14
EDUCATION LAW

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I INTRODUCTION

THE PROCESS of education was considered to be having two actors, the giver and the seeker. The Supreme Court has distinctly identified the third actor, *i.e.*, the one who is legally responsible for the one who receive the education (the parents, the legal guardians, the society and the state). During the year under survey this could be considered as one of the main milestones in the march of education law. Of course, the law implementing the right to education withstood the challenge to its constitutionality. This was not any mean achievement. It is true that the apex court had to apply the severability principle and interpretational ingenuity in order to hold it constitutionally valid. In addition to this, the Supreme Court and several high courts did their level best to prevent the commercialization of education, especially in the field of professional education. The courts have been alive to the necessity of treating primary and secondary teachers honourably and in protecting their rights from the arbitrary exercise of power by the managements. Overall the year under survey had adequate number of feathers on its cap.

II RIGHT TO EDUCATION

Right to Education Act upheld

Right to education and the law enacted to enforce the fundamental right under article 21A were upheld by the Supreme Court rejecting the challenge by the private schools. The Right of Children to Free and Compulsory Education Act, 2009 (herein after referred to a RTE Act, 2009) was intended to ensure quality education to be available freely and compulsorily to children between 6 to 14 years of age. In *Society for UN-AIDED Private Schools of Rajasthan* v. *Union of India*[1] a three judges' bench through its majority decision delivered by Chief Justice S H Kapadia on his own behalf and on behalf of Swatanter Kumar J (KS Radhakrishnan J disagreeing and delivering his minority opinion) upheld the constitutionality of the RTE Act, 2009 except to its applicability to unaided minority-run schools. They rejected the contention that section 12(1)(c) violates articles 14 or 19 of the Constitution of India. Section 12(1)(c) *inter alia* provides for admission to class I, to the extent of 25% of the strength of the class, of the children belonging to weaker

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1 (2012) 6 SCC 1.

section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education to them till its completion. The court found that earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in article 14. Further it found that section 12(1)(c) provides for level playing field in the matter of right to education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees. Education is an activity in which we have several participants. There are a number of stakeholders including those who want to establish and administer educational institutions as these supplement the primary obligation of the state to provide for free and compulsory education to the specified category of children. Hence it was held that section 12(1)(c) also satisfies the test of reasonableness, apart from the test of classification in article 14.

The court has held that the RTE Act, 2009 is constitutionally valid and shall apply to the following:

(i) A school established, owned or controlled by the appropriate government or a local authority;
(ii) An aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate government or the local authority;
(iii) A school belonging to specified category; and
(iv) An unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

However, the court has declared that the RTE 2009 Act and in particular sections 12(1)(c) and 18(3) infringe the fundamental freedom guaranteed to unaided minority schools under article 30(1) and, consequently, applying the principle in *R.M.D. Chamarbaugwalla* v. *Union of India*[2] and principle of severability, the said 2009 Act shall not apply to such schools.

According to the minority view given by K.S. Radhakrishnan J the Act was found unconstitutional and hence not applicable to unaided educational institutions. According to this minority judgment, the provisions of the Act were read down and specific directions were issued to save the act from being struck down.

Right to infrastructure part of right to education

During the previous year also the Supreme Court had declared that basic infrastructure in schools would form part of the right to education. This was reiterated during the period under survey also. In *Environmental & Consumer Protection Foundation* v. *Delhi Administration*[3] the court while considering the PIL held that in order to ensure compliance of Article 21-A of the Constitution, it is imperative that schools must have qualified teachers and basic infrastructure.

2 AIR 1957 SC 628.
3 (2012) 4 SCALE 243.

In *Environmental & Consumer Protection Foundation* v. *Delhi Administration*[4] the Supreme Court reiterated that it was the responsibility of all the States for development of basic infrastructure facilities in view of the right to education under article 21 A. The petitioner, a registered charitable society, sought directions to improve the conditions of government and aided schools and also school run by the local authorities so that the constitutional objective of providing free and compulsory education under article 21-A of the Constitution of India would be a reality. The court directed that since the court has already issued various directions for proper implementation of the RTE Act, 2009 Act and to frame rules, there is no reason to keep the writ petition pending. Thus the writ Petition was disposed of with direction to all the states to give effect to the various directions already given by the court in the matter of *Society for Unaided Private Schools of Rajasthan* v. *Union of India and Another*,[5] like providing toilet facilities for boys and girls, drinking water facilities, sufficient class rooms, appointment of teaching and non-teaching staff *etc.*, if not already provided, within six months from the date of passing of this order. It was made clear that these directions were applicable to all the schools, whether state owned or privately owned, aided or unaided, minority or non-minority. The court has further observed that if the directions were not fully implemented, it would be open to the aggrieved parties to move the Supreme Court for appropriate orders.

Pre-school education as part of right to education

The question whether pre-school education would form part of the right to education used to rise before different courts. A related question is whether pre-schooling (at the age of 3 plus) which occurs before the pre-primary school (at the age of 4 plus) should be treated as part of the main school system or as a separate system without any admission process.

In *Social Jurist, A Civil Rights Group* v. *Govt. of NCT of Delhi*[6] a division bench of the Delhi High Court considered the obligation of the schools with regard to pre-school education. The Constitution of India, through its several provisions, has put the obligation on the state and other stake-holders for providing education to young children. There are several provisions in the Constitution of India, in the fundamental rights and directive principles of state policy which mandates early childhood care and education (ECCE) services. After referring to article 15(3a) article 39(f), article 42, article 45 and article 47 and also to the National Policy on Education (NPE) 1968 which was replaced by the NPE of 1986, the court summed up the law relating to pre-school education as follows:

(i) Early childhood care and education (ECCE) which has been globally recognized as critical for human resource development starts from the period of conception to age 8. This entire period presents a developmental continuum and the pre-school care and education has to be treated as part of this developmental continuum. It, thus, becomes an integrated process.

4 (2012)10 SCC 197.
5 *Supra* note 1.
6 190 (2012) DLT 406.

(ii) Every child has a right to ECCE of equitable quality and when ECCE is treated as first step in educational ladder and as a part of Education For All (EFA), the government as well as schools have responsibility for all programmes for children of 3+ age as well, which is integral part of ECCE.

(iii) Entire period from 0 to age 8 presents a developmental continuum which is divided into three sub-stages, namely, birth to 2+, 3 to 5+ and 6 to 8 +. Thus, 3 to 5+ is one stage before child enters class 1 at the age of 6. This sub-stage of 3 to 5+ includes pre-school as well as pre-primary and is clubbed together.

(iv) The pedagogical process of ECCE includes a significant step, namely, at pre-school level, preparing the child for entry and success in primary school. In this process, the curriculum has to be such that it is able to help the child to adjust to the routines of primary schools as well as to the demands of formal teaching.

(v) At the level of pre-school, curriculum has to be such which should ensure that child gets interested in education when he is to take next step at pre-primary level and thereafter, formal education from class 1. This can be ensured only when the child who gets admission in pre-school remains in the same milieu and environment. Therefore, those schools which have pre-school level as well, this pre-school level cannot be totally segregated as standalone basis. Such a situation will be derogatory to and prejudicial to the interest of children.

(vi) It is in the interest of a child who is admitted to pre-school that he remains in the same environment to which he is admitted to at pre-school level and continuity is maintained.

(vii) Need of healthy teacher-child relationship at ECCE level is recognized and the role of teachers at the stage of pre-school becomes important, it would be in the interest of these children to remain in touch with those teachers at pre-primary school level as well. It is more so when at pre-school as well as pre-primary, the system needs trained teachers who understand the psychology and needs of the children and are able to give due emphasis to the kind of care and education which the children need at that stage.

(viii) Even for ensuring that there are no drop outs when the formal learning starts, the continuum from pre-school to pre-primary and higher level becomes essential. This is recognized by the Right to Education Act as well as mandate is particularly incorporated in sections 11 and 12 thereof which lay emphasis on 'inclusive elementary education to all'.

(ix) Providing integrated system for 25% children belonging to weaker sections and disadvantaged groups which is the mandate of the RTE Act and denying the same to remaining 75% children not only be unhealthy for the system and may create many other logistic problems, it would be discriminatory as well.

(x) This is even sought to be achieved by the government *vide* notification dated 07.01.2011 to which no challenge is laid by the petitioners.

(xi) Subjecting the parents and children to double admission test, first at pre-

> school level and again at pre-primary level would not only work against the welfare of the children, it would be counter-productive and may have serious psychological and other repercussions on the children. Though the petitioner has suggested that at Pre-school level, there should not be any admission criterion and all those who approach be given admission, this suggestion may be relevant for those institutions having only nursery/ kindergarten/montessori *etc*. but is totally impractical for the schools which have primary and/or senior level education as well.

The court could not find any proper reason or rationale to keep pre-school apart and segregated by those regular schools where pre-school facilities exist and admission starts from that stage. It is in the interest of all stakeholders that in such schools, pre-school is treated as entry level, especially after the introduction of RTE Act, 2009. In this respect the court differed from the submissions made by the petitioners and also the recommendations of Ganguly Committee.

At the same time the court made it clear that the focus on 'care' and 'education' at pre-school level has to be altogether different. The children are not to be burdened with any textbooks or home works. This part of school may be treated as nursery, Montessori, kindergarten, play school, *etc.* Schools also have to keep in mind the specific curriculum framework for ECCE which keeps in mind the guiding principles like play as basis of learning, art as the basis of education, recognition of specific features of children thinking, *etc.* According to the court, to that extent, pre-school is not to be treated as part of formal education and at that stage, education has to be only informal.

Extending the limits of neighbourhood school

Another important issue arising out of the right to education is the concept and extent of neighbourhood in the context of admission to schools. In *Federation of Public Schools* v. *Government of NCT of Delhi*[7] a division bench of the Delhi High Court considered the neighborhood school concept in the context of RTE Act, 2009 and extending the limits of neighbourhood for providing admission to children belonging to EWS. Regarding the extendability of the neighbourhood concept, the court gave the following directions:

(i) Admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 km. of the specific schools;
(ii) In case the vacancies remain unfilled, students residing within 3 kms. of the schools shall be admitted;
(iii) If there are still vacancies, then the admission shall be offered to other students residing within 6 kms. of the institutions;
(iv) Students residing beyond 6 kms. shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 kms. area.

Thus the challenge on behalf of 326 private unaided recognized schools in Delhi to the notification extending the limits of neighbourhood farther than 1 km was rejected that the paramount purpose was to provide access to education.

7 187 (2012) DLT 184.

Schools to provide 25% reservation in admissions at all levels

Another provision which needed classification in the context of right to education was the one requiring 25% reservation for weaker sections at one level of admissions. Clarifying this in *Social Jurist* v. *Govt. of NCT of Delhi,*[8] a division bench of the High Court of Delhi interpreted the provisions of sections 12 (1)(c) & 2(n) of the RTE Act, 2009 and Delhi School Education (Free Seats for Students Belonging to Economically Weaker Sections and Disadvantaged Group) order, 2011 with regard to filling up of vacancy of 25% seats required to be reserved by each school for children belonging to Economically Weaker Sections (EWS) and Disadvantaged Groups. The court has clarified that schools are required to reserve 25% of seats for EWS and disadvantaged group category at the time of making admissions whether in pre-school, pre-primary or class -1.

As per para 4(b) of the above Delhi School Education Order 2011, the admission in a school has to be at one level only whether at pre-school, pre-primary or class-1 and the school is not entitled to increase the number of seats in any class beyond entry level. The aforesaid para is intended to prevent the unaided schools from defeating the provisions of RTE Act by restricting the number of seats available for admission at entry level, when reservation of 25% as aforesaid is provided, and making admissions in classes above entry level, at which stage no reservation is provided. The schools are thus required to reserve 25% of the seats for the EWS and disadvantaged group category at the time of making admissions whether in pre-school, pre-primary or class-1. Though the schools as aforesaid if admitting students at pre-school level are not entitled to make fresh admissions to any classes beyond that stage, but the court clarified that even if they are doing so, they are again required to reserve for and admit the students belonging to EWS and disadvantaged group category at that stage as well. The court clarified as follows:

(a) Those schools which are imparting pre-school education shall provide for 25% admission to children belonging to EWS and dis-advantaged groups at pre-school level;
(b) Those schools which do not have pre-school education and are admitting children in class 1 will provide 25% reservation to children belonging to weaker section and dis-advantaged groups at that level;
(c) Those, schools which have pre-school education and are making fresh admission in pre-primary and class-1 will have to conform to 25% reservation at all levels wherever fresh admission are there.

The high court has pointed out that this interpretation given by it is in consonance with the judgment dated 12.04.2012 of the Supreme Court in writ petition (C) No. 95/2010 and the connected petition titled *Society for Un-aided Private Schools of Rajasthan* v. *UOI*.

No reservation within 25% of right to education quota

Can a reservation permissible for scheduled castes and scheduled tribes could be used to reduce or annihilate the 25% reservation for weaker sections and

8 190 (2012) DLT 345.

disadvantaged group provided in the right to education law? The High Court of Delhi had reason to answer this. In *Jatin Singh* v. *Kendriya Vidyalaya Sangathan,*[9] a division bench of Delhi High Court considered the question whether the school falling under the definition of section 2(n) of the RTE Act, 2009 could apply the rule of reservation and allot a specified number of seats to scheduled caste and scheduled tribe candidates in 25% of seats reserved for children belonging to economically weaker section and disadvantaged group under section 12(1)(c) of the said Act. The said 25% seats in addition to 25% already reserved for SC and ST candidates. The court has held that though the reservation is permissible as provided under clause (4) of article 15 of the Constitution, that reservation cannot be made applicable to 25% of the seats earmarked for the children falling under the definition of clauses (d) and (e) of section 2 read with section 12(1)(c) of the act. Of course, it is not as if the school cannot have a clause to reserve the seats for the benefit of SC and ST candidates, as such reservation is permissible in respect of remaining 75% of the seats. On the contrary, at the guise of invoking clause (4) of article 15 of the Constitution of India, the school cannot carve out certain percentage of the seats out of 25% earmarked for the children falling under section 12(1)(c) and reserve for SC and ST candidates. Clause 5(3) of the guidelines for admission to school in question in the academic year, 2012-13 would be contrary to the provision of section 12(1)(c) of the Act and classification would amount to discrimination among the children falling under the definition of clauses (d) and (e) of section 2 of the RTE Act, 2009 is special enactment in order to give effect to the fundamental right guaranteed under article 21 of the Constitution of India and more particularly the definition of section 12(1)(c) of the said Act. The court declared that clause 5(3) of the admission guidelines of the school for admission to the school in class-I in the academic year, 2011-12 introducing reservation to the extent of 22.5% of total seats for SC and ST candidates out of 25% seats reserved for children belonging to disadvantaged group and children belonging to economically weaker section is illegal and contrary to the provisions of the said Act. Accordingly, school was directed to reframe its guidelines for admissions in the ensuing academic year, 2013-14.

Though the reservation is permissible as provided under clause (4) of article 15 of the Constitution, that reservation cannot be made applicable to 25% of the seats earmarked for the children falling under the definition of clauses (d) and (e) of section 2 read with section 12(1)(c) of the Act. Of course, it is not as if the school cannot have a clause to reserve the seats for the benefit of SC and ST candidates, as such reservation is permissible in respect of remaining 75% of the seats. On the contrary, at the guise of invoking clause (4) of article 15 of the Constitution of India, the school cannot carve out certain percentage of the seats out of 25% earmarked for the children falling under section 12(1)(c) and reserve for SC and ST candidates.

The court referred to the given facts of the case. Totally, 10 seats were earmarked representing 25% of the seats under section 12(1) of the Act. As 15% of the seats were allotted to SC candidates, *i.e.*, 6 students were admitted under the said category and 7.5% seats were allotted to ST candidates thereby 3 seats were to be allotted to

9 AIR 2013 (Del) 12.

ST candidates and leaving only one seat for the children belonging to weaker section and disadvantaged group. The court has held that if the classification made by the school through its guidelines was implemented, the resultant position would be only to frustrate the provision of the Act whereby the children belonging to weaker section and disadvantaged group would be deprived of their legitimate share in the admission.

It remains to be seen whether the view taken by the high court stands the test of scrutiny by the Supreme Court. The best interpretation would have been to treat the SC/ST reservation and right to education reservation as horizontal and vertical respectively instead of conflicting each against the other. Then SC/ST reservation would have cut across both the 25% and 75% quotas of right to education.

III STUDENTS RIGHTS

Hostel facilities for SC/ST students

In *Akhil Bhartiya Vidyarthi Parishad* v. *Union of India*,[10] the Supreme Court considered the petition seeking direction for effective implementation of Babu Jagjivan Ram Chhatrawas Yojna, a scheme for grant of hostel facility for SC and ST boys and girls. The scheme has been framed by the Central Government which is effective from 01.01.2008. In response to notice, Union of India and some states filed their responses. The court found that the responses showed that there was laxity and lack of concern on the part of most of the state governments/union territories in ensuring that the objectives of the scheme are achieved. The court also found a lapse on the part of the Central Government in not constituting the steering committee for monitoring and evaluation as contemplated in the scheme. Central Government was directed to constitute steering committee for monitoring as contemplated under the scheme and chairperson of the committee was directed to submit the report to the court indicating therein the state-wise state of affairs in respect of the implementation of the scheme.

Suspension of student on misbehavior with professor

In matters of discipline or administration of the internal affairs of a university, the courts should be most reluctant to interfere. This has been the settled principle. In *Vice Chancellor, Guru Ghasidas University* v. *Craig Mcleod*[11] the Supreme Court had an occasion to reiterate this principle. The university had taken action against a student for his misbehavior with a professor on the campus. The university issued directions suspending the student from attending classes and restraining him from entering the university premises. In the writ petition against it, the high court through an interim order granted stay against suspension and rustication. The Supreme Court found that the respondent was alleged to have assaulted a professor on campus which by itself was a rather serious allegation, hence impugned interim order by the high court was unsustainable.

Students' career jeopardized due to lapses by AICTE

When it was found that there was definite slackness and irresponsibility in

10 (2012) 3 SCALE 530.

11 AIR 2012 SC 3356.

functioning on the part of the AICTE which in turn jeopardized the career of students, the Supreme Court not only frowned upon it but also imposed costs on AICTE. To save the career of students the court approved the order of the high court to shift the students to other colleges. In *Parshavanath Charitable Trust* v. *All India Council for Tech. Education,*[12] the Supreme Court considered whether it was permissible for the AICTE to withdraw approval on the ground of shifting of college to new premises without its approval. The appellant-college shifted to new premises without approval of the AICTE and without 'no objection certificate' from the state government and directorate of technical education. The appellant-college applied for shifting of the college to the new premises but even after a lapse of two years, the AICTE had not finally disposed of the request. The expert committee of AICTE visited the new site of the appellant-college and despite the report of the Committee, AICTE extended the approval for two academic years. However, subsequently on report on shifting site without permission of AICTE and also lack of sanction from other authorities show cause notice was issued for withdrawal of approval and lowering down of sanctioned number of seats. Writ petition against said show cause notice before the high court was dismissed. The Supreme Court found that high court in its judgment had specifically noticed the defects pointed out by the expert committee and that compliance with the conditions for approval as well as regulations and provisions of the AICTE Act was an unexceptionable condition for grant of approval. However, the court observed that final decision on approval is a matter of fact and the authorities are expected to pass appropriate orders in accordance with law and upon due diligence and in compliance with the procedure prescribed under law.

The high court also had directed allocation of the affected students to other colleges. The Supreme Court found that order for shifting of students was a consequential order and was in the interest of the students. According to Supreme Court, AICTE was evidently at fault and it ought not to have granted any approval for two academic years after adverse report of the expert committee. There has been definite slackness and irresponsibility in functioning on the part of the AICTE. The approval itself was issued by the regional committee when the application for transfer was pending with the AICTE itself. The court found it a matter of regret that as a result of such approval granted by the AICTE, the careers of these students had been jeopardized to some extent. It was certainly a lapse on the part of the AICTE which cannot be ignored by the court as it had far-reaching consequences including placing the careers of the students admitted during these two years in jeopardy. Even though the high court had directed allocation of these students in other colleges, their academic course certainly stood adversely affected and disturbed, for which the AICTE was responsible. The court could not overlook such apparent erroneous approach and default which can be for anything but *bona fide* reasons. The court imposed costs of Rs.50,000/- upon the AICTE for such irresponsible working. The court relied on its earlier decisions like *Unni Krishnan, J.P.* v. *State of Andhra Pradesh,*[13] *Ranjan Purohit and Ors.* v. *Rajasthan University*

12 (2012) 12 SCALE 219.
13 (1993) 1 SCC 645.

of Health Science,[14] and *Medical Council of India* v. *Madhu Singh*.[15] The court also referred to the decision in *Jaya Gokul Educational Trust* v. *Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram, Kerala State*.[16] The court further relied on the earlier decision in *AICTE* v. *Surinder Kumar Dhawan*.[17] The court referred to the decision in *Adarsh Shiksha Mahavidyalaya* v. *Subhash Rahangdale,*[18] *State of Tamil Nadu* v. *Adhiyaman Educational & Research Institute*,[19] and *Bharathidasan University* v. *All India Council for Technical Education*.[20] The court reiterated the time schedule for approval and admission for each academic year and declared that it is mandatory and that no authority has any power to alter the schedule.

Expulsion of a student without show cause notice illegal

In *Mobashashir Sarwar* v. *Jamia Millia Islamia*,[21] the High Court of Delhi considered the legality of expulsion of a student from school and banning his entry in the school campus without giving him or his guardian an opportunity of hearing. It found that no show cause notice was issued to the student or his guardian before imposing punishment. Hence the expulsion order was set aside giving the institution liberty to initiate fresh disciplinary action as per law. The impugned order passed by the respondents has far reaching consequences. Expulsion from the school and the ban imposed on the petitioner from entering the school campus is a grave punishment to be inflicted. While it is true that no leniency to be shown in academic matters and the educational institutions ought to be very strict in maintaining high academic standards and academic discipline, but at the same time the rules of *audi alteram partem* cannot be thrown to the winds, the court observed.

IV ADMISSION TO EDUCATIONAL INSTIUTIONS

Continuation in MBBS despite irregular admission

In *Deepa Thomas* v. *Medical Council of India*,[22] the Supreme Court considered the question of entitlement of students admitted through irregular admission to complete the course. In the present case the irregularity occurred due to the inadvertent omission to include in prospectus the requirement of minimum 50% marks in CEE. The appellants secured more than 50% marks in qualifying examination but less than 50% mark in CEE. However, on the strength of interim order passed by high court and of the Supreme Court, the appellants continued their studies for 4-1/2 years. In such circumstances, the court found that it was quite unjust and unfair to discharge the appellants at that stage. Thus, as a special case, the appellants were allowed to continue and complete their MBBS course.

14 (2012) 8 SCALE 71.
15 (2002) 7 SCC 258.
16 (2000) 5 SCC 231.
17 (2009) 11 SCC 726.
18 (2012) 2 SCC 425.
19 (1995) 4 SCC 104.
20 (2001) 8 SCC 676.
21 188 (2012) DLT 113.
22 (2012) 3 SCC 430.

The court also took note of the submissions made by the counsel for respondent-colleges that the MCI has not been implementing the regulations uniformly. For example, admissions to MBBS course in the state of Tamil Nadu are allowed to be made without any entrance test and only based on the marks in the qualifying examination. This was not disputed by the counsel for the MCI. It was also alleged that in the state of Kerala itself the MCI had regularized the irregular admissions in other private medical colleges like the Gokulam Medical College, but the correctness of the allegation could not be verified by the counsel for MCI for want of time.

The court found that it was an eminently fit case for invoking the Supreme Courts powers under article 142 of the Constitution of India to permit the appellants to continue and complete the MBBS course to which they were admitted in the year 2007, since such an order was necessary for doing complete justice in the matter.

The court has further directed that since irregular admissions were made by the respondent-colleges in violation of the MCI regulations, though due to the mistake or omission in the prospectus issued by the respondent colleges, they should be directed to surrender from the management quota, number of seats equal to the number of such irregular admissions. Such surrenders shall be made in a phased manner starting with the admissions of the year 2012. However, any of the respondent-colleges shall not be required to surrender more than eight seats in one academic year.

Modified scheme of online counseling for PG medical course

In *Anand S. Biji* v. *State of Kerala,*[23] the apex court decided to order modification of order for permission to conduct on line counseling for granting admission in post graduate medical course. The court also considered the permissibility of ordering such modification without notice to other parties. Earlier order was passed by the Supreme Court on 22.04.1993. The court held that no notice was required to be sent to any party as the proposed modification in the said order was only beneficial to candidates appearing in said examination.

Time schedule for MBBS admissions

In *Priya Gupta* v. *State of Chhattisgarh,*[24] the Supreme Court issued specific directions and time schedule for admission to MBBS course. Time schedule prescribed by court has the force of law and forms part of regulations of Medical Council of India. It was also declared that no discretion was left to authorities, whosoever may it be, to alter the schedule. Non-adherence to schedule was to be viewed seriously. The court issued about nine specific directions laying down the specific time schedule for admission to MBBS/BDS courses directing that they be treated in *rem* for their strict compliance, without demur and default, by all concerned. The court also directed that all these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, state governments, universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any

23 (2012) 4 SCALE 15.

24 (2012) 7 SCC 433.

default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the serious consequences and penal actions.

In the present case, cancellation of admission of the two appellants to MBBS course was challenged. The court found that it was a clear example of calculated tampering with time schedule. Intention to grant admission to less meritorious candidates was evident. There was total abandonment of procedure by medical college of informing all eligible candidates by appropriate means that two seats were available. Completion of entire process of admission for two seats in few hours indicated that whole exercise was undertaken only with the object of granting admission to appellants. Prescribed procedure was given a go by. The court found that the fault was attributable to all the stakeholders involved. Appellants were not innocent. Father of 2nd appellant who was the director of medical education would have taken advantage of his position. Despite cancellation of admissions, appellants by virtue of an interim order had completed 4 years of the course. By their admission, appellants firstly denied admission to other higher meritorious candidates and secondly had taken advantage of very low fees. On the peculiar facts, to do complete justice, appellants were permitted to complete their course subject to payment of Rs. 5 lacs each to the college.

The court did not accept the argument that the appellants/students were not at fault and the reliance upon the judgments of the Supreme Court in the cases of *A. Sudha* v. *University of Mysore,*[25] *Amandeep Jaswal* v. *State of Punjab*,[26] *R. Vishwanatha Pillai* v. *State of Kerala*[27] and *Chowdhary Navin Hemabhai* v. *The State of Gujarat.*[28]

Merit not to be compromised in MBBS admissions

In *Asha* v. *Pt. B.D. Sharma University of Health Sciences*[29] the Supreme Court reiterated the principle that the authorities cannot grant admissions to MBBS courses compromising the merit. The Appellant who applied for the entrance test under backward class 'B' category and ex-serviceman (ESM) category got 832 marks. In the first round of counseling appellant was not given admission to MBBS course as she was low in merit. The appellant was admitted to BDS course in the first counseling. The appellant though appeared in the second counseling, was not given admission to MBBS course though candidates who got lower marks to her secured admission to MBBS course. The appellant immediately filed a writ petition challenging the same. The single judge allowed the writ petition and directed to admit the appellant but on appeal, the division bench had set aside the order. The Supreme Court found that the appellant was a candidate who was placed higher in the merit list. The candidates having much lower merit were given admission to MBBS. Therefore the court directed the respondents to grant admission to the appellant to the MBBS course in the current academic year subject to the condition

25 (1987) 4 SCC 537.
26 (2006) 9 SCC 597.
27 (2004) 2 SCC 105.
28 (2011) 3 SCC 617.
29 (2012) 7 SCC 389.

that she will pursue her MBBS course right from its beginning. The court, in addition to the earlier directions given in other cases, gave additional general directions with regard to the process of admissions to MBBS and BDS courses.

Marks not to be rounded off for eligibility for admission

In *Registrar, Rajiv Gandhi University of Health Sciences, Bangalore* v. *G. Hemlatha*,[30] the Supreme Court considered the permissibility of rounding off the marks in base course to fulfill the eligibility criteria to admission to M.Sc. (Nursing) course. The Respondent No. 1 having secured 54.71% in B.Sc. (Nursing) course applied for M.Sc. (Nursing) course. The eligibility criteria for securing admission to M.Sc. (Nursing) Course was 55% aggregate marks. The Respondent No. 1 claimed that marks obtained by her should be rounded off to 55%. The court held that no provision of any statute or rules has been shown which permits rounding-off of eligibility criteria. When eligibility criteria is prescribed, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The court held that the high court erred in rounding-off of 54.71% to 55% so as to make respondent no. 1 eligible for admission to PG course. Such rounding-off was impermissible. The court referred to its earlier decisions in *Orissa Public Service Commission and Another* v. *Rupashree Chowdhary,*[31] and *Vani Pati Tripathi* v. *Director General, Medical Education and Training.*[32]

The court made it clear that this order merely settles the question of law and shall not have any adverse impact, in any manner, on the service of the respondent no. 1.

Non-transparent admission to private medical college illegal

In *Rajan Purohit* v. *Rajasthan University of Health Science,*[33] the Supreme Court declared as illegal 117 admissions in private medical colleges being not fair and transparent. It found that the admission of students other than those from the panel of combined medical test in contravention of Medical Council of India Regulations was illegal and the concerned college was at fault in not following a fair and transparent procedure in admitting 117 students. The college was at fault in not holding a competitive entrance examination for determining the inter se merit of students who applied to college for admission. The court also found that the admission procedure adopted by college was not fair and transparent hence fell short of triple test in *P.A. Inamdar's* case and such admission procedure was not within the fundamental right of college to admit students of its choice under article 19(1)(g). Out of 117 seats, 10 seats were kept vacant as per the directions of the court. The court found that the colleges were to suffer penalty for violation of regulations and as a deterrent measure direction issued to surrender 107 seats in a phased manner, not more than 10 seats in each academic year to the state government. 117 students who were admitted in the MBBS course were directed to pay Rs. 3 lacs each to the government. The court relied on its earlier decisions in *T.M.A. Pai*

30 (2012) 8 SCC 568.
31 (2011) 8 SCC 108.
32 AIR 2003 All. 164.
33 (2012) 10 SCC 770.

Foundation v. *State of Karnataka,*[34] *P.A. Inamdar* v. *State of Maharashtra*,[35] and Priya *Gupta* v. *State of Chhattisgarh*[36]. And it distinguished its earlier decisions in *A.P. Christians Medical Educational Society* v. *Government of Andhra Pradesh*,[37] *Regional Officer, CBSE* v. *Ku. Sheena Peethambaran*,[38] *Visveswaraiah Technological University* v. *Krishnendu Halder.*[39]

Separate ranking list for each academic year in PG medical admission

In *Sujit Kumar Lenka* v. *State of Orissa,*[40] the Supreme Court has laid down that with regard to admission in PG medical course there had to be separate merit ranking list for each academic year for in service candidates. The high court, while disposing of the writ appeals, had directed the state government and its authorities to prepare a combined merit ranking list of 45 in-service candidates of 2012 and left over in-service candidates of 2011, on the basis of their merit. However, the apex court has found that since each academic year is a separate academic year, the high court could not have directed for preparation of a combined merit ranking list of candidates for the year 2011 and 2012 and the court took exception to the observations made by the high court.

Admissions to diplomate of national board course upheld on equity

In *National Board of Examinations* v. *Ami Rajesh Shah*,[41] the Supreme Court considered the question of admission in medical course. The appellant-board contended that the respondent hospital had violated statutory rules framed by the board, despite being given sufficient opportunities to act in accordance with the guidelines and admission of the respondent-doctors was not in accordance with the rules framed by the board. The court found that there existed confusion in the minds of the students and the hospital admitted the respondents-doctors for the diplomate of national board course (DNB course) despite the rules framed by the board. Because of this confusion the students had taken admission in the respondent-hospital, though there were rules framed by the Board. The Supreme Court found that since the respondent-doctors possessed the necessary qualification and have already taken admission in the respondent-college and have been prosecuting their studies for nearly two and a half years out of three years course, the court need not come in the way of students from completing their course. Keeping this in view and in the interest of welfare of students, and on ground of equity, the court declined to interfere with the impugned judgment and order passed by the high court.

The Supreme Court clarified that the judgment and order passed by the high court need not be treated as a precedent in any other case.

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34 (2002) 8 SCC 481.
35 (2005) 6 SCC 537.
36 (2012) 5 SCALE 328.
37 (1986) 2 SCC 667.
38 (2003) 7 SCC 719.
39 (2011) 4 SCC 606.
40 (2012) 11 SCALE 436.
41 Judgement and order dated 13/12/2012 in Civil Appeal No. 8994/2012.

Contempt of court while depriving deserving candidate's admission

In *Priya Gupta* v. *Addl. Secy. Ministry of Health & Family Welfare*,[42] the Supreme Court considered the question of contempt of court and disobedience not only in depriving the meritorious candidates but lowering the dignity of court and faith of people in administration of justice. Directions were already issued in the main judgment of *Priya Gupta* v. *State of Chhattisgarh*[43] clearly providing for admission to medical courses in order of merit, for the process of admission to be transparent and fair, and that there must be strict adherence to the time schedule specified in the judgments which were violated. Contemnor/director, medical education at the eleventh hour on last date for admission, very cleverly managed admission of two appellants by violation of schedule, moulding the process of selection to provide her a seat in the medical college. There was flagrant violation of the orders of the court which has proved prejudicial not only to the system of admission, but even to the deserving students who in the order of merit were entitled to get those seats. Such conduct, not only has the adverse effect on the process of admissions and disturbs the faith of people in the administration of justice, but also lowers the dignity of the court by unambiguously conveying that orders and directions of the Supreme Court, and prescribed procedure can be manipulated or circumvented so as to frustrate the very object of such orders and directions, thereby undermining the dignity of the court. The court found that contemnor willfully violated the directions of the Supreme Court and has manipulated the process of selection laid down by the Supreme Court so as to gain personal advantage for admission of his daughter and the other appellant thereby causing serious prejudice to other candidates of higher merit. Having held him guilty of the offence of civil contempt in terms of section 12 of the Act, the court refrained from awarding him civil imprisonment and awarded him a penalty of Rs.2,000/- as fine. The court found that members of the selection committee were to discharge the very onerous duty of ensuring that all the eligible candidates had been informed of the vacancy position and they were also expected to scrutinise the certificates of eligible candidates and recommend admission strictly in order of merit. The committee has not only failed to discharge its onerous duty but has even kept all principles of fair selection aside and ensured selection of the daughter of the director. The members of selection committee were not subordinate to the director or even the dean while performing the duties for filling up the two vacancies as members of the selection committee. They cannot take shelter of *bona fide* exercise of power in obeying orders of the superior. Therefore, the court held that all these four persons have also violated the orders of the court and have circumvented the process of selection and defeated the very object of the directions issued by the court. Consequently, they were also punished and directed to pay a fine of Rs.2,000/- by each one. The court distinguished its decision in *D.P. Gupta* v. *Parsuram Tiwari,*[44] and referred to

42 (2012) 12 SCALE 289.
43 (2012) 7 SCC 433.
44 (2004) 13 SCC 746.

the ones in *Mohd Aslam* v. *Union of India*[45] and *Asha Sharma* v. *Pt B.D. Sharma University of Health Sciences*.[46]

Filling up of unfilled NRI quota

In *Modern Dental College and Research Centre* v. *State of Madhya Pradesh,*[47] a three judge bench of the Supreme Court considered the question of filling up the unfilled NRI quota in private unaided medical/dental colleges. The State of Madhya Pradesh claimed that unfilled NRI seats would go to general pool and be shared by both the state and college equally on basis of interpretation of the Supreme Court in *Modern Dental Colleges case*[48] and *Gardi Medical College's case*[49]. The court found that the interpretation in said cases was contrary to principles laid down by a larger bench in *Pai Foundation case,*[50] and *P.A. Inamdar case*[51] and, therefore, deserved to be overruled. The court clarified that it was open to applicant colleges to fillup unfilled NRI seats for 2012-13 onwards through entrance test conducted by them till disposal of appeal subject to condition laid down in *Inamdar's* case strictly on the basis of merits.

Eligibility despite zero marks in entrance

In *Jayant Kishore* v. *State of Chhattisgarh,*[52] a division bench of Chattisgarh High Court has held that candidates obtaining zero mark or minus marks in the entrance examinations cannot be denied admissions unless supported by some legislative authority. Rules of 2010 provided for admission on merit basis in the entrance examinations, *i.e.* PET 2010 and AIEEE 2010, but it no where prescribed that the candidates obtaining zero mark or minus marks in the entrance examinations shall not be considered for admission either in Chhattisgarh quota or in other state quota or in management quota.

The circulars relating to zero and minus marks were issued by the directorate operated to prejudice of the candidates as they shadowed over their right to education. The court held that unless the instructions contained in circulars were supported by some legislative authority, the same could not be permitted to stand against the right and interest of the candidates.

V RESERVATION IN ADMISSION

Review of Government of India nominee quota in MBBS admission

The Supreme Court considered the question of giving admission to candidates in the government of India nominee (NGOI) quota even though they had failed Delhi University Medical and Dental Entrance Test (DUMET) ignoring those who

45 (1994) 6 SCC 442.
46 (2012) 7 SCC 389.
47 (2012) 4 SCC 707.
48 (2009) 7 SCC 751.
49 (2010) 10 SCC 225.
50 (2002) 8 SCC 481.
51 (2005) 6 SCC 537.
52 AIR 2012 CHHATT 102.

had cleared DUMET in *Bhawna Garg* v. *University of Delhi*.[53] Even though a candidate having lower rank in DUMET could not get admission, other candidates who failed in DUMET were allowed to be admitted through another channel, namely, NGOI quota. The appellants had applied as female general category candidates and also took and cleared the DUMET. However, on account of their lower rank in the merit list of candidates who cleared the DUMET, the appellants could not be admitted to any of the seats in the three government medical colleges under the Delhi university. The division bench of high court declined to grant relief to the appellants in the matter of admission to the MBBS course in the medical colleges under Delhi University for the academic session 2011-2012. The appellants contended that 4 candidates, who have been given admission in the seats reserved for NGOI in LHMC and MAMC during the academic year 2011-2012, have even failed in the DUMET. The court found that if the candidates who have failed in the DUMET are admitted through a separate source of admission, this may result in lot of heart burn amongst the students who have cleared the DUMET but have not got the admission to a seat in the MBBS course on account of their lower rank in the merit list. Therefore, the court directed that from the academic year 2013-2014, NGOI applying for the reserved seats would have to secure the minimum marks in the national eligibility-cum-entrance test for MBBS course. The court relied on earlier decision *Kumari Chitra Ghosh* v. *Union of India*.[54] The court also distinguished *T.M.A. Pai Foundation* v. *State of Karnataka*[55] from the present case.

The court directed that in future the Delhi university must stipulate in the bulletin and the Government of India must issue instructions that candidates who opt to take the DUMET but do not qualify will not be eligible for admission to the quota reserved for NGOI.

No rural service weightage in open quota for PG medical admission

In *Satyaprata Sahoo* v. *State of Orissa,*[56] the Supreme Court considered the additional weightage to candidates in state government employment who worked in rural/tribal areas for admission to post graduate medical course in the 50 % open (direct) category. The appellants who appeared in the entrance test under direct candidates (open category), have challenged the clause 11.2 of prospectus that provides additional weightage to candidates who are in employment of state government and served in rural/tribal areas, while applying under direct category. Clause 9 earmarked 50% seats to in-service candidates and another 50% to direct category candidates. As per clause 9, comparative merit is the only criteria in the open category. Due to clause 11.2, in-service candidates to whom 50% seats were already reserved can make an in-road into direct category also while retaining their rights to get admission through in-service category. Direct (open) category is a homogeneous class which consists of all categories who are fresh from college or rendered service in private hospitals. The court found that the encroachment/inroad/ appropriation of seats earmarked for open category candidates definitely affect the

53 AIR 2012 SC 3299.
54 (1969) 2 SCC 228.
55 (2002) 8 SCC 481.
56 (2012) 8 SCC 203.

candidates who compete strictly on basis of merit and the seats legitimately due to appellants were occupied by candidates from in-service category. The court directed the state government to take back the in-service candidates into their service and permit them to serve in rural/tribal areas so that they can compete through the category of in-service candidates in the 50% seats earmarked for them for admission to the postgraduate course.

No carry forward of vacant MBBS seats

In *Faiza Choudhary* v. *State of Jammu & Kashmir*[57] the Supreme Court considered the question whether vacant seat for MBBS course can be carried forward to accommodate a candidate of previous year and held that it is impermissible. Whether an MBBS seat which fell vacant in the year 2010 could be carried forward to the year 2012 so as to accommodate a candidate who was in the merit list published in the year 2010? The court found that no rule or regulation has been brought to the knowledge conferring power on the board to carry forward a vacant seat to a succeeding year. If the board or the court indulges in such an exercise, in absence of any rule or regulation, that will be at the expense of other meritorious candidates waiting for admission in the succeeding years. Therefore, it held that a seat which fell vacant in a particular year cannot be carried forward or created in a succeeding year, in absence of any rule or regulation to that effect under Medical Council of India Act. The court referred to the decisions in *State of Punjab* v. *Renuka Single,*[58] *Medical Council of India* v. *State of Karnataka,*[59] *Medical Council of India* v. *Madhu Singh*[60] and *Satyaprata Sahoo* v. *State of Orissa*.[61]

Reserved category candidates to be considered for general category

In *Jyoti Yadav* v. *GNCTD*,[62] a division bench of the Delhi High Court considered the sustainability of non-consideration of reserved category candidates for general category. The court found that in an open competition, while the general category candidates are entitled to compete only against unreserved seats but a reserved category candidate in addition to his right to be considered against the reserved seat is also entitled to be considered against unreserved seats. The court found that the option in the application, for consideration of candidature for a reserved seat is only a declaration of intention to be considered against reserved seats without depriving the right to be considered against an unreserved seat. Benefits are conferred on the persons belonging to reserved categories but these benefits are not in substitution of any other right which may otherwise be available to them as citizens of the country. Members belonging to the reserved category cannot be asked to occupy only the reserved seats; they are free to occupy any seat including unreserved seats; however the requirement of law is that while claiming selection against unreserved seats, they should prove their merit like any other citizen who is not

57 (2012) 10 SCC 149.
58 (1994) 1 SCC 175.
59 (1988) 6 SCC 131.
60 (2002) 7 SCC 255.
61 *Supra* note 56.
62 (2012) 6 AD (Delhi) 669.

entitled to the benefit of reservation. The court referred to the decisions by the Supreme Court in the cases *Jitendra Kumar Singh* v. *State of U.P.*[63] and *A.P. Public Service Commission* v. *Baloji Badhavath*.[64] However, the petitioners were not given the benefit of admission since the admission process was over and concerned relief had become infructuous.

Discrimination between of scheduled castes and persons with disability

In *Anamol Bhandari* v. *Delhi Technological University*,[65] a division bench of the delhi high court considered the question of lesser concession to candidates from category of person with disabilities than that of candidates belonging to SC and ST category and found that it was discrimination. The petitioner, a physically disabled person having 50% disability passed his all India senior school certificate examination, 2012, from CBSE with aggregate percentage of 52.66% in physics, chemistry and mathematics (PCM). The respondent/Delhi technological university provided 10% of concession of marks in the minimum eligibility requirements for candidates belonging to SC and ST category, but relaxation of 5% only is permissible for people with disabilities (PWD). The court considered whether different treatment to the two categories is permissible under law or it amounts to hostile discrimination insofar as PWD category is concerned. The court held that people suffering from disabilities are equally socially backward, if not more, as those belonging to SC and ST categories and therefore, as per the constitutional mandates, they are entitled to at least the same benefit of relaxation as given to SC/ST candidates. The court held that the provision giving only 5% concession in marks to PWD candidates as opposed to 10% relaxation provided to SC and ST category candidates is discriminatory and PWD candidates are also entitled to same treatment. The mandamus was, accordingly, issued directing the DTU to provide 10% relaxation.

VI DEGREE AND QUALIFICATION

Exemption for pre 2001 Russia trained Doctors

In *Shailesh Kumar Jha* v. *Medical Council of India*,[66] a division bench of the High Court of Delhi considered the rejection of the application for registration by Medical Council of India for non fulfillment of minimum eligibility criteria for joining the medical course, at the time of admission in the medical institutions abroad, contending that appellant did not fall in any of the categories under which the applications were to be disposed of in compliance of order of Supreme Court in *Medical Council of India* v. *Indian Doctors from Russia Welfare Associations*.[67] The court found that in the face of the Central Government having used the expression 'minimum admission norms', it is not possible to carve out a distinction between the eligibility norms of (i) age; (ii) having studied the subjects of physics, chemistry, biology and English; and, (iii) having obtained aggregate 50% marks,

63 (2010) 3 SCC 119.
64 (2009) 5 SCC 1.
65 195(2012) DLT 102.
66 198 (2013) DLT 449.
67 (2002) 3 SCC 696

on the one hand and having done 10+2 from the specified boards on the other hand. It was found that MCI as well as single judge have held only the former category and not the latter to be covered in the minimum admission norms. The division bench found that there could be no such distinction. Regulations on graduate medical education also do not carve out any such distinction and both categories are found under the heading of 'eligibility criteria'. Not only so, if the version of the MCI as accepted by the single judge were to be accepted, it would mean that a student who has not even studied the subjects of physics, chemistry and biology and may have studied some other subjects but from the specified board would be eligible for registration but a student who though has studied the subjects of physics, chemistry, biology and English but from a non specified/ recognized board, would be ineligible. The court held that when the Central Government and the Supreme Court, for the students who had applied for registration prior to 15.03.2001 (as the appellant had) condoned the minimum admission norms, the same would include the norm of having passed the qualifying examination from the specified board and which is but a facet of the admission norms and cannot be placed at a pedestal higher than the other admission norms. The court relied on the decisions in *Dr. Prashanta Padmanabha Amin* v. *R.N. Sheetal Wad,*[68] *Nusrat Jahan Bukhari* v. *Medical Council of India*[69] and *Syed Bilal Ahmad Razvi* v. *Union of India*.[70]

VII EDUCATIONAL INSTITUTIONS

Commercialization of teacher training courses

In *Adarsh Shiksha Mahavidyalaya* v. *Subhash Rahangdale,*[71] the Supreme Court deprecated the ranked commercialization of teacher training courses and upheld the directions issued against irregularities committed while granting recognition/ affiliation to private institutions by the Western Regional Committee (WRC) (in relation to states of Gujarat, Goa, Madhya Pradesh and Maharashtra). National Council for Teachers Education Act, 1993 requires compliance of mandatory requirements before starting teacher training courses by private institutions and granting recognition to them. Thousands of applications filed before WRC (in relation to states of Gujarat, Goa, Madhya Pradesh and Maharashtra) by private institutions for starting teacher training courses without complying with mandatory conditions. Irregularities were committed by WRC in granting recognition/affiliation to private institutions. Apprised by the irregularities, the Central Government, by invoking powers under section 29(1), directed WRC not to grant any recognition to any teacher training institute. The said direction was challenged. The respondent, Subhash Rahangdale also filed public interest litigation (PIL) for a direction ensuring proper maintenance of norms and standards in teacher education system in various colleges run by different educational societies/entitles. The high court ordered for re-scrutiny of applications for grant of affiliation and also issued several directions.

68 130 (2006) DLT 410.
69 MANU/DE/1288/2009, High Court of Delhi W.P. (C) 8160/2008, decided on 05.05.2009
70 AIR 2012 J&K 106.
71 (2012) 2 SCC 425.

The orders of high court were challenged. The Supreme Court found that directions of the high court were of general application and did not target any particular college/ institution, hence, impugned order cannot be said to be violative of principles of natural justice. It also held that since the appellants institutions had not questioned the vires of admission procedure hence cannot contend that they were entitled to admit students *de hors* the list prepared on the basis of entrance examination conducted under the directions of the state government.

Emphasizing the roles and duties the regional committees established under section 20 of the 1993 Act the court has given a few general declarations and directions with regard to granting and withdrawal of recognition teacher training colleges and courses and also the functioning of regional committees of national council for teachers education. So far as the specific cases and appeals before the court, a few specific directions were given as applicable to the particular cases including scrutiny of the institutions and declaration of results of the students.

The Supreme Court also held that PIL under article 226 of the Constitution of India was maintainable against irregularity of recognition of teachers training colleges highlighting the irregularities committed by WRC of NCTE (National Council for Teachers' Education) in granting recognition to private institutions who have not complied with the mandatory requirements. It found that PIL was not filed to settle any scores with any institution or with ulterior motive and no personal interest of the respondent was involved. The court relied on the decision in *State of Uttaranchal* v. *Balwant Singh Chaufal*[72] and Shivajirao *Nilangekar Patil* v. *Mahesh Madhav Gosavi (Dr.)*.[73]

Inspection not always necessary before derecognising

In *National Council for Technical Education* v. *Vaishnav Institute of Technology & Management*,[74] the Supreme Court considered the question whether an inspection by the regional authority is necessary always before derecognizing a recognized institution under National Council for Teachers Education Act, 1993. The court held that sections 17 and 13 must be harmoniously construed. In exercise of its powers under section 17, the regional committee may feel that inspection of a recognized institution is necessary before it can arrive at the satisfaction as to whether such recognized institution has contravened any of the provisions of the 1993 Act or the rules or the regulations or the orders made thereunder or breached the terms of the recognition. In that event, the route of inspection as provided under section 13 has to be followed. If the regional committee has been authorized by the council to perform its function of inspection, the regional committee may cause the inspection of institution to be made as provided in section 13 and prescribed in rule 8. Where, however, the regional committee feels that the inspection of a recognized institution is not necessary for the proposed action under section 17, obviously it can proceed in accordance with the law without following the route of inspection as provided under section 13.

72 (2010) 3 SCC 402.
73 (1987) 1 SCC 227.
74 (2012) 5 SCC 139.

Grant of recognition to schools without following the procedure

In *State of Kerala* v. *Tribal Mission,*[75] the Supreme Court considered the issue of grant of recognition to school and the possibility of interference by court in such cases. Government rejected the application for recognition of the respondent. The single Judge of the high court upheld the order. The respondent took up the matter before the division bench of the high court wherein appeal was allowed stating that the respondent has satisfied the various conditions laid down in the government's policy and therefore, directed the government to grant recognition to the respondent school as an unaided self-financing English medium school. However, Supreme Court held that assuming that the respondent school has satisfied all the requirements, still it has to undergo the procedure laid down under rules 2 and 2A of chapter V, otherwise, it is bound to provide scope for discrimination, arbitrariness, favouritism and also would affect the functioning of other recognized schools in the locality. The court found that state spends large amounts by way of aid, grant *etc*. for running schools in the aided sector as well as the state owned schools. Indiscriminate grant of recognition to schools in the unaided sector may have an adverse affect on the state owned schools as well as the existing schools in the aided sector, by way of division fall, retrenchment of teachers *etc*. Therefore, the procedure laid down in rules 2 and 2-A of chapter V of KER cannot be overlooked. The Supreme Court insisted that grant of recognition of school without compliance of rules is violation of equality. The court relied on its earlier decision in *State of Kerala* v. *K. Prasad*.[76]

Unaided private institution subject to writ jurisdiction in view public function

In *Ramesh Ahluwalia* v. *State of Punjab,*[77] the court considered the question whether an unaided private educational institution would be subject to the writ jurisdiction under article 226 of the Constitution of India. After holding disciplinary proceedings, the disciplinary authority passed an order directing the appellant to be removed from service. The appellant duly submitted an appeal but the same was rejected by the disciplinary committee, which was challenged by filing writ petition. But the same was dismissed by the single judge in *limine*. The appellant filed letters patent appeal before the division bench of the high court which was also dismissed.

The appellant had specifically taken the plea that the respondents perform public functions, *i.e.* providing education to children in their institutions throughout India. The Supreme Court held that judgment of the single judge as also the division bench of the high court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institution. The court relied on its decisions in *Mukti a Sadguru Shree Muktajee Vandas Swami Suvarn a Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani,*[78] and *Unni Krishnan J.P.* v. *State of Andhra Pradesh*.[79]

The court reiterated that there can be no doubt that even a purely private body, where the state has no control over its internal affairs, would be amenable to the

75 (2012) 8 SCC 775.
76 (2007) 7 SCC 140.
77 (2012) 10 SCALE 46.
78 (1989) 2 SCC 691.
79 (1993) 1 SCC 645.

jurisdiction of the high court under article 226 of the Constitution, for issuance of a writ of mandamus, provided, of course, the private body is performing public functions which are normally expected to be performed by the state authorities.

No recognition with retrospective effect

In *National Council For Teacher Education* v. *Venus Public Education Society*,[80] the Supreme Court held that it is impermissible to grant recognition with retrospective effect to an educational institution. The respondent-society submitted an application to the WRC of NCTE for grant of recognition for the purpose of conducting D.El.Ed. course from the academic session 2010-11. Order of recognition passed in favour of the respondent was conditional and there was a clear stipulation that admission should not be made until formal recognition under clause 7(11) of the 2009 regulations is issued by the WRC and affiliation is obtained from the university/ examining body. The high court disposed of the writ petition by directing that in the recognition order it shall be added that the institution was entitled for recognition for the D.El.Ed. course with an annual intake of 50 students for academic session 2011-12 also. This was challenged. The Supreme Court held that recognition could only be granted for the next academic session. The high court could not have directed the recognition to be retrospectively operative because certain formalities remained to be complied with. The court referred to its earlier decisions in *Chairman, Bhartia Education Society and another* v. *State of Himachal Pradesh*,[81] *Morvi Sarvajanik Kelavni Mandal Sachalit MSKM BEd College* v. *National Council for Teachers' Education,*[82] *State of T.N.* v. *St. Joseph Teachers Training Institute*,[83] *State of Maharashtra* v. *Vikas Sahebrao Roundale*,[84] *Adarsh Shiksha Mahavidyalaya and others* v. *Subhash Rahangdale*,[85] *A.P. Christian Medical Educational Society* v. *Govt. of A.P.,*[86] and *N.M. Nageshwaramma* v. *State of A.P.*[87]

The court found that the institution had the anxious enthusiasm to commercialize education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law. The court also referred to its decisions in *Ahmedabad St. Xavier's College Society* v. *State of Gujarat*,[88] *Andhra Kesari Educational Society* v. *Director of School Education*,[89] *State of Maharashtra* v. *Vikas Sahebrao Roundale,*[90] *St. John's Teachers Training*

80 (2013) 1 SCC 223.
81 (2011) 4 SCC 527.
82 (2012) 2 SCC 16.
83 (1991) 3 SCC 87.
84 (1992) 4 SCC 435.
85 (2012) 2 SCC 425.
86 (1986) 2 SCC 667.
87 (1986) Supp. SCC 166.
88 (1974) 1 SCC 717.
89 (1989) 1 SCC 392.
90 (1992) 4 SCC 435, *supra* note 84.

Institute (for Women) v. *State of T.N.,*[91] *N.M. Nageshwaramma* v. *State of A.P.,*[92] and *Adarsh Shiksha Mahavidyalaya* v. *Subhash Rahangdale.*[93]

The court further held that an institution that is engaged or interested in getting involved in imparting a course for training has to obey the command of law in letter and spirit. There cannot be any deviation. But, unfortunately, some of the institutions flagrantly violate the norms with adamantine audacity and seek indulgence of the court either in the name of mercy or sympathy for the students or financial constraint of the institution or they have been inappropriately treated by the statutory regulatory bodies.

Denial of affiliation on the basis of cut-off date

In *Maa Vaishno Devi Mahila Mahavidyalaya* v. *State of Uttar Pradesh,*[94] the Supreme Court found that the denial of affiliation on the ground of receipt of applications after the cut-off date was right. Cut off date was prescribed by judicial pronouncement in the case of *College of Professional Education* v. *State of Uttar Pradesh*,[95] the court recorded the procedure and terms and conditions of admission, recognition and fixed a cut-off date for affiliation. The issue was whether the university and the State Government were justified in rejecting the application for affiliation on the ground that there was a cut-off date and/or the conditions of recommendation/affiliation had not been satisfied. The court held that no fault can be found with the view taken by the authorities concerned.

The court considered the permissibility of state interference except granting recognition. The role of the state should be after the affiliation is granted by the affiliating body. The role of the state is a very formal one and the state is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable.

The court referred to its earlier decisions in *State of Maharashtra* v. *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya,*[96] *St. John Teachers Training Institute* v. *Regional Director, National Council for Teacher Education*[97] and *Chairman, Bhartia Education Society* v. *State of Himachal Pradesh.*[98]

The court also considered the effect of non-recognition on affiliation and held that the NCTE Act is a special Act enacted to cover a particular field, *i.e.* teacher training education, and, thus, has to receive precedence over other laws in relation to that field. No institution or body is empowered to grant recognition to any institution under the NCTE Act or any other law for the time being in force, except the NCTE itself. Grant of recognition by the council is a condition precedent to grant of affiliation by the examining body to an institute.

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91 (1993) 3 SCC 595.
92 (1986) Supp. SCC 166.
93 (2012) 2 SCC 425.
94 (2012) 12 SCALE 440.
95 Civil Appeal No.5914 of 2011 decided on 22.07.2011.
96 (2006) 9 SCC 1.
97 (2003) 3 SCC 321.
98 (2011) 4 SCC 527.

The court referred to *Jaya Gokul Educational Trust* v. *Commissioner & Secretary to Government Higher Education Deptt., Thiruvanathapuram, Kerala State,*[99] *State of Tamil Nadu* vs. *Adhiyaman Educational & Research Institute,*[100] *State of Maharashtra* v. *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya,*[101] *S. Satyapal Reddy* v. *Government of A.P.,*[102] *Engineering Kamgar Union* v. *Electro Steels Castings Ltd.,*[103] *Medical Council of India* v. *State of Karnataka*[104] and *Dr. Preeti Srivastava* v. *State of Madhya Pradesh.*[105]

Also referred to the decision in *Chairman, Bhartia Education Society* v. *State of Himachal Pradesh.*[106] and *St. John Teachers Training Institute* v. *Regional Director, National Council for Teacher Education.*[107] To reach the decision, the court relied on the decision in *State of Maharashtra* v. *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya.*[108]

Conducting classes not mandatory for tax exemption

In *Council for Indian School Certificate Examinations* v. *Director General of Income Tax,*[109] a division bench of the Delhi High Court considered the entitlement of income tax exemption as an educational institution under section 10(23C)(vi) of Income Tax Act, 1961. It has held that holding of class is not mandatory to be treated as an educational institution. The court found that it was not disputed before it that the petitioner institute does not conduct classes or is directly engaged in teaching the students. The petitioner affiliates schools, prescribes syllabus and conducts examination of students. The petitioner is authorized and permitted to conduct the said exams and the results enable the students to get admission at the graduate level. It is not disputed before us that the exams conducted by the petitioner society are recognized. In the writ petition it is stated that about 1750 schools all over India are affiliated with the petitioner society and are imparting education from nursery to twelfth standard. In other words, the petitioner is performing the similar functions if not identical functions performed/undertaken by the central board of secondary education and the state boards.

Any university or other educational institution existing solely for educational purposes qualifies for tax exemption. The university and the educational institution should not be for the purposes of profit. The second requirement is negative in nature, whereas the first requirement is positive. The court refused to accept the contention of the revenue and the reasoning given in the impugned order that the

99 (2000) 5 SCC 231.
100 (1995) 4 SCC 104.
101 (2006) 9 SCC 1.
102 (1994) 4 SCC 391.
103 (2004) 6 SCC 36.
104 (1998) 6 SCC 131.
105 (1999) 7 SCC 120.
106 (2011) 4 SCC 527.
107 (2003) 3 SCC 321.
108 (2006) 9 SCC 1.
109 188 (2012) DLT 553.

petitioner is not an educational institution because it is an examination body and its principal work is to conduct examination and charge examination fee, *etc.*

Higher property tax from unaided schools

In *Vinod Krishna Kaul* v. *Lt. Governor N.C.T. of Delhi,*[110] a division bench of the Delhi High Court considered the permissibility of charging higher property tax from unaided schools charging higher fees than those from government and government aided schools. While agreeing with the respondents/municipality that there exists an intelligible differentia between government/government-aided schools on the one hand and private un-aided schools on the other, the court found that this differentia has no nexus with the object of such classification. The apparent and ostensible object is that schools which are not running as profit earning businesses ought to be treated at par with government / government-aided schools. That is apparent from the fact that government / government aided schools have a use factor of 1 and so do private unaided schools, which charge fees upto Rs. 600/- per month. The foundation on which the use factors of 2 and 3 are assigned to schools charging fees between Rs. 601/- and Rs. 1200/- per month and those charging fees in excess of Rs. 1200/- per month, respectively, appears to be the reasoning or assumption that these schools are profit making enterprises. But, what if that were not true? What if the schools charging higher fees were imparting a better quality of education with a better infrastructure without any individual or group of individuals profiteering from the enterprise? In such a situation, the nexus between the intelligible differentia and the object would disappear rendering the classification to be violative of article 14 of the Constitution. Therefore, a classification based merely on the fee structure would not be a satisfactory means of achieving the object. Perhaps, one use factor could be assigned to all schools which are not profit making bodies / entities, irrespective of the fee structure. And, a higher use factor could be assigned to schools which are being run on a profit-making basis.

Expansion of affiliation to a state university outside state

In *State of Haryana* v. *Global Educational & Social Trust*,[111] a division bench of the High Court of Delhi considered the question of whether a university created by state legislature can expand its affiliation outside of state and found that it was impermissible. Guru Govind Singh Indraprastha University established by GNCT was seeking NOC from governments of Uttar Pradesh and Haryana for affiliation of institutions situated in NCR but not in NCT of Delhi. Section 4 of the concerned Act empowers the university for affiliation out of boarder of NCT in NCR. The court held that section 4 of 1998 Act, empowering GGSIPU to exercise power outside Delhi in the NCR is undoubtedly contrary to the spirit of article 245(1) of the Constitution empowering legislature of state to make laws for the whole or any part of the state only. The court relied on various decisions such as *Charanjiv Charitable Trust* v. *AICTE*,[112] *Motilal Padampat Sugar Mills Co. Ltd.* v. *State of Uttar Pradesh*,[113] *M/s. Cauvery Coffee Traders, Mangalore* v. *M/s Hornor Resources*

110 2012 (31) DRJ 655.
111 193 (2012) DLT 472.
112 CWP No. 3065/2008.
113 (1979) 2 SCC 409.

(International) Co. Ltd.,[114] *St. Johns Teachers Training Institute* v. *Regional Director, National Council for Teacher Education*,[115] *Aditya College of Pharmacy & Science* v. *Guru Gobind Singh I.P. University*, W.P.(C) No. 13751/2006, *Aditya College of Pharmacy & Science* v. *Guru Gobind Singh I.P. University*,[116] *Mata Sudarshan Tilak Raj Dhawan Educational Trust, Panchkula* v. *State of Haryana*,[117] *Trinity Institute of Higher Education* v. *Govt. NCT of Delhi*,[118] *Jaya Gokul Educational Trust* v. *The Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram*,[119] *St. Joseph's Hospitals Trust* v. *The Kerala University of Health Science*,[120] *The State of Tamil Nadu* v. *V.S. B. Educational Trust*.[121]

Once the legislature of a state is empowered to make laws having force only within the state and not outside the state, it is axiomatic that such laws cannot create/establish bodies which will exercise powers outside the state. A university established by the law of one state cannot exercise powers outside the state.

The court found that the refusal of the governments of the states of Haryana and Uttar Pradesh to issue NOC cannot be said to be arbitrary. The local laws of the respective states do not permit colleges/institutions located therein to be affiliated to any university other than the respective state universities. The refusal is thus in consonance with local laws to which there is no challenge.

Establishment of schools only with permission

In *Shikshan Mandal through the Secretary, Dr. R. G. Prabhune* v. *State of Maharashtra*,[122] the full bench of the Bombay High Court has held that a person who wants to establish a school should apply for permission. Only those schools permitted by government to be established can apply for recognition. Hence it is necessary for a person who wants to establish a secondary school to apply for permission to establish a school.

VIII STAFF AND SERVICE CONDITIONS

No deemed confirmation in private school on fixed period appointment

In *Chatrapati Shivaji Shikshan Prasarak Mandal* v. *Dattatraya Rupa Pagar*,[123] the Supreme Court considered the justification of setting aside the termination of a teacher in private school appointed for fixed period. Termination was set aside on the ground of deemed confirmation. The respondent no. 1 was appointed as *Shikshan Sevak* in appellant no. 1's school for 3 years period from 01.04.2001 to 31.03.2004. The respondent no. 1's services were discontinued by a letter dated 16.07.2004.

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114 (2011) 10 SCC 420.
115 (2003) 3 SCC 321.
116 (2003) 3 SCC 321.
117 AIR 2003 P&H 39.
118 2008 (105) DRJ 1670.
119 (2000) 5 SCC 231.
120 WP(C) No. 12323/2012.
121 MANU/TN/9615/2006, (2006) 3 MLJ 1037.
122 AIR 2012 BOMBAY 115 FULL BENCH.
123 (2012) 4 SCALE 576.

The tribunal quashed the termination on ground that as per terms of appointment, on expiry of 3 years, respondent would be deemed to have completed probation and confirmed as such his services could not be terminated. The high court had upheld the tribunals order. Supreme Court found that the terms of appointment clearly showed that the respondent No. 1 was appointed for fixed time with a stipulation that he would not be treated at par with regular employees. According to the court there were no documents to show that he was appointed after regular selection. The court found that order passed by the presiding officer of the tribunal was *ex-facie* erroneous and the high court committed serious error by refusing to quash the same.

Recovery of overpaid salary from teachers

In *Chandi Prasad Uniyal* v. *State of Uttarakhand*,[124] the question was whether it was permissible to recover from the teachers the excess payment due to wrong fixation of salary. The Supreme Court found that it was permissible even if the over payment was due to irregular/wrong fixation by the concerned district education officer. The excess payment was made to appellants due to irregular/wrong pay-fixation by concerned district education officer. The court found that there was a stipulation in fixation order that in the event of irregular/wrong pay-fixation, the institution in which appellants were working would be responsible for recovery of amount received in excess from salary. The court relied on it earlier decisions in *Col. B.J. Akkara (retd.)* v. *Government of India*,[125] and *Syed Abdul Qadir* v. *State of Bihar*.[126]

Termination without notice and sanction illegal

In *Bhartiya Seva Samaj Trust Tr. Pres.* v. *Yogeshbhai Ambalal Patel*,[127] the Supreme Court found that the termination of the teacher's services by school management without notice and without sanction from the competent authority was illegal. It also rejected the ground that appointment of the teacher was in contravention of statutory provisions. It was further found that teachers appointed with respondent no. -1 in pursuance to same advertisement and possessing same qualification are still working with same management. The court found that it was not merely a case of discrimination rather it is a clear case of victimization of respondent no. 1 by school management.

Primary and Secondary teachers to be treated honourably

In *Bihar State Government Secondary School Teachers Association* v. *Bihar Education Service Association*,[128] the Supreme Court was considering the permissibility of reopening merger of cadres. It found that withdrawal by judicial pronouncement despite issue of merger finally settled by the Supreme Court in earlier litigation was not permissible. Considering lesser promotional opportunity

124 (2012) 8 SCC 417.
125 (2006) 11 SCC 709.
126 (2009) 3 SCC 475.
127 AIR 2012 SC 3285.
128 (2012)11 SCALE 291.

of teachers and for removal of their stagnation, the Government of Bihar decided to merge the Bihar Subordinate Education Service into Bihar Education Service Grade-II *vide* impugned notification which attained finality by two rounds of earlier litigation finally settled by the Supreme Court. The high court *vide* impugned judgment reopened the issue and set aside the notification for merger. Consequently, the government issued consequential notification. The division bench declined to interfere with judgment of the single judge. The apex court found that State of Bihar understood the decisions so far correctly, and, therefore, passed the resolution dated 07.07.2006 accepting the view point, which had found favour with the high court as well as the apex court, recommending the merger of the two cadres and upgradation of the teachers. When the Bihar education service employees filed their writ petition the state government rightly defended its resolution dated 07.07.2006. However, the single judge failed to understand the import of the decision of the Supreme Court, and thought that he had the liberty to reopen the controversy despite the decisions rendered in the first two rounds.

The Supreme Court found that there is no dispute that although the rules do provide for a channel of promotion to the subordinate teachers, actually the chances of promotion for them are very less. There is a serious stagnation as far as the subordinate teachers are concerned.

The Supreme Court emphasized the importance of the role of primary and secondary teachers and found that in a country where there is so much illiteracy and where there are a large number of first generation students, the role of the primary and secondary teachers is very important and that they have to be treated honourably and given appropriate pay and chances of promotion. It also observed that it was certainly not expected of the state government to drag them to the court in litigation for years together.

Removal from service for giving corporal punishment

In *Kishore Guleria* v. *Director of Education*,[129] a division bench of the Delhi High Court upheld the single bench's decision which had found that the penalty of removal from service awarded to a teacher by the disciplinary authority of a school was proportional to the gravity of misconduct found against the teacher, that is, of giving corporal (physical) punishment to the students. The single bench had in its decision in *Kishor Guleria* v. *Director of Education, Directorate of Education*[130] had found that there was no discrepancy in the impugned order passed by the tribunal rejecting the challenge by the teacher against the penalty of removal imposed by the school. The court had also found that no disproportionate punishment was given by the disciplinary authority against the teacher.

It was found that the teacher committed gross misconduct by giving corporal (physical) punishment to students physically touching part of girl's body which is prohibited and untimely tantamount to sexual abuse. The said misconduct was admitted by the petitioner himself who sought to tender apology for the same. The court had also observed that infliction of corporal punishment upon children is inhuman.

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129 (2012) 7 AD (Delhi) 158.
130 195 (2012) DLT 189.

Denial of promotion as HoD to non-medico teacher no discrimination

In *Jaswinder Kaur Gambhir* v. *Union of India*,[131] a division bench of the Delhi High Court considered the question of MCI fixing eligibility criteria for non-medico teacher in medical institution for appointment to post of head of department of biochemistry and found that MCI has implicit power to supervise the qualifications or eligibility standards for teachers and staff in medical college. It also found that the regulations, insofar as they permit non medicos to also teach in certain departments of medical colleges are an exception to the general rule and while carving out the said exception, care has been taken to limit the role of such non-medico teachers, *i.e.*, of their being not eligible to be appointed as HoD. The government does not have any authority to alter the Regulations framed in this regard. HoD is lowest step in the ladder to director, principal, dean and medical superintendent. When non-medico teachers are not to climb the ladder, there can be no discrimination in their being denied to take the first step thereto. Non-medico teachers clearly fall in a different class than the medical teachers and the question of discrimination does not arise. The court also noticed that each of the petitioners joined employment with full knowledge of the limitation as far as appointment as HoD is concerned.

The court found that the MCI Act has constituted the MCI as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously the high powered council has power to prescribe the minimum standards of medical education as held in *State of Kerala* v. *Kumari T.P. Roshana.*[132]

No need of approval for suspending a teacher

In *Delhi Public School* v. *Shalu Mahendroo,*[133] a division bench of the Delhi High Court while interpreting the relevant provisions of the delhi school education Act, 1973 as applicable to unaided private schools has held that no approval of director was required before suspending a teacher. It also held that neither prior nor *ex post facto* approval is necessary in case of non-aided school.

IX MINORITY EDUCATIONAL INSTIUTIONS

Right to Education Act not applicable to unaided minority schools

In *Society for UN-AIDED Private Schools of Rajasthan* v. *Union of India,*[134] the Supreme Court while upholding the constitutionality and validity of the RTE Act, 2009 has held that it was not applicable to unaided minority schools. However, it has been held that the Act should be applicable to an aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate government or the local authority.

In fact, after laying down that providing 25% of the intake from the weaker sections and the disadvantaged groups will be a permissible regulation in view of

131 132 (2012) DRJ 325.
132 (1981) 4 SCC 512.
133 196 (2013) DLT 147.
134 (2012) 6 SCC 1.

the supplementary obligation on the unaided institutions flowing from the fundamental right to education and that such a provision was also a permissible condition while granting recognition, the blanket exclusion of minority unaided schools from the operation of the whole Act can be quashed as not a correct interpretation.

Even if the minority unaided ones were excluded from the operation of quota for weaker sections and disadvantaged groups, the other provisions of the Act relating to standards, quality, curricula and infrastructure could be made applicable to the minority unaided schools also.

Moreover, the 25% intake could be correctly interpreted in tune with the freedom of choice of the minorities. The provisions of the Act properly construed would show that the provision of 25% does not mandate that they should be from the non-minority students. If the linguistic and religious minority educational institutions are directed to give representation of their own children belonging to weaker sections and disadvantaged groups, it would have enhanced their rights and not violated them. Minority rights are group rights and they dwell in the community including their weaker and disadvantaged children and their parents. The management of these institutions exercise this right derivatively and on behalf of the community. Thus such reservation for weaker sections of their own community would have been cutting horizontally across their vertical preference for minority's own children. They would have been required to prefer weaker from non-minority children only to the percentage of their total intake of non-minority children. Such preference could be upheld without infringing their freedom of administration as a regulation in the national interest or a permissible condition for recognition or in compliance with the supplementary obligation flowing from articles 21 and 21A towards their own children. These minority schools could educate the weaker and disadvantaged children of their own community on the expense the government utilizing the provision for reimbursement.

Yet there is another problem with the logic of including the aided minority schools within the purview of the Act. Once the judgement takes a view that the whole act is not applicable to unaided minority institutions being violative of their right to administer under article 30 of the Constitution there was no rhyme or reason to make the said act applicable to aided minority institutions. The classification of minority educational institutions under article 30 into aided and unaided in making the whole Act applicable or inapplicable runs counter to the settled law laid down by *TMA Pai case* and *Inamdar case* followed by smaller benches. It has been clearly reiterated that the only permissible regulation which can be imposed on an aided institution in addition to the ones permissible on the unaided ones are those which are meant to ensure the proper spending and accounting of the aid given and cannot have any limit or restriction on the freedom of administration. Even the mandate of non-discrimination under article 29(2) has been held not to affect the freedom of administration except to the extent on admitting non-minority students after exhausting substantially the admission for minority students. This balancing of articles 30 and 29(2) cannot be construed to make a restriction on administration permissible on an aided minority school which is not permissible on an unaided minority school.

The majority judgement has also created a vacuum as far as the minority unaided schools are concerned by completely excluding them from the operation of the Act. The applicability of the right to education of the children belonging to the linguistic and religious minorities and the interplay between articles 21A and 30 remains to be addressed by the legislature. It is true that the present 2009 Act has not addressed the issue of minority educational institutions and the admission therein and how these institutions are to be regulated in the matter of fulfilling their supplementary obligation flowing from articles 21 and 21A. The Constitution contemplates separate law for regulating such obligations in the case of minority educational institutions. Even in the case of compulsory acquisition of land the Constitution has contemplated separate law for acquiring the land belonging to the minority institutions. This is evident from the provisions of clause (1A) of article 30 which provides for special law and special procedure for acquiring the land belonging to minority educational institutions. The legislature ought to have followed this Constitutional scheme and made a separate law and procedure in the matter of regulating the supplementary obligation of unaided minority institutions in fulfilling the mandate of article 21A.

Not to restrict strength of staff in minority schools

In *Lakshmi Matriculation School* v. *State of Tamil Nadu*,[135] a division bench of the High Court of Madras was dealing with the challenge to the restrictions imposed by the fee regulating committee. As per the guidelines a restriction was put on the strength of the staff even in minority institutions. The court found that that in respect of the minority educational institutions, the committee unjustly restricted the strength of teaching staff as well as non-teaching staff. In so far as minority educational institutions are concerned, the committee ought to have accepted the strength of teaching and non-teaching staff as submitted by those educational institutions supported with materials like attendance *etc*. The court held that a minority educational institution has a right to employ teaching and non-teaching staff as per their requirement. Any restriction on the strength of teaching and non-teaching staff would amount to restricting right of administration of minority community, which is protected under article 30(1) of the Constitution of India. As per the guidelines, the Committee restricted teaching staff salary to the upper limit of 60% of the proposed fee income. *Modern School case*,[136] nowhere states that the salary component of the teaching staff is to be restricted to 60% of the fee income. Stipulating a regulation by the committee and imposing artificial restriction of 60% of proposed income as the upper limit of salary for the teaching staff is yet another restriction on the right of minority educational institutions.

Te court directed that there shall not be restriction regarding the salary payable to teaching and non-teaching staff, which, of course, is subject to the government scale of pay and government orders. The committee shall not interfere with the expenditure of the minority educational institutions on its cultural and religious activities to retain its character as minority institutions.

135 (2012) (2) CWC 2004.
136 (2004) 5 SCC 584 reviewed in (2009) 10 SCC 1.

Surplus teachers cannot be forced on aided minority schools

In *Momin Education Society* v. *Education Officer*[137] the Bombay high court through its single bench has reiterated the principle that minority institutions have right to appoint teacher and nobody can force upon minority institution to appoint a particular person who is not selected by it as teacher. The petitioner minority educational institution had selected and appointed qualified teaching assistants and submitted the same for approval by the education officer. He rejected the same on the ground of availability of surplus teachers of other aided schools to be appointed on the said posts. The appeal also was rejected by the grievance committee who even directed the education officer to send the names of the surplus teachers and to take action against the school in the vent of their non-accommodation by the school. Allowing the writ petition of the school management the high court followed the law declared by the Supreme Court in *Ahmedabad St. Xavier's College* and reiterated in *Sindhi Education Society* and declared that the law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution would be void as being violative of article 30(1). It is, of course, permissible for the state and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the state would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the university, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person, who is not selected by it as a teacher.

Freedom to appoint in-charge principal

In *The President, Sind Educationists' Association* v. *The Registrar, University of Mumbai*,[138] a division bench of the Bombay High Court considered whether a minority educational institution has the freedom to choose an in-charge principal without following the directive of the university to appoint the senior most teachers as the in-charge principal. Purportedly following the resolution of the state government and the circular of the university requiring the colleges to appoint as in-charge principal the seniormost teacher of a college, the Registrar of University of Mumbai rejected the request of the college authorities for approval of the appointment of their choice as in-charge principal. The court set aside the refusal of approval and declared that the circular of the university would not apply to the

137 (2012) 6 ALLMR 193.
138 (2012) 3 ALLMR123.

college being a minority college. While doing so the high court has applied the law laid down by the Supreme Court with regard to the right of the minority institution to choose the principal of its choice in *Secy., Malankara Syrian Catholic College* v. *T. Jose*.[139] The court directed the university authorities to re-consider within two weeks the proposal regarding appointment of in-charge principal of the college to ascertain whether the same complies with the other governing conditions, and, if satisfied about the same, grants approval to his appointment till completion of process of appointing permanent or regular principal of the college. The court also directed that till such decision is taken, the one already appointed by the college be allowed to discharge duties, powers and functions and enjoy privileges as in-charge principal of college.

X CONCLUSION

The legislative attempt to ensure inclusive and quality education to be available freely and compulsorily to children between 6-14 of age got the stamp of approval by the Supreme Court of India through its majority opinion. The differing view of the minority opinion should send alarm signals for the future since there is a possible danger of this minority view evolving into a majority opinion in one of the forthcoming cases. For the moment the 25% reservation for the economically weaker sections and the disadvantaged groups even in private unaided schools would continue. Different high courts also have done their bit in expanding the content of the right to education. The issues relating to the neighbourhood concept, pre-school education, admission at different levels of entry in schools *etc.,* received purposive interpretation at the hands of high courts repelling the clever ways resorted to by the private schools to evade the burden of 25% reservation. The procedure and time-schedule for admission into professional courses were to be fortified again by the Supreme Court and the high courts in order to prevent the commercialization of professional education. Transparency and meritocracy in the admission process even in private un-aided professional colleges has been made the permanent mantra. The Supreme Court has also referred to the danger of closing down of government-owned and government-aided schools as a result of indiscriminate granting recognition to private unaided schools in some states. The apex court continued to be the staunch supporter and guardian of the rights of students, teachers and the minority educational institutions during the year under survey also.

139 (2007) 1 SCC 386.