the provision for toilets in schools, the Supreme Court held that all the schools must provide toilet facilities. Empirical researches have indicated that wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools. It clearly violates the right to free and compulsory education of children guaranteed under article 21-A of the Constitution asserted the court as declared in *Environmental & Consumer Protect. Found.* v. *Delhi Administration.*[8]

The court directed that all the states and the union territories ensure that toilet facilities are made available in all the schools on or before 30.11.2011. In case it is not possible to have permanent construction of toilets, at least temporary toilets be provided in the schools on or before 30.11.2011 and permanent toilets be made available by 31.12.2011.

A similar order was also passed by the court in *Environmental & Consumer Protect Found* v. *Delhi Administration.*[9]

Right of children in circuses

In *Bachpan Bachao Andolan* v. *Union of India,*[10] the Supreme Court considered the issue of employment of children in Indian circuses and found it to be a violation of their fundamental right to education and also violation of section 3 of Right of Children to Free and Compulsory Education Act, 2009.

The court directed that in order to implement the fundamental right of the children under article 21A it is imperative that the central government must issue suitable necessary notifications prohibiting the employment of children in circuses within two months from the date of the order. The respondents were directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children be kept in the care and protective homes till they attain the age of 18 years. They were also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification. The respondents were further directed to frame proper scheme of rehabilitation of rescued children from circuses.

Armed forces to vacate schools in north-eastern states

In *Re: Exploi. of Chiln. Inj Orph. In St. of T.N.* v. *Union of India,*[11] the Supreme

7 2011(6) SCALE 552.
8 2011(12) SCALE 110.
9 2011(13) SCALE 503.
10 2011(5) SCC 1 (Dalveer Bhandari and A.K. Patnaik JJ).
11 2011(11) SCALE 15.

Court considered the violation of the children's right to education by the occupation of school building by the armed forces/para-military forces. Pursuant to the directions of the court, all the school buildings and compounds in the north-eastern states have been vacated by the armed forces/para-military forces.

III STUDENTS' RIGHTS

Revaluation not permissible in absence of provision

The Supreme Court considered the question of revaluation of answer sheets in pre-medical/pre-dental entrance examination and held that re-evaluation is not permissible in absence of provision in relevant rules. In *Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E.* v. *Khushboo Shrivastava,*[12] respondent no.1 who appeared in the entrance test, sought for re-evaluation. Bye-laws of CBSE did not provide for re-examination/revaluation of answer sheet. However, answer sheets were produced and were compared on direction of high court with the model answer. Two more marks were awarded by the high court. Direction was issued for admission of respondent no.1 in the MBBS course for next academic session. In appeal, the Supreme Court held that neither single judge nor division bench could have substituted its own views for that of examiners in exercise of powers of judicial review under article 226 as they are purely academic matters.

Right to inspection though not for re-evaluation

In *Central Board of Secondary Education* v. *Aditya Bandopadhyay,*[13] the Supreme Court considered the question of re-evaluation of answer sheets and the validity of a provision barring inspection or disclosure of the answer-books or re-evaluation of the answer-books and restricting the remedy of the candidates only to re-totalling. The said provision was held valid and binding on the examinee under rules of examining body. However, court has held that all rules and by-laws of examining body are superseded by section 22 of RTI Act and examinee has right to get certified copy or inspect the examined answer book after re-totaling under RTI Act.

Not to change eligibility prescribed in prospectus

In *Parmender Kumar* v. *State of Haryana,*[14] it was held by Supreme Court that changing of eligibility criteria (by state) laid down in prospectus for candidates who appeared in entrance test against HCMS quota, just a day before counselling was illegal and invalid. The court found that once process of selection for admissions commenced on the basis of prospectus, no change could be effected by government. The court relied on the decision in *Vinay Rampal (Dr.)* v. *State of J & K,*[15] and found that the decision in *State of Orissa.* v. *Mamata Mohanty,*[16] was not applicable.

The court directed that the appellants shall be admitted in the post-graduate or diploma courses, for which they have been selected, for the new academic year without any further test or selection.

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12 2011(9) SCALE 63.
13 2011(8) SCC 497.
14 2011(12) SCALE 565.
15 (1984) 1 SCC 160.
16 (2011) 3 SCC 436.

Duty to hold examination for students

The Supreme Court considered the revocation of recognition of college under section 14 of National Council for Teachers Education Act, 1993 and the duty to conduct examination for the student in *Kumari Ranjana Mishra* v. *State of Bihar*.[17] A writ petition was filed by two appellants and five other candidates undergoing C.P.Ed. course in college seeking a direction to school examination board to allow them to appear in the examination. It was dismissed holding that without a direction of state government to SEB, no relief could be granted by the high court. The Supreme Court found that college was established after permission was granted by state government. Temporary recognition was also granted for C.P.Ed. and D.P.Ed. courses. Hence school examination board was under a duty to hold examination for students of college and this duty can be enforced by court under article 226 of the Constitution. Impugned order of high court was found to be unjustified and was set aside. Direction was issued to Bihar SEB to conduct examination for appellants as soon as possible.

Cut off marks for admission test not arbitrary

The Supreme Court has held that fixing of high cut of marks was by itself not arbitrary. In *Sanchit Bansal* v. *Joint Admission Board,*[18] the Supreme Court held that an action is said to be arbitrary and capricious, where a person, in particular, a person in authority, does any action based on individual discretion by ignoring prescribed rules, procedure or law and the action or decision is founded on prejudice or preference rather than reason or fact.

To be termed as arbitrary and capricious, the action must be illogical and whimsical, something without any reasonable explanation. When an action or procedure seeks to achieve a specific objective in furtherance of education in a *bona fide* manner, by adopting a process which is uniform and nondiscriminatory, it cannot be described as arbitrary or capricious or *mala fide*.

The appellants in this case had alleged *mala fides* on the part of chairman of the board and chairman of the organising committee. The allegation was that on account of personal enmity, rivalry and hostility harboured by them towards the second appellant, who happened to be a professor at IIT, Kharagpur, they manipulated the ranking and selection process and deliberately set cut-off marks to deny admission to second appellants' son, a seat in IIT. The court found the claim that to deny admission to one student among more than 2,87,000 students, they manipulated the process of fixing cut-off marks was too far fetched and difficult to accept, apart from the fact that there is no iota of material to support such a claim.

The court further observed that it is true that if in JEE 2006, a different or better process had been adopted, or the process now in vogue had been adopted, the results would have been different and the first appellant might have obtained a seat. But on that ground it is not possible to impute *mala fides* or arbitrariness, or grant any relief to the first appellant. The court was of the view that the appellant will have to be satisfied in being one of the many unsung heroes who helped in improving the system.

17 2011(4) SCC 192.

18 2011 (11) SCALE 593.

No application of NCTE Act for any period prior to 1995

In *Pushpa Kumari* v. *State of Bihar,*[19] the Supreme Court considered the effect of non-recognition to a college under National Council for Teachers Education Act, 1993. Appellants 1 to 4 pursued teachers training course from the 'college' in question during sessions 1988-90, 1991-93, 1992-94 and 1993-95 respectively. Non-release of examination forms and non-acceptance of fees by college was challenged. High court dismissed the writ on ground that no recognition from National Council for Teacher Education (NCTE) has been granted to the college. But the Supreme Court found that pursuant to directions of high court in earlier litigation, the state government has granted recognition to the college retrospectively *w.e.f.* sessions 1985-87 to 1993-95. NCTE Act came into force on 01.07.95 and NCTE was established on 17.08.95. NCTE Act has no application for any period prior to 1985. The court held that appellants who had undertaken teacher training course during academic sessions 1985-87 to 1993-95 were entitled to take the examination conducted by the board.

The court relied on the earlier decisions in *Sunil Kumar Parimal* v. *State of Bihar*[20] and *Kumari Ranjana Mishra* v. *The State of Bihar.*[21]

Right of students to elect their representatives

The Supreme Court considered the request for modifications to the elections norms as per the recommendations made by the Lyngdoh Committee in the interlocutory applications by student bodies of JNU seeking leave for holding elections. In *University of Kerala* v. *Council, Principals*,' *Colleges, Kerala,*[22] the court was confronted with two competing claims, one to ensure purity in election process, and another, vital right of students to elect their representatives. The court found that the right of students to choose their representatives is an extension of right to freedom of expression and such right cannot be stifled by court order.

Difference in applicability of natural justice in individual and mass copying

In *Sarita Kumari* v. *The Board of Secondary Education, Ajmer*,[23] a division bench of the Rajasthan High Court considered the requirement of granting adequate opportunity before canceling the examination on the ground of use of unfair means and distinguished between mass copying and copying by individual examinee and the applicability of the principles of natural justice in each situation. The court was considering the provisions of Rajasthan Public Examination (Prevention of Unfair Means) Act (27 of 1992). It was held that in case of mass copying or use of unfair means, principles of natural justice are inapplicable. But in case of unfair means by individual examinee, adequate opportunity of hearing is to be given to examinee, by the board/committee before canceling the examination.

As a matter of fact, the concerned authority can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his/her case is given to the examinee.

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19 2011 (10) SCC 189.
20 (2007) 10 SCC 150.
21 (2011) 4 SCC 192.
22 2011(13) SCALE 487.
23 AIR 2011 Raj. 167 (Jaipur Bench).

Distinction between students from state board and those from CBSE and ICSE

In *Govindagiri* v. *State of Karnataka,*[24] a division bench of the Karnataka High Court has held that it was not discriminatory to issue a circular to the effect that only schools which are governed by Karnataka Education Act, shall be permitted to take part in sports competition. The court found that the classification between students from state board and those from CBSE and ICSE was valid. The court has taken the view that the children studying in ICSE/CBSE schools cannot as of right claim that they should be allowed to take part in the competition because they do not fall in the same class of students controlled by state department. ICSE/CBSE schools are controlled by autonomous bodies and they will not come under purview and jurisdiction of Karnataka Education Act. Therefore, circular issued by department of public instruction was not discriminatory.

Scholarship to religious minority not against equality

In *Sanjiv Gajanan Punalekar* v. *Union of India,*[25] a division bench of the Bombay High Court considered whether the scholarship schemes for students of minority community were constitutionally valid. Government schemes for providing scholarship to students of minority community based on economic conditions of such students were challenged. The court found that articles 14 and 15(1) of Constitution permit reasonable classification based upon intelligible differentia when the differentia had rational nexus with object sought to be achieved and that the said schemes are constitutionally valid and do not suffer from any infirmity under articles 14, 15(1) (4), 27 of the Constitution.

The petitioners had challenged the schemes for providing scholarships to students of minority community by invoking the principles of strict scrutiny test and suspect legislation. Under the strict scrutiny test applied in the United States, an affirmative action by the state would only survive if the courts find compelling evidence that proves without doubt that the affirmative action is narrowly tailored and serves only the most compelling of interests. In other words, the affirmative action based on suspect classification may only be used after all other methods have been considered and found to be deficient. However, in India there is a presumption that every legislation passed by parliament is constitutionally valid, unless otherwise proved; there is a presumption that a governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness and was not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the government is unreasonable or without public interest because there are a large number of policy considerations which must necessarily weigh with the government in taking action and therefore, the court would not strike down governmental action as invalid on this ground unless it is clearly satisfied that the action is unreasonable or not in public interest.

24 2011 (6) Kar. LJ 133.

25 2011 (4) Bom. CR 377.

Regular and private students two classes altogether

In *Gagandeep Chauhan* v. *GNCT of Delhi,*[26] a division bench of Delhi High Court considered the scheme of CBSE for regular students and private students and found that they are two classes altogether and there is no vice of discrimination in the scheme for regular students with a stipulation that if he intends to take an additional subject, he must study and attend classes in the said subject while there was no such stipulation for private students. The court found that a private student cannot attend the classes as a regular student and a regular student cannot be treated as a private student partially.

IV ADMISSION TO EDUCATIONAL INSTIUTIONS

Further counseling for vacant seats

In *Orissa Private Medical & Dental Colleges Association* v. *Chairman, Orissa Joint Entrance Examination-2011,*[27] the Supreme Court considered the request made by appellant (on the basis of affidavit filed by respondent) to conduct further counselling from among 624 qualified candidates who were in waiting list to fill up 8 vacant seats in private medical colleges. No objection was raised by the respondent for conducting further counseling. Request of appellant was accepted and direction was issued to conduct further counselling and to furnish the list of candidates admitted.

Qualification for lateral entry to an engineering degree

In *Mahatma Gandhi University* v. *Jikku Paul,*[28] the Supreme Court considered the admission by self financing engineering colleges of diploma holders not securing minimum of 20% marks in entrance test to second years of B. Tech course. Circular dated 18.3.2009 was issued calling said colleges to furnish details otherwise results of such candidates will be withheld and their applications for registration for fourth semester will be rejected. Writ petition challenging the same was allowed by high court. The Supreme Court held that the decision of high court was contrary to requirements of lateral entry scheme and therefore liable to be set aside.

No ban on admission in absence of principals

In *Bharat Ratna Indira Gandhi College of Engineering* v. *State of Maharashtra,*[29] the Supreme Court considered private unaided degree colleges having no permanent principals. *Suo motu* action was taken by high court against these colleges and direction was issued that if such colleges fail to fill the post of principal by 31.5.2009, the university will issue order prohibiting admission in said colleges. The Supreme Court held that none of the colleges were made parties nor any notice issued to them. *Suo motu* orders without even a petition are ordinarily not justified nor sustainable and the court also found that no such direction could have been validly given by high court as there was no statutory rule that in the absence of permanent principal, admission in colleges could not be made.

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26 2011 (8) AD (Delhi) 127 : MANU/DE/1016/2011.
27 2011(10) SCC 664. 2007 (Supp.1) OLR 941.
28 AIR 2011 SC 3543.
29 2011 (4) SCC 565.

Admission only to eligible candidates

The Supreme Court has held that admission to a course can be given only to those candidates who are eligible as per the regulations of the examining body and the state government. In *Chairman, Bhartia Education Society* v. *State of Himachal Pradesh*[30] admissions were given before recognition of the institute. Writ petition was filed seeking regularisation thereof by directing board to permit the students to appear in examination. The court found that in view of clear provisions of law, before recognition, the institute neither could not offer the JBT course nor admit any student to such course. Admission made by institute in the year 1999 were illegal and irregular and could not be approved, recognised or regularized.

The practice of admitting students by unrecognized institutions and then seeking permission for the students to appear for the examinations was repeatedly disapproved by the Supreme Court.

***Mala fide* intention of the college in admission process**

In *Priyanka Dattatray Bamane* v. *State of Maharashtra*,[31] a division bench of the Bombay High Court found that the private medical college with *mala fide* intention got the common admission process operated in such a manner that particular seat in the medical college was allowed to remain vacant with more than 23 candidates waiting in queue and the queue was disbanded with the consequence that 24th student in erstwhile queue came to be given admission to this coveted seat. Many candidates took admission in government medical college in the first round. Seats offered to them in private medical college remained vacant after third round as they had already secured admission in first round. After vacancy was created, concerned private medical college neither notified the vacancy on its website nor advertised it in newspaper after third round was completed. Vacancy was published in newspaper at different place and that too before date of third round. This showed *mala fide* intention of concerned college. The court directed the college to pay exemplary costs of rupees three lakhs to petitioner who was denied admission due to arbitrary and *mala fide* action of concerned college.

No admission if withdrawn after admission in the previous year

In *Muveen Kumar* v. *Guru Gobind Singh Indraprastha University*,[32] a division bench of the Delhi High Court held as correct the refusal to grant admission to appellant in post graduate degree course in the field of medicine on the ground of the breach of undertaking by appellant and withdrawing the admission secured to PGD course in the field of ENT in the previous academic year. Appellant while taking admission in the said course, was required by admission brochure, to give an undertaking not to appear in next and subsequent entrance test till the duration of said course is over. The court found that in view of breach of said undertaking, refusal to grant admission to appellant was justified and writ petition was rightly dismissed by single judge.

30 2011 (4) SCC 527.
31 2011 (4) AIR Bom R 496.
32 2011(5) AD (Delhi) 767.

The court also held that the admission brochure is not to be read and interpreted as statute, but it is in the nature of a contract which a student enters into with the university for admission.

Not to change prospectus in the midstream

In *Varun Kumar Agarwal* v. *Union of India*,[33] a division bench of the Delhi High Court considered the question of permissibility to change the terms of prospectus in midstream. The case related to admissions in MS/MD course at All India Institute of Medical Sciences. A change was made in prospectus in the mid stream by extending the zone of consideration. Petitioner who secured 179th rank and did not get the stream of his choice had challenged it. By issuing a corrigendum, AIIMS had changed the scenario by publishing further results. Action of AIIMS was found by the court as nothing but accommodation. Direction was issued to AIIMS to allot seat to petitioner in general category either in surgery or gynaecology or orthopedics in the next academic session.

The court held that the hopes and aspirations of the students, who came within the zone of merit, cannot be scuttled by changing the prospectus by way of introducing a corrigendum.

No admission to prevent vacant seats going waste

In *GGSIP University Through Its Registrar* v. *Dhruv Singhal*,[34] a division bench of the High Court of Delhi reversed the orders of the single bench directing to give admission to respondents solely on the ground that seats should not go waste. The court found that when persons who were more meritorious were not called for counselling and not extended the benefit of admission, the respondents could not have been extended the benefit of admission solely because they approached the court. It was a case of admission in B.Tech course. Writ petition was filed seeking a direction to admit petitioners against the seats which remained vacant. It was allowed on the ground that seats should not go waste. The division bench was of the view that the single judge was not justified in directing admission to respondents solely on the ground that seats should not go waste.

V RESERVATION IN ADMISSION

Reservation for wards of army personnel

In *Indian Medical Association* v. *Union of India,*[35] the Supreme Court considered the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 and the exemption to army college of medical science by Delhi government from operation of the Act allowing the ACMS to fill 100% of its seats by wards of army personnel. The court held that the said exemption violates the basic principles of democratic governance of constitutional requirement and violates the provisions of the Act, 2007. Further, it was held that

33 2011(179) DLT 24.
34 2011(176) DLT 550.
35 2011(7) SCC 179.

there was no power conferred on Delhi Government to grant any exemption in favour of any institution from operation of Act and thus action of Delhi Government was wholly arbitrary, without any basis in law and *ultra vires*.

The court also found that the exemption granted by the government of Delhi allowing ACMS to fill 100% of its seats by wards of army personnel violates the basic principles of democratic governance and the constitutional obligation that executive implement the specific and mandatory policy legislated by the legislature in as much as it this violates the provisions of Act.

The court was also of the view that the claimed rights of non-minority educational institutions to admit students of their choice, would not only be a minor right, if that were in fact a right, if exercised in full measure, but would be detrimental to the true nature of education as an occupation, damage the environment in which our students are taught the lessons of life, and imparted knowledge. Further it may also damage their ability to learn to deal with the diversity of India, and gain access to knowledge of its problems, so that they can appreciate how they can apply their formal knowledge in concrete social realities that they would confront.

Reservation of 100% seats invalid

In *Puneet Gulati* v. *State of Kerala,*[36] the Supreme Court held that prospectus providing for reservation of 100% of seats in super specialty courses for students from Kerala alone was invalid. The court also held that since the appellant was denied admission on the basis of invalid policy, he deserves to be accommodated in the course.

OBC seats not to be diverted

In *P.V. Indiresan* v. *Union of India,*[37] the Supreme Court considered implementation of 27% reservations to Other Backward Classes (OBCs) admissions in Jawaharlal Nehru University (JNU). The court found that the cut off procedure followed by JNU has the effect of rewriting the eligibility criterion, after applications from eligible candidates were received. A factor which is neither known nor ascertained at the time of declaring admission programme cannot be used to disentitle a candidate to admission, who is otherwise eligible. It was asserted by the court that when an eligible OBC candidate was available, converting OBC seat into general category was impermissible.

The appellant had challenged the continuance of the procedure adopted by JNU during 2008-09 and 2009-10. During those years, JNU would fix the minimum eligibility marks at 40% when the admission programme was announced and would apply it only to general category candidates not specifying the minimum eligibility marks for OBC candidates and would decide the same, only after all the general category seats were filled, by fixing a band of marks upto 10% below the marks secured by the last candidate admitted under the general category. If a OBC candidate secured the marks within that band, he would be given admission. Otherwise even if he had secured 70%, as against the minimum of 40% he would not get a seat, if

36 AIR 2011SC 3571.
37 2011(8) SCC 441.

the band of marks was higher. Such a procedure, was arbitrary and discriminatory, apart from being unknown in regard to admissions to educational institutions. The court found that the minimum eligibility marks for admission to a course of study were always declared before the admission programme for an academic year commenced. Whatever be the marks so prescribed, it should be uniform to all applicants and a prospective applicant should know, before he makes an application, whether he is eligible for admission or not. The court clarified that if the total number of seats in a course is 154 and the number of seats reserved for OBCs is 42, all the seats should be filled by OBC students in order of merit from the merit list of OBC candidates possessing the minimum eligibility marks prescribed for admission (subject to any requirement for entrance examination).

Students not to suffer for fault of rule making authority

The Supreme Court considered the issue of admissions to Scheduled Caste candidates in MBBS course in *Chowdhury Navin Hemabhai* v. *State of Gujarat*[38] wherein the appellants who secured less than 40% marks in the entrance test were placed in the merit list and admitted to MBBS course. MCI directed the college to discharge appellants as they had secured less than 40% marks in the entrance test. Supreme Court held that as both the MCI regulations and the state rules, 2008 insist that a candidate must have obtained 40% marks in entrance test, the order of high court dismissing the writ petitions was right. However, the admission of appellants took place due to fault of rule making authority and since the appellants were not to be blamed for having secured admission, therefore, to discharge appellants from MBBS course will cause grave injustice to them. Hence the court directed that the admission of appellants to MBBS course in the college was not to be disturbed.

Admission of service candidate

In *Archana Chouhan Pundhir* v. *State of Madhya Pradesh,*[39] the Supreme Court considered Madhya Pradesh Medical and Dental Post Graduate Course Entrance Examination Rules, 2007 and found that the appellant was entitled to admission as an in-service candidate. On 30.4.2007, the appellant had completed more than 7 years of service as medical officer and although the initial appointment of the appellant was on contract basis, in purported compliance of order dated 21.4.2004 passed by the high court in writ petition, the state government had regularized her service *w.e.f.* 31.12.2005. The Supreme Court found that appellant, therefore, was entitled to admission as "in-service candidate".

Specialty-wise reservation in P.G. medical course

In *Rohit Bhoil* v. *State of H.P,*[40] the full bench of the High Court of Himachal Pradesh considered the speciality wise allocation of seats to in-service candidates and direct group and the seats reserved in each group for SC/ST/OBC categories in admission to P.G. medical courses. The court directed that reserved category

38 2011(3) SCC 617.
39 2011(11) SCC 486.
40 AIR 2011 HP 76.

candidates who became qualified with lower minimum percentage should be allotted only seats/specialities specially allotted to them on rotation.

The prospectus had clearly provided that there is not only reservation of seats for SC and ST, but it has also provided for speciality-wise distribution of seats by following the 40 point roster and 5 point roster. The 40 point reservation roster for reservation of speciality and seats to SC/ST candidates in respect of state quota seats have been applied on total seats available for all specialities. The successful candidates of each category and group were to be called for allotment of seats as per their merit in their respective category and group. The allotment of available seats to the eligible candidates has to be made in the order of merit drawn category-wise and group-wise. As per the scheme of the prospectus, there were only 2 groups, i.e., in service and direct.

The court held that once the state allocates the seats group-wise (in-service and direct) and the seats are reserved in each group for SC/ST/OBC categories who need only score the lower minimum qualifying marks and where the state has also made a specialty-wise distribution of seats among the various categories, those candidates in the reserve categories who become qualified with lower minimum percentage should be allotted only the seats/specialities specially allocated to them on rotation. However, in case seats are available in their respective group (in-service or direct) after accommodating the un-reserved/general candidates who have scored the prescribed minimum qualifying marks for the general group, as against those un-filled seats in the respective group, the candidates belonging to the SC/ST/OBC category who have scored only the lower minimum qualifying marks shall be considered in the respective group (with the prescribed interchange also), since they have otherwise become eligible to be included also in the respective group, as per the prospectus.

VI FEE FIXATION

No increase in fee structure during embargo

In *Fee Regulatory Committee* v. *Kalol Institute of Management,*[41] the Supreme Court reversed the order of Gujarat High Court which permitted the unaided professional colleges to increase the fee structure fixed by the fee regulatory committee on account of increase in wage bill due to payment as per Sixth Pay Commission report. The Supreme Court found that during the embargo on revision of fee for next three years after the fixation of fee such increase could not be allowed. However, the court allowed that extra cost incurred by unaided colleges to be recovered by increasing fee in the subsequent years.

No interference in raising fees unless profiteering or capitation fees

In *Haryana Progressive Schools Conference (Regd.)* v. *State of Haryana*[42] a single bench of Punjab and Haryana High Court has set aside the order of director of education interfering with charging of fees by educational institution and putting a cap on increase in tuition fees as not more than 20%, holding that it was beyond the scope of statute as well as in violation of law. However, the court observed that

41 AIR 2011 SC 2792.
42 AIR 2011 (NOC) 438 (P&H).

if director of school education finds that petitioner institutions were in any manner resorting to profiteering and had increased fee for purpose of commercialization or were charging the capitation fee, then director would certainly be in competent position to issue direction to interfere in charging of fee.

In *Principal, Delhi Public School, DPS, Dhanbad* v. *Syed Mohammad Sharfullah*,[43] a single bench of the Jharkhand High Court considered the question of raising of schools fees and the interference by the tribunal. The fee in CBSE pattern school was hiked from Rs. 820/- p.m. to Rs. 1190/- p.m. The court found that it was not a case of profiteering as well as there was no demand of capitation fee and the hike was made under financial constraints hence the same could not have been termed as an abnormal phenomenon. The court further found that the escalation in enhancement of fee was fully justified and the tribunal could not have decreased it.

VII DEGREE AND QUALIFICATION

Higher eligibility standards by state or university

In *Visveswaraya Technological University* v. *Krishnendu Halder,*[44] the Supreme Court considered the issue of fixation of eligibility criteria by the state or the university higher than the one fixed by AICTE for admission in engineering course.

The object of the state or university in fixing eligibility criteria higher than the one fixed by AICTE, is two fold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional engineering courses. The second is to enable the state to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the state and the examining body, to fix higher qualifications is recognized, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the respective state, unless the AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the university and the state.

The court found that even when a large number of seats remained unfilled on account of non-availability of adequate candidates, the lower minimum standards prescribed by AICTE alone would not apply automatically.

According to the court, if there are large number of vacancies, the remedy lies in (a) not permitting new colleges; (b) reducing the intake in existing colleges; (c) improving the infrastructure and quality of the institution to attract more students. The Supreme Court asserted that the need to fill the seats cannot be permitted to override the need to maintain quality of education.

VIII EDUCATIONAL INSTITUTIONS

No right to run any particular course

In *State of Himachal Pradesh* v. *Himachal Pradesh Nizi Vyavsayik Prishikshan*

43 2011 (2) AIR Jhar R 861.
44 2011(4) SCC 606.

Kendra Sangh,[45] the Supreme Court considered the right of an institute to run a particular course and held that no institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time.

No relief since false claim of recognition

In *Abhyudya Sanstha* v. *Union of India,*[46] the Supreme Court considered National Council for Teachers Education Act, 1993 and held that since appellants did not approach the court with clean hands and they made false statement that recognition had been granted to them by NCTE and thereby succeeded in persuading this court to entertain the SLP and pass interim orders, they are not entitled to any relief under article 136 of Constitution.

The court relied on *Hari Narain* v. *Badri Das*[47] and *G. Narayanaswamy Reddy* v. *Govt. of Karnataka.*[48] The court further considered the question of regularisation of the admission of the students, who were allotted to the appellants by the state government etc. pursuant to the directions given by the Supreme Court. It found that there is no valid ground much less justification to confer legitimacy upon the admission made by the appellants in a clandestine manner. Any such order by the court will be detrimental to the national interest. The students who may have taken admission and completed the course from an institution, which had not been granted recognition, will not be able to impart value based education to the future generation of the country. Rather, they may train young minds as to how one can succeed in life by manipulations.

Ban on recruitment on aided posts not to be retrospective

In *Government of Andhra Pradesh* v. *Sevadas Vidyamandir High School,*[49] the Supreme Court considered the applicability of ban on recruitments of aided teacher posts. The ban was imposed vide a memo issued by the state government on filling-up of existing vacancies in the aided posts of teachers. Memo was issued while the recruitment process was underway. Undisputedly, the memo was not given retrospective effect and the court found that administrative orders were prospective in nature, unless expressly or impliedly given retrospective effect. The Supreme Court held that the high court was justified in directing the respondents to go ahead with the selection process as the ban has no application.

Switching from state board to ICSE not closing down

In *Colvin School Society* v. *Anil Kumar Sharma,*[50] the Supreme Court considered the permissibility of switching over from state board to Indian certificate for

45 2011(6) SCC 597.
46 2011(6) SCC 145.
47 AIR 1963 SC 1558.
48 (1991) 3 SCC 261.
49 2011(9) SCC 613.
50 2011 (11) SCALE 427.

secondary education (ICSE) course. Appellant runs a school and intermediate college. Appellant decided to shift the secondary and higher secondary courses of education conducted in its school and intermediate college affiliated to U.P. state board to ICSE. The court found that shifting of institution from course of one board to another does not amount to closing down of institution but in the context of affiliation with state board, it comes to closing down. Regulation 10 requires a written one year's advance notice to be given and the same cannot be said to be an arbitrary instruction. Students opting for state board course in appellant's institution were dwindling and it became uneconomical to run the course. Neither state of U.P. nor U.P. state board have any objection for starting ICSE. Appellant was willing to continue the services of teachers who were teaching state board's course. In view of the facts, appeal was disposed of by giving directions to board to take a decision within 2 months on the issue of closure of institution.

Renewal of permission for the BDS course not to be subject to approval of Supreme Court

In *Priya Darshni Dental College & Hospital* v. *Union of India,*[51] the Supreme Court considered whether the power of central government in granting or refusing permission for BDS course was subject to control or supervision of Supreme Court or subject to confirmation or approval by Supreme Court. It held that such a condition requiring approval of Supreme Court is, therefore, liable to be quashed.

The court held that it was not proper for the Ministry of Health and Family Welfare (Dental Education Section), Government of India, (for short 'the Ministry') to stipulate a condition while granting renewal of permission for the BDS course, that the order is subject to the condition that the institute obtains the orders of Supreme Court to the effect that such permission would not violate the earlier order of the Supreme Court to the effect that 15th July would be last date for grant of such permission in the relevant academic year.[52]

Steps for giving recognition mandatory

In *National Council for Teacher Education* v. *Shyam Shiksha Prashikshan Sansthan,*[53] the Supreme Court considered the scheme for giving recognition to teachers training institutes and held it to be mandatory.

The court held that the cut off dates are not violative of article 14 of the Constitution and that the provisions contained in section 14 and the regulations framed for grant of recognition including the requirement of recommendation of the state government/union territory administration are mandatory and an institution is not entitled to recognition unless it fulfils the conditions specified in various clauses of the regulations.

Withdrawal of recognition due to lack of infrastructure facility

The Supreme Court considered the withdrawal of recognition to the teachers training college due to lack of infrastructure facility and found it to be valid in *Shri*

51 2011 (4) SCC 623.
52 *Id*. at 629.
53 2011 (3) SCC 238.

Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College v. *National Council For Teachers' Education,*[54] The institution established by the appellant was inspected more than once and several deficiencies seriously affecting its capacity to impart quality education and training to teachers were pointed out. The fact that institution was being run in a building shared by two other colleges was itself sufficient to justify withdrawal of recognition. Four lecturers appointed by appellant did not have requisite M.Ed. qualification. Appellant-institution was found lacking in certain infrastructural facilities that justified withdrawal of recognition. The court relied on the decisions in *Managing Committee of Bhagwan Budh Primary Teachers Training College* v. *State of Bihar*,[55] and *State of Tamil Nadu* v. *St. Joseph Teachers Training Institute.*[56]

The court rejected the prayer for permitting the students to continue in the unrecognised institution of the appellant or directing that they may be permitted to appear in the examination.

Withdrawal of permission for junior college against natural justice

In *Shivagangagiri Vidyabiruddi Samste* v. *State of Karnataka,*[57] the Supreme Court considered the dismissal of writ petition challenging the withdrawal of permission for running a junior college on ground of delay and laches. It was held that there was no delay or laches on the part of appellant as order dated 21.9.2002 was not passed after giving an opportunity to the appellant. It was also found that appellant gave representation and matter was under consideration.

The court held that order of withdrawal of permission being opposed to principles of natural justice cannot be sustained and has to be set aside.

Arbitrary denial of permission to start new Urdu medium school

In *Alhuda Multi-purpose Education Society Akot* v. *State of Maharashtra*,[58] a division bench of the Bombay High Court found that the denial of permission to start a new secondary school in Urdu medium was arbitrary. Rejection of the application was on the ground that information about other middle schools in a radius of 3 kms. was not furnished. But the court found that while submitting the application and giving information therein petitioner had specifically stated that there were no schools within the vicinity of 5 kms. of place at which they propose to start their school. The respondents arbitrarily construed the word 'Nahi' used by the petitioner against relevant column to mean that they had no information. Hence the court found that the rejection of application for permission was arbitrary.

CBSE's new grading system not unreasonable

In *Independent Schools' Federation of India (Regd.)* v. *Central Board of Secondary Education*,[59] a division bench of the Delhi High Court considered the

54 2012 (2) SCC 16.
55 (1990) Supp. SCC 722.
56 (1991) 3 SCC 87.
57 2011(3) SCALE 12.
58 2011 (5) AIR (NOC) 367 (Bom.).
59 2011(183) DLT 211.

constitutional validity of the circular introducing examination reform by CBSE. The circular was issued for introducing examination reform and continuous and comparative evaluation and introducing grading system at secondary level for classes 9th and 10th. The court found that the scheme was framed with the assistance of experts and the interest of young students had been kept in view by CBSE. It is a policy decision relating to field of education. The court further found that there was nothing in policy decision introducing new methodology of CBSE to invite the frown of article 14 being unreasonable and arbitrary.

A school per se not charitable institution for tax exemption

In *Municipal Corporation of Delhi* v. *Ramjas Foundation Charitable Trust,*[60] a single bench of Delhi High Court considered the entitlement of an unaided school for property tax exemption under Delhi Municipal Corporation Act, 1957 and held that a school *per se* is not charitable and imparting education sans an element of public benefit or philanthropy is *per se* not charitable. The court found that the denial of tax exemption under charitable purpose to a school was valid. School did not produce any record like balance-sheet *etc*. to prove charitable purpose as per guidelines laid down by Supreme Court in the case of *Municipal Corporation of Delhi* v. *Children Book Trust*.[61] Relying on the same case court held that transfer of funds by the school to the society even in the name of contribution would amount to transfer by society to itself.

Collection of funds no ground to deny tax-exemption

In *Deputy Director of Income Tax* v. *Shanti Devi Progressive Education Society,*[62] a division bench of the Delhi High Court considered the denial of tax exemption to the respondent education-society under section 10(22) of the Income Tax Act, 1961. Amounts were received by respondent-education society by way of admission fee, corpus fund and loan taken from parents but there was nothing to show coercive process to recover these amounts. There was no allegation of any diversion of these funds for purpose other than carrying on educational activity. And there was nothing on record to show a profit motive. The court found that the assessee was entitled to exemption under section 10 (22) of Act.

The court also considered the question of prohibition against taking donations under Delhi School Education Act, 1973 and found that the prohibition against taking donations etc. is clearly applicable to those aided institutions where government is giving finances for running of the institutions and they have no application to the unaided institutions.

Eligibility for recognition at the time of application and not inspection

In *National Council For Teacher Education* v. *G.D. Memorial College of Education*[63] a division bench of Delhi High Court has held that all norms of NCTE to be fulfilled at the time of making application and not at the time of inspection for

60 2011 (180) DLT 623.
61 (1992) 3 SCC 390.
62 2011 (3) AD (Del) 271.
63 2011(123) DRJ 465.

recognition. NCTE withheld process for recognition as the respondent society was only lessee of the land and not the owner on the date of application and certificate from authorities were not produced that the land was for educational purpose. Appellate body upheld the decision. In writ, filed by the respondent, single bench held that ownership of land including other fulfillment of norms of NCTE was required to be fulfilled at the time of inspection and accordingly directed the appellant to process the application in 90 days. But the division bench found all norms of NCTE to be fulfilled at the time of making application. The court further directed NCTE to proceed with only those applications fulfilling the norms of recognition at the time of application as per law.

State not to refuse NOC for approval of a course

In *Global Educational & Social Trust* v. *Guru Gobind Singh Indraprastha University*[64] a division bench of the Delhi High Court considered the issue of recognition/approval to a course. The court found that as per joint inspection by AICTE and respondent-university, there was no deficiency in the institution. The court directed that if appellant-institution files an application for grant of recognition/ approval to a course before AICTE, the same shall be placed before board which shall take decision within three weeks. The court also observed that when there is concurrence by AICTE and university, state government in a case of this nature, has no role to refuse no objection certificate.

IX STAFF AND SERVICE CONDITIONS

Prescription of higher qualification for recruitment

In *Chandigarh Administration* v. *Usha Kheterpal Waie,*[65] the Supreme Court has held that it is for the appointing authority to prescribe mode of selection and minimum education qualification and courts/tribunals can neither prescribe nor entrench upon the power of the authority as long as qualification prescribed is reasonably relevant and has a rational nexus with functions and duties attached to the post and are not violative of provisions of Constitution/Statutes/Rules. The court relied on the decisions or *Rangaswamy* v. *Government of Andhra Pradesh,*[66] and *P.U. Joshi* v. *Accountant General.*[67]

The Supreme Court found that the tribunal and high court also committed an error in holding that the appellant could not prescribe the qualifications of Ph.D. for the post of principal merely because earlier the said educational qualification was not prescribed or insisted upon:

Posts of principals in aided colleges not a cadre for reservation

In *State of Uttar Pradesh* v. *Bharat Singh,*[68] the Supreme Court considered Uttar Pradesh Higher Education Services Commission Act, 1980 and the selection of principals. The Supreme Court considered whether post of principals in aided

64 2011 (179) DLT 493.
65 2011(9) SCC 645.
66 1990(1) SCC 288.
67 2003(2) SCC 632.
68 2011(4) SCC 120.

degree and post-graduate institutes constitute a cadre and, therefore, subject to reservation as prescribed under Provisions of Reservation Act, 1994.

The court held that since the attribute of interchangeability and transferability is missing in the case of principals there was no cadre of principals serving in different aided and affiliated institutions and that the principal's post is a solitary post in an institution and hence reservation of such a post is clearly impermissible.

Not to complete selection under illegal rules

In *Ranu Hazarika* v. *State of Assam,*[69] the Supreme Court considered the recruitment of teachers under Assam Elementary Education (Provincialisation) Amendment Rules, 2005. The court found that the high court could not have permitted the state government to perpetuate the illegality by allowing to continue the recruitment as any action under illegal rules would be null and void.

No retrospectivity to enhanced eligibility

In *State of Orissa* v. *Saroj Kumar Jena,*[70] the Supreme Court has held that entitlement of pay can not be denied on the promoted posts for the reason of the lack of enhanced eligibility criteria. Respondent was appointed as lower division clerk and his appointment was duly approved by the appellant-director of higher education vide order dated 06.11.1990. Respondent was subsequently promoted to the post of upper division clerk *w.e.f.* 03.03.1990 and, thereafter, to the post of head clerk *w.e.f.* 02.04.1992. Representation made by the respondent to fix his pay in the pay scales of the posts of UDC and head clerk came to be rejected on 20.03.1999 on the ground that he did not possess the requisite qualifications, i.e., he had not passed the accounts examination, as required under the rules, 1999. The court held that admittedly, the rules 1999 could not be made applicable with retrospective effect to the case of the respondent who had been appointed and promoted further to the posts of UDC and head clerk and those promotions were duly approved by the appellant.

No UGC scale if no eligibility

In *State of Orissa* v. *Mamata Mohanty,*[71] the Supreme Court found that in the absence of the required educational qualification no UGC scale can be ordered to be granted.

Removal without prior approval invalid

In *DAV College Managing Committee* v. *Surender Rana,*[72] the Supreme Court held that removal of a probationer required prior approval and in its absence, termination was illegal under Delhi School Education Rules, 1973.

Requirement of prior approval before suspension is mandatory

In *Geeta Ganpatarao Suryawanshi* v. *Shra-ddheya Mahila Bahuudeshiya Sanstha, Taroda*[73] a division bench of the Bombay High Court considered whether

69 2011(4) SCC 798.
70 2011(2) SCC 794.
71 2011(3) SCC 436.
72 2011(4) SLT 95.
73 2012(1) AIR Bom. R 194; 2012(3) Bom CR 417, decided on 20.08.11.

a rule requiring prior permission before suspending an employee of a private school is mandatory or directory.

Under section 16 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (3 of 1978) and Rule 35(4) of Maharashtra Employees of Private Schools (Conditions of Service) Rules (1981), there is the requirement of obtaining prior approval of appropriate authority before suspending an employee which further prescribes specific consequence of suspending an employee without obtaining prior approval. Hence the court ruled that the requirement of obtaining prior approval was mandatory.

However, the court held that the non-compliance with mandatory provision of obtaining prior approval of appropriate authority before passing suspension order does not nullify order of suspension. There are two reasons why nullification should not be considered to be the natural consequence in a case such as the present. Firstly, the law itself has provided for specific consequence of non-compliance vide sub-rule (4), which lays down that non-compliance will impose a liability of payment of subsistence allowance on the management. Secondly, that an automatic nullification would involve general inconvenience in the sense that an employer would be forced to bear with an employee, who has *prima facie*, been found to be guilty of misconduct which, in some cases, might be serious enough to warrant expulsion of an employee from the place of employment and a stripping of official powers. It would also result in conferring advantage on ' those guilty of the neglect' without promoting the real aim and object of the enactment. The court thus held that it is mandatory that the prior approval must be obtained though not obtaining such approval will not result in nullification of the suspension order, it will result in consequence provided by rule itself, i.e., sub-rule (4) of imposing the liability of subsistence allowance on the management.

No advantage on own fraud

In *District Primary School Council, WB* v. *Mritunjoy Das,*[74] the Supreme Court reiterated the principle of law that no person should be allowed to keep an advantage which he has obtained by fraud. It relied on the decision in *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education,*[75] for the proposition that no person should be allowed to keep an advantage which he has obtained by fraud.

The contesting respondents had obtained admission in teachers training fraudulently inflating their marks and got the certificate and consequently got selected as primary teachers. When the fraud came to light they were dismissed after issuing show cause notice and affording opportunity for personal hearing. Their challenge to dismissal was rejected by the single bench; however the division bench allowed their writ on the ground that at the time of getting appointed as teachers they had not played any fraud. Reversing the same and allowing the writ petition the Supreme Court held that if a particular act is fraudulent, any consequential order to such fraudulent act or conduct is *non-est* and void *ab initio*.

74 2011(8) SCALE 112.
75 2003(8) SCC 311.

Right to appeal available only to employee of specified private schools

In *Komal Rugwani* v. *State of Maharashtra*,[76] the full bench of the Bombay High Court considered the question whether an employee of a school other than the one recognised by an authority under Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act had a right to appeal. It found that the said right to appeal is available only to employees in private school. In order to be a private school that school must be recognized by director, divisional board, state board or officers authorized by such director or such board. Private school recognized by a body or officer referred to in section 39(2) of Bombay Primary Education Act is not governed by provisions of Act. Hence employees of such school cannot file appeal under section 9 or Bombay Primary Education Act, section 39(2).

Dismissal for obscene conduct

In *Samarth Shiksha Samiti* v. *Directorate of Education,*[77] a single bench of the Delhi High Court considered the question of reinstatement by the educational tribunal, a staff who was dismissed by the school and found it unjustified. The court found that the charge against respondent employee was grave and serious being that of obscenity with girl students and lady teachers. As many as 9 girls and several lady teachers of school complained of the indecent behaviour of respondent. The school had itself ran a risk of affecting its own reputation. There was sufficient compliance of rule 120. Tribunal appeared to have confused the operation of statute/ rule. The words "as far as may be" used under rule 120 suggests that strict compliance of the rule is not to be insisted upon and deviations as per necessity are permissible.

Rules for payment of gratuity to employees

In *Institute of Economic Growth* v. *Controlling Officer under Payment of Gratuity Act*[78] a division bench of the Delhi High Court considered the question of the applicability of rules to be followed by the appellant educational institution with regard to the payment of gratuity to employees. It held that as per relevant rules of appellant-institute placed on record, the appellant-institute had to follow for the purpose of gratuity mutatis mutandis the rules of the University of Delhi.

X MINORITY EDUCATIONAL INSTIUTIONS

Institution to be non-minority if not for the benefit of the minority

Would establishing and administering by the members of the minority community make an educational institution a minority educational institution under article 30 of the Constitution of India? In *T. Varghese George* v. *Kora K. George,*[79] the Supreme Court considered this question while deciding whether the educational agency was a minority educational trust or public charitable trust. The high court found that T. Thomas Educational Trust was a public charitable trust and hence

76 2011 (4) AIR Bom. R 374.
77 2011 (180) DLT 93.
78 2011 (179) DLT 770.
79 (2012)1 SCC 369: 2011(12) JT 108.

framed a scheme for its administration. Founder of the trust belonged to christian community. But the approach of the founder was secular and he did not restrict the benefits for a religious community. Orders as to recognition as a minority educational institution were obtained from civil court but not from a competent authority prescribed under the Act, hence such orders cannot be used for determining the character of trust. Moreover, the findings as to the nature and character of the trust were not challenged before courts below. The founder in his trust deed nominated first board members not on the basis of their religion but on the basis of their *ex-officio* capacity. The Supreme Court held that merely because founder belonged to particular faith, persons belonging to that faith cannot claim exclusive right to administer the trust.

Parity in pay in unaided minority institution

The Supreme Court considered the question of parity in pay in unaided Minority educational institution. In *Satimbla Sharma* v. *St. Paul's Senior Secondary School*,[80] teachers of private unaided minority educational institution filed a writ seeking parity in salary and allowances along with teachers of government or aided schools. The court has held that teachers of private unaided minority schools had no right to claim salary equal to that of their counter parts working in government schools. Salary and allowances of teachers of private unaided school are a matter of contract and not within the domain of public law. The teachers of government schools are paid out of the government funds and the teachers of government aided schools are paid mostly out of the government funds, whereas the teachers of private unaided minority schools are paid out of the fees and other resources of the private schools.

The court also observed that as the right to equality under article 14 of the Constitution was available against the state, it could not be claimed against unaided private minority schools. Similarly, such unaided private schools are not state within the meaning of article 36 read with article 12 of the Constitution and as the obligation to ensure equal pay for equal work in article 39(d) is on the state, a private unaided minority school is not under any duty to ensure equal pay for equal work.

However, the court observed that the state government should consider making rules prescribing the salary and allowances of teachers keeping in mind article 39(d) of the Constitution as early as possible.

Cancellation of amendment to the rules of society

In *Allahabad High School Society, Allahabad* v. *State of Uttar Pradesh,*[81] the Supreme Court held that the cancellation of amendments to rules and bye laws of the high school society by assistant registrar was correct and valid. The court found that the basic features of society alongwith its primary object had been altered by way of amendments to rules. Material was available to show that principal in connivance with outgoing bishop in order to perpetuate themselves in society made amendments for their benefits and to disadvantage of society.

The court also took note of the fact that the assistant registrar, in his order had permitted the Bishop, diocese of Lucknow, who is an *ex-officio* member of the

80 AIR 2011 SC 2926.
81 2011(6) SCC 118.

society and chairman of the governing body under the rules, to convene a general body meeting after informing all the members about the present situation.

Freedom to choose staff even in aided minority schools

In *Queen Mary's School* v. *Union of India,*[82] a division bench of the Delhi High Court considered the scope of the fundamental right of the minority educational institutions to appoint teachers and other personnel of their choice under article 30 of the Constitution of India and held that rules 47, 64(1)(b)(e) and 96 of Delhi School Education Rules were not applicable even to aided minority schools.

According to the court, rule 47 and rule 64 (1) (e), cannot be made applicable to minority schools - aided or otherwise. The power to require aided schools to absorb teachers and employees rendered surplus in other institutions is laudable, as it furthers the twin social goals of ensuring that trained and experienced manpower does not go waste, and also of assuring employment to teachers and employees, who may be rendered helpless in such circumstances. The state's objective in protecting the *laissez faire* consequences from such vulnerable - and at the same time valuable - sections of the society cannot be over emphasized. Yet, that social purpose cannot obscure, equally that when those personnel are deployed by the administration on an unwilling (if not protesting) minority institution, it becomes an imposition, robbing the school or institution of its choice to pick its personnel, guaranteed by the Constitution. Therefore, it was held that rules 47 and 64 (1) (e) are inapplicable, to the extent that an unwilling school cannot be directed to accept such teachers or employees.

The court did not agree with the state's argument that the rule mandating the inclusion of nominees whose participation is minimal, and whose views are not binding, is a harmless rule. It was observed that the basic right to recruit personnel of its choice, is that of the minority aided school management. This (which deals with approval of appointment), the court did not find any logic in the minority aided school being compelled to allow participation of nominee members in the selection committee, even if their views or votes are not binding. Thus, the court held that minority aided schools are not bound to adopt the composition of the recruitment committees indicated in rule 96; they are to adhere to the rules applicable to unaided minority schools, i.e., rules 127-128.

Rule 64 (1) (g) is held inapplicable to the extent that it mandates such schools to fill the posts "without any discrimination or delay as per the recruitment rules prescribed for such posts". However, the court clarified that the managements of such aided minority schools shall adhere to the recruitment rules, and other general norms, to the extent they prescribe qualifications, experience, age, and other such criteria, for appointment (as they are regulatory).

Minority school's right to dismiss the staff

In *Managing Committee Frank Anthony Public School* v. *C.S. Clarke*,[83] a single bench of the Delhi High Court considered the right of a minority educational institution to take disciplinary action against a teacher for misconduct and reversed

82 2011(185) DLT 168.
83 2011(184) DLT 550.

the order of the Delhi School Education Tribunal which had set aside the enquiry and the order of dismissal from service. Respondent was appointed as assistant teacher of unaided minority school and was charged for gross misconduct and criminal trespass. Incidents involving an attempt to forcibly occupy principal's bungalow in school campus, abusing and attempting assault on principal, forcible occupation of tutorial room and neglecting to turn in classes resulted by dismissal from service upon initiation of departmental enquiry. Tribunal held that enquiry was held in violation of rules 118 and 120 DSER and enquiry proceedings were held in hush-hush manner. Writ petition was filed against the order of the tribunal. The court found that rules 118 and 120 DSER were not applicable to enquiry proceedings. Enquiry was held by a retired principal of a public school. Sufficient opportunity was given to respondents to defend themselves. Respondents, however, chose not to lead evidence as regards the incidents.

The court found that it was not possible to conclude that the procedure adopted by the EO in the instant case was not just, fair and reasonable.

The court also found that section 8(3) DSEA would apply to an unaided minority school but tribunal erred in observing as a sequitur that section 8(2) DSEA read with rules 118 and 120 DSER would also apply.

NOC by minority commission not the same as other NOC

In *Medical Council of India* v. *AL Karim Educational Trust*,[84] a single bench of Delhi High Court considered the question whether the NOC under the National Commission for Minority Educational Institutions Act, 2004 is to be equated with NOC/approval/permission required by an educational institution under any other legislation.

According to the court there was nothing in section 10 of the Minorities Act to suggest that the NOC required therein is the NOC/permission/ approval required by an educational institution under any other legislation. While the NOC under section 10 concerns only the character as a "minority," the NOC/approval/permission under other legislations including the regulations aforesaid, concern the character as an "educational institution" and having necessary infrastructure and capacity to impart education in a course or subject. There is nothing in the Minorities Act to suggest that the NOC under section 10 is intended in supersession of NOC/approval/ permission required for setting up an educational institution or for imparting education in a course or subject. Rather section 10(4) provides that on grant/deemed grant of NOC, the applicant shall be entitled to proceed with the establishment of minority educational institution "in accordance with the rules and regulations, as the case may be, laid down by or under any law for the time being in force"; recognizing thereby that grant of NOC does not obviate compliance with other laws/rules/regulations for establishment of an educational institution.

XI CONCLUSION

In addition to the expansive interpretation of the fundamental right to education, the right of students got a new boost when the Supreme Court acknowledged the

84 2011 (180) DLT 268.

right to get the certified copy or to inspect the examined answer sheet. Similarly, the right of students to elect their representatives also was well acknowledged. The constitutionally enshrined social justice in admission to professional colleges received a well explained reiteration in the case of *IMA* v. *Union of India*.[85] Unconstitutional and impermissible reservation in admissions was at a receiving end from the Supreme Court when it struck down hundred per cent reservation of seats in super specialty for students from Kerala in *Puneet Gulati* v. *State of Kerala*[86] and also the hundred per cent reservation for wards of armed personnel in army medical college. The minority rights under article 30 of the Constitution also received expansive interpretation by the Supreme Court and the high courts.

85 *Supra* note 35.
86 *Supra* note 36.