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EDUCATION LAW

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I INTRODUCTION

EMPHASISING THE importance of education the High Court of Allahabad quoted, "Education is a better safeguard of liberty than a standing army." This theme echoed in the several judgments on education throughout the year under survey. Two major amendments to the Constitution of India relating to education withstood the challenges to their validity before five judge benches of the Supreme Court during this period. They were article 21 A and article 15(5). The constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter RTE Act) was also upheld by the five judge bench decision. The fundamental right to education received expansive interpretation by another five judge bench of the apex court encompassing the state's obligation to grant aid to private schools. It was also held that mother tongue cannot be imposed by the state agencies on private schools even at the primary level. Another five judge bench while dismissing a review petition issued a clarification which is not less important than a judgment itself stating that it is up to the state to decide on the suitability of reservation in super specialty faculty posts in medicine. Over all, the width and depth of the right to receive education received purposive and liberal interpretation from the apex court and the several high courts of the states throughout the year.

II RIGHT TO EDUCATION

Right to Education amendment (article 21A) of the Constitution is valid

The validity of the 86th Constitution amendment introducing article 21 A in the Constitution of India declaring and providing for the fundamental right to education came for consideration before a five judges bench of the Supreme Court of India in *Pramati Educational & Cultural Trust* v. *Union of India*.[2] The court considered the question whether by inserting article 21A through the Constitution (Eighty-Sixth Amendment) Act, 2002 the Parliament has altered the basic structure or framework of the Constitution. Article 21 A is titled 'Right to Education' and it

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1 2014 (10) ADJ 159.

2 (2014) 8 SCC 1.

provides that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine. Accordingly, the RTE Act was enacted by Parliament to provide free and compulsory education to all children of the age of six to fourteen years. In the context of the Act imposing obligation on private unaided educational institutions, it was argued that if article 21A is interpreted to include the private unaided educational institutions within its sweep then it would abrogate the right under article 19 (1) (g) of the Constitution to establish and administer private educational institutions which is a basic feature of the Constitution.

The court referred to the statement of objects and reasons which had stated that although the Directive Principle in article 45 contemplated that the state will provide free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution, this goal could not be achieved even after 50 years and, therefore, a constitutional amendment was proposed to insert article 21 A in part III of the Constitution. It was for this object that the Constitution (Eighty-Sixth Amendment) Act, 2002 inserted article 21A of the Constitution.

The court upheld the validity of the amendment by holding that by the Constitution (Eighty-Sixth Amendment) Act, a new power was made available to the state under article 21A of the Constitution to make a law determining the manner in which it will provide free and compulsory education to the children of the age of six to fourteen years as this goal contemplated in the Directive Principles in article 45 before this constitutional amendment could not be achieved for fifty years. This additional power vested by the Constitution (Eighty-Sixth Amendment) Act, 2002 in the state is independent and different from the power of the state under clause (6) of article 19 of the Constitution and has affected the voluntariness of the right under article 19(1) (g) of the Constitution. By exercising this additional power, the state can by law impose admissions on private unaided schools and so long as the law made by the state in exercise of this power under article 21A of the Constitution is for the purpose of providing free and compulsory education to the children of the age of 6 to 14 years and so long as such law forces admission of children of poorer, weaker and backward sections of the society to a small percentage of the seats in private educational institutions to achieve the constitutional goals of equality of opportunity and social justice set out in the Preamble of the Constitution, such a law would not be destructive of the right of the private unaided educational institutions under article 19 (1) (g) of the Constitution.

Unaided schools obliged to provide free and compulsory quality education to disadvantaged and weaker sections

The constitutional validity of the RTE Act, 2009 was also under challenge in *Pramati Educational & Cultural Trust* case.[3] The Supreme Court through the five judge verdict has upheld its validity and ruled that the said Act is not *ultra vires* article 19(1) (g) of the Constitution. The court has found that it would be clear

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3 *Ibid*.

from statement of objects and reasons of the Bill that the 2009 Act intended to achieve the constitutional goal of equality of opportunity through inclusive elementary education to all and also intended that private schools which did not receive government aid should also take the responsibility of providing free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections.

Obligation to impart education on States as well as societies running educational institutions

In *Saurabh Charan* v. *Lt. Governor, NCT of Delhi* [4] the Supreme Court has held in the context of right to education that imparting elementary and basic education is a constitutional obligation on states as well as societies running educational institutions. The court referred to the decision of the US Supreme Court in *Brown* v. *Board of Education of Topeka*.[5] The court was considering the issue of deletion of provision relating to admission in schools for the wards of parents who were transferred to Delhi from different states of India. Under notification dated 18.12.13, children of appellants became eligible for admission *inter alia* on the basis of being children of parents who have been transferred inter-state by being allotted five points. Administration issued notification dated 27.02.14, changing the very basis of admission granted to appellants' children, by deleting points for inter-state transfer cases and decided to determine eligibility on basis of neighborhood and sibling principles. Appeals by special leave were filed against interim order of high court whereby it was directed that admission process shall be allowed to be completed for other categories of students except candidates of appellants who have been transferred to Delhi from different states of India. The Supreme Court found that it was deemed appropriate to relieve appellants from hardship of having admission being granted earlier under notification from being taken away by subsequent notification issued in mid-stream. The court held that it was not permissible for administration to alter the basis of admission after admission process had started and that the criteria for selection of those who had participated in selection process could not have been questioned by unsuccessful participants. The court directed that the admissions already granted to appellants' children should not be disturbed on the basis of impugned notification deleting points for inter-state transfer and that these children should continue their study in those schools where they got admitted or selected for admission.

Free and compulsory education to children with special needs

The issue of giving free and compulsory education to the children with special needs came for consideration before a division bench of the High Court of Delhi in *Pramod Arora* v. *Hon'ble Lt. Governor of Delhi*.[6] The court was considering a PIL for directions to the respondents, *i.e.*, Government of National Capital Territory

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4 (2014) 6 SCC 798.

5 347 US 483 (1954).

6 2014 (10) AD (Delhi) 241.

and Union of India with respect to admission of children with disabilities ("children with special needs" hereinafter CWSN). Reliefs claimed included a direction to quash amendment to section 2(d) of RTE Act, 2009 (neighbourhood criteria based on a statutory stipulation) brought into force through amendment of 2012, and also for a direction to quash paragraph 14(b) of the order issued by Lt. Governor of Delhi on 18.12.13, on the ground that it positively restricted the schools from devising criteria for special treatment, for purpose of admission, of CWSN and that the introduction of the impugned order resulted in such schools being denied choice of applying those special criteria, exclusively designed to admit CWSN.

The court found that there are two distinct entitlements under the The Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 (hereinafter the PWD Act). First, a right is conferred under section 39 for admission of CWSN (children with special needs) who are "persons with disabilities" in all government established and government aided institutions. This is clear from the language of that provision. The court noted that while section 39 belongs to chapter VI of the PWD. Act titled 'Employment', the Supreme Court in *All Kerala Parents' Association of the Hearing Impaired* v. *State of Kerala*,[7] has clarified that a plain reading of section 39 shows that it relates to reservation in admissions for students and not in government employment, thus overruling contrary precedent emerging from decisions of various high courts in the country. The second and most important point concerned the duty of the state to ensure that each child with 'disability' (as defined under the PWD Act) "has access to free education in an appropriate environment till he attains the age of eighteen years". This clear and unambiguous prescription is found in section 26(a) of the PWD Act. This obligation is absolute in its terms and, crucially, is not contingent upon fulfilment of other criteria, such as being certified with a disability of forty percent or more, or setting up of schools for those with special needs or augmenting capacity in that regard *etc.* The corresponding nature of the right of CWSN to free education, till the age of eighteen, is significant. This right was protected and recognized in proviso to section 3(2) of the RTE Act and continues to be protected even now, after the 2012 amendment, by virtue of section 3(3) of the RTE Act. The court found that this was a sequitur, an inevitable inference, flowing from the specific allusion to the 'same rights' which CWSN have 'to pursue free and compulsory elementary education which children with disabilities... under provisions of chapter V of the PWD. Act.' Parliament could not have meant anything other than the right under section 26 of the PWD Act, because of two simple reasons: first, there is no other provision under that Act entitling CWSN to free and compulsory education, and second, section 26 is located under chapter V of the PWD Act, which is preserved by the RTE Act. Moreover, the intention to save rights in another enactment cannot be ascribed to Parliament if such other enactment does not contain such rights to begin with. Rather, it coheres that article 26 prescribes the right to education, which was legitimately preserved at the time of enacting the RTE Act.

The court has held that in the case of admission of children with special needs, the neighbourhood criteria and point based admission system, are unjustified.

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7 2002 (7) SCALE 198.

According to the court, first of all, the imperative of section 26 is that government has to ensure that all CWSN are given access to education till age 18. Such being case, neither neighbourhood criteria (based on a statutory stipulation in section 12, RTE Act nor point based admission system, directed by impugned order can be allowed to prevail over that obligation, which is underscored by section 26(b) to (d) as well as sections 27-29 of PWD Act. Therefore, imposition of neighbourhood criteria, in substitution of previously existing discretion to admit CWSN allowed to unaided schools, is contrary to provisions of section 26 of PWD Act read with section 3(3) of RTE Act. Neighbourhood criterion in section 12 has to yield to dictates of section 26 of PWD Act. Second, neighbourhood principle in section 12 as well as impugned order-operates, and can operate in case of CWSN on presupposition that there are a sufficient number of schools in each neighbourhood equipped to cater to needs of all kinds of CWSN in that neighbourhood. To relegate CWSN in favour of neighbourhood criteria, when it is an admitted position that most neighbourhoods do not have schools that cater to CWSN, would amount to deliberately subverting section 26 of PWD Act, and right of CWSN to an education under article 21A of Constitution, manifested through section 3 of RTE Act. Indeed, till that stage is achieved, insistence of neighbourhood principle or criteria would render right under section 26 of PWD Act useless. Such an interpretation, which, per force, excludes a section of population (and importantly, a section that deserves greater protection than most) cannot be countenanced. Third, impugned order classifies CWSN with EWS and DG in deciding admissions to school, thus again ignoring distinct classification of disabled persons *vis-a-vis* non-disabled persons. Thus, impugned order of 18.12.13 is illegal to extent is brackets CWSN with other disadvantaged groups. Petition disposed off with directions that all applications for admission of CWSN to institution, if such admission is regulated by section 12, RTE Act (government owned, aided, or unaided private schools), shall be conducted through nodal agency, which shall prescribe a uniform mechanism and guidelines for certification of CWSN by authorized persons.

The court has further held that the 25% quota earmarked for economically weaker sections (EWS/DG) in section 12(1) (b) and (c) was made pursuant to the logic of article 15 of the Constitution. In other words, the quota for the children falling within the categories defined in sections 2(d) and (e) of the RTE Act were delineated in pursuance of the discretionary powers of the state under article 15(3), (4) and (5) of the Constitution. This being the case, it would be incumbent upon the state to ensure that all children falling within sections 2(d) and (e) of the RTE Act stand an equal chance at being included within the 25% earmarked for these categories. At the very least, all the groups falling within sections 2(d) and 2(e) must be ensured a chance to be beneficiaries of a reservation commensurate to the nature of their disadvantage. Not permitting this by leaving the selection into the EWS/DG categories to an open lottery could very well be exclusionary in that the quota could predominantly be filled in by economically weaker section candidates, thus leaving no seats for SC/ST candidates. This equally probable hypothetical would do violence to the constitutionally mandated reservations under article 15(4).

Thus the court has arrived at three major conclusions in this case:

(i) The right to free, compulsory education to CWSN guaranteed by section 26 of the PWD Act read with section 3(3) of the RTE Act is in no manner affected or diluted by the definition in section 2(d) of the RTE Act; consequently whilst making or ensuring admissions under section 12- to any category of schools, the State or its agencies, entrusted with the task are under a duty to give full and meaningful effect to section 26. This would mean that the state necessarily has to ensure the admission of all CWSN.

(ii) The state has the flexibility of directing segregation of the 25% quota set apart for persons from disadvantaged groups and weaker sections, to ensure widest representation of all such categories and at the same time, to safeguard against the possibility of only one of those categories securing admission in respect of the entire quota set apart for the purpose. Here, the neighbourhood principle in section 12 has to be balanced judiciously with the right of the particular group.

(iii) In the case of CWSN, on account of the imperative nature of section 26 and its protection under section 3(3) of the RTE, it is held that the neighbourhood principle cannot prevail over the need to admit CWSN if in a given case, the school is equipped to deal with or handle some or one kind of disability (blindness, speech impairment, autism *etc*). Insistence on the neighbourhood criteria in such cases would not only be retrograde, but destructive of the right guaranteed under section 26 of the PWD Act. The state therefore has to tailor appropriate policies to optimise admission of CWSN in those unaided schools, in the first instance, which are geared and equipped to deal with particular disabilities, duly balancing with the dictates of the neighbourhood criteria.

Based on the above the court issued specific directions including those for creating a nodal agency, for creating a list of all public and private educational institutions catering to CWSN, for filing an action taken report, and reporting compliance with the directions.

Transparent and non-discriminatory admission procedure even for unaided pre-elementary classes

In *Children Welfare Association* v. *The State of Assam*[8] a division bench of the High Court of Guahati considered the question whether any direction could be issued regarding the problems confronting pre-elementary or pre-primary education in the state, more particularly issues relating to admission at the stage of nursery and kinder-garden (KG). A non-government organization (NGO) called Children Welfare Association had filed a Public Interest Litigation highlighting various issues confronting pre-elementary or pre-primary education in the State of Assam

8 AIR 2015 (NOC) 359 (Gau.).

(PIL) , more particularly the issue relating to admissions. It sought a direction to the respondents to lay down guidelines for un-aided private schools imparting education at pre-elementary stage *i.e*. at the stage of nursery and KG. The court found that state had no policy to deal with present aspect of matter though it was open to the state to formulate of necessary guidelines and put them in place to regulate pre-school education. It was found that at present there was neither statutory frame work in place nor any administrative guideline holding field. Matter in question required consideration of government which would respond to situation by enacting suitable legislation. The court issued about nine directions including the one that there shall be transparent and non-discriminatory admission procedure which shall be notified by respective schools and shall be made known to parents/ guardians seeking admission of their children well in advance. It was also held that the directions would be applicable to all schools in the state imparting pre-primary education

Power to choose a school primarily with the parents and not with the administration

In *Forum for Promotion of Quality Education for All* v. *Lt. Governor of Delhi*[9] a single bench of the High Court of Delhi considered the validity of restrictions placed on the admissions to private unaided schools purportedly under RTE Act and held that the power to choose a school has to primarily vest with the parents and not in the administration. The court found that the office orders failed to consider the vitality as well as quality of a school. School choice gives families freedom to choose any school that meets their needs regardless of its location. Neighbourhood concept was better taken care of by private unaided schools both in terms of the guidelines laid down in the Ganguli Committee Report as well as under the earlier admissions order, 2007 which was followed in all schools wherein the person living closest to the school was given the maximum marks. Yet the right of every child living anywhere in Delhi to seek admission in a reputed school was not foreclosed. The court was of the opinion that the office orders were violative of the fundamental right of the school management to maximum autonomy in day-to-day administration including the right to admit students as well as the fundamental right of children through their parents to choose a school. Being contrary to Supreme Court and division bench judgments these office orders were quashed *qua* private unaided schools with regard to seventy five per cent general nursery seats. The court also found that article 19(6) of the Constitution postulates and contemplates restriction on a fundamental right by way of a law and not by an administrative action in the form of an order or a circular or a notification without any authority of law.

The court relied on the decisions in *Bijoe Emmanuel* v. *State of Kerala.*[10] The court considered the fundamental right of private unaided recognized school managements and their maximum autonomy in the day-to-day administration including the right to admit students. The court also found that there is no material

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9 216 (2015) DLT 80.

10 (1986) 3 SCC 615; *Union of India* v. *Naveen Jindal* (2004) 2 SCC 510; *Kharak Singh* v. *The State of U.P,* 1964 (1) SCR 332.

to show that private unaided schools were indulging in any malpractice or were misusing their right to admit students in pursuance to the 2007 notification and that the restrictions cannot be imposed by way of office orders and that too, without any authority of law.[11]

Power to regulate cannot be used to contradict or overrule a specific provision. Rule of the Delhi School Education Rules, 1973 (DSE) cannot be interpreted to mean that the school has to be confined to the locality and cannot admit students staying beyond the locality in which it is situated. To accept such a submission would amount to doing violence to the language used in Rule 50 of the DSE Act. Government by way of the impugned office orders cannot trample upon the autonomy conferred upon the management of the schools with regard to the right to admit students, as long as the procedure stipulated is fair, transparent and non-exploitative.[12]

III STUDENTS RIGHTS

Time limit to apply for change of name not unreasonable

The constitutional validity of the Central Board of Secondary Education (CBSE) bye laws which prohibited the petitioner from applying for change of name after ten years from the issuance of certificate was under challenge in *Abhishek Kumar* v. *Union of India*[13] before a division bench of the Delhi High Court. The court found that such lime limit was reasonable. It also observed that the court has to be reluctant to substitute its own views in such matters in preference to those formulated by professionals having experience of dealing with working of educational institutions. It also took note of the fact that the validity of rule 69.2 examination bye-laws which similarly imposes a time of two years for applying for corrections of date of birth in the records of and certificates issued by the CBSE has been upheld by the high court and apex court.[14]

No leniency to those who resort to unfair means in examinations

In *Board of Technical Education* v. *Sahibjeet Singh*[15] a division bench of the Delhi High Court considered whether the interpretation of cancellation of the entire examination to be restricted to a semester to benefit a candidate who resorted to

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11 See *T.M.A. Pai Foundation* v. *State of Karnataka* (2002) 8 SCC 481; *State of Bihar* v. *Project Uchcha Vidya Sikshak Sangh* (2006) 2 SCC 545.

12 See generally, *Social Jurist, A Civil Rights Group* v. *Govt. of NCT of Delhi*, 198 (2013) DLT 384. The court has also relied on the decisions in *Pramati Educational & Cultural Trust (Registered)* (2014) 8 SCC 1; *P.A. Inamdar* v. *State of Maharashtra* (2005) 6 SCC 537, *Dayanand Anglo Vedic (DAV) College Trust and Management Society* v. *State of Maharashtra* (2013) 4 SCC 14.

13 144 (2014) DRJ 8.

14 It relied on the decisions in *Jigya Yadav* v. *CBSE* 2011 I AD (Delhi) 552; *Bhagwat Dayal* v. *CBSE* 180 (2011) *DLT* 1; *Mukul Singal* v. *CBSE*, order dated May 27, 2011 in LPA No.496/2011; *Chirag Jain* v. *CBSE* (2011) ILR 5 Delhi 267.

15 2014 (7) AD (Delhi) 72.

unfair means in the examinations or allow the interpretation of the rules by the Board of Technical Education, Delhi. Respondent/writ petitioner was pursuing a three year diploma course in automobile engineering comprising of six semesters from GTB Polytechnic, affiliated to appellant board. Respondent participated in examinations, for all papers of fifth semester as well as for two back papers of thired semester. A case was registered against him for using unfair means in respect of one of two back papers taken by him of third semester. Appellant board cancelled entire board examination taken by him. A writ petition was preferred. By the impugned judgment, single judge allowed petition, by directing appellant board to declare result of respondent/writ petitioner in respect of fifth semester papers taken by respondent. This was challenged by appellant board before the division bench. Allowing the appeal, the court found that in the scheme of appellant board, words 'Entire Examination' meant one session of examination be it in howsoever many subjects/papers, whether of same or different semesters. Single judge had not given any reason for dissecting one session of examination into separate examinations for different semesters. Had intention been to cancel examination in all papers of semester, instead of using word `examination', word `semester' would have been used. The court agreed with the interpretation of the rule by appellant board that words 'Entire Examination' refer to a particular session of examination, be it in papers/subjects of one or more semester. The court found that the appellant board, in the matter of cancelling the examination of respondent/writ petitioner of subjects/papers of different semesters taken by him together, interpreted its own rule, and court need not to interfere with same. The court relied on the decision of the Supreme Court in *Director (Studies)* v. *Vaibhav Singh Chauhan*,[16] neither the Constitution of the Board nor the Rules define the word `examination'. However, reference to the word `examination' in different clauses of the constitution of the appellant board and in the examination rules of the appellant board showed the same to be used as a `session of examination' and not relatable to a semester and not carving out any distinction, whether it be in papers/subjects of one or more semesters. The examination form prescribed and which was filled up by the respondent/writ petitioner was found to be making a provision for the students to list the subjects in which the student wants to take the examination in a particular session, including subjects of more than one semester. The roll number allotted is also for the entire examination, may be of papers/subjects of different semesters. Therefrom it appeared that in the scheme of the appellant board, the words 'Entire Examination' meant one session of examination be it in howsoever many subjects/papers, whether of the same or different semesters. The court has taken the view that had the intention been to cancel the examination in all papers of the concerned semester only, instead of using the word `examination', the word `semester' would have been used. The court agreed with the interpretation of the rule by the appellant

16 (2009) 1 SCC 59 and referred to *Rajeev Rathi* v. *Controller of Examinations and Admissions Aligarh Muslim University,* 1988 AWC 506 All; *Munish Bansal* v. *Guru Jambheshwar University*, AIR 1998 Punjab & Haryana 105 (DB) & *Deepinder Singh Mann* v. *The Punjab Technical University* (2010) 159 PLR 485.

board that the words 'Entire Examination' referred to a particular session of examination be it in papers/subjects of one or more semester.

The court also took note of the fact that the Supreme Court in *Director (Studies)* case had reiterated that the courts should not ordinarily interfere with the functioning and orders of educational authorities, unless there is clear violation of some statutory rule or legal principle. It was further held that there must be strict purity in examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations.

Admission based on revaluation marks

In *Shriram College of Commerce* v. *Sunny Goel* [17] a division bench of the High Court of Delhi considered the need to grant admission based on the increased marks after revaluation. The results of class XII were declared in which the respondent secured 95.5%. On revaluation of English paper, his percentage increased to 97.5%. The appellant refused to give admission in B. Com (H) because of delay by CBSE in releasing the result of re-evaluation of petitioner's answer book of English paper. Single judge directed appellant college and the respondent no. 2 university to give admission to the respondent no.1/writ petitioner in the undergraduate course of B.Com (H) in the appellant college in the academic year 2014-15. The court found that re-evaluation cannot be an exercise in futility. It also found as misplaced the appellant's contention that direction of single judge if allowed to stand would make the admission process an endless exercise delaying the commencement of the academic session. For academic year 2014-15, last date for admission stipulated by the university *i.e.,* of 29.07.14 had elapsed. What the single judge has held is that till the said date, admission on the basis of re-evaluated marks cannot be denied. Possibility of others approaching for admission on the re-evaluated marks did not arise. As far as the future academic years are concerned, single judge has already directed a mechanism to be devised therefor. Vice chancellor of the respondent no. 2 university and the chairman of the respondent no.3 CBSE in their wisdom would be able to take care of the issue. Undertaking given by the respondent no.2 University in *Jainidh Kaur* case to admit all students even if they only produce their marks after re-evaluation till the last cut-off date irrespective of availability of seat stipulate that the students will be admitted irrespective of availability of seat arises only to take care of situation where the colleges had already closed their admissions and the student with re-evaluated marks approaching thereafter though within the cut-off date fixed by the respondent no.2 university. Respondent no.1/writ petitioner had approached the appellant college and the respondent no.2 university much prior to 29.07.14. Appellant was directed to give admission to respondent and the appeal was dismissed. The court relied on the decisions in *Deepa* v. *Maharishi Dayanand University*.[18]

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17 2014 (8) AD (Delhi) 221.

18 (2003) 133 PLR 555; *Apurav Chandel* v. *State of H.P.* AIR 2010 HP 1; *Rajendrakumar Chandrakant Nadkarni* v. *University of Bombay,* AIR 1991 Bom126; *Yudhvir Singh* v. *Dr. Babasaheb Ambedkar Marathwada University,* 1998 (2) MhLj 721; *Ku. Sadhana* v. *Vikram University, Ujjain*, AIR 1986 MP 181; *Anjay Bansal* v. *Bangalore University*,

Eligibility under old programme despite mid-term change in admission policy

Would a candidate be eligible for admission under the old programme despite the mid-term change in admission policy? This came for consideration in *Siddarth Singh* v. *Vice Chancellor, Delhi University* [19] before a division bench of the Delhi High Court. Petition was filed seeking mandamus directing respondents to grant admission to appellant in B.Com. (Hons) programme/course under sports quota. The petitioner was refused admission for the reason that he did not have mathematics in class XII. Schedule of admission as contained in admission brochure was replaced by another schedule whereby First Year Undergraduate Programme (FYUP) programme under which appellant had applied and as per which programme appellant, for admission in B.Com. (Hons) course was not required to have Mathematics, was rolled back. The court found that when appellant/writ petitioner under FYUP could have studied B.Com. (Hons) without having studied Mathematics in higher secondary, there was no reason why appellant was ineligible merely because respondent university switched over from FYUP to three year programme. Appellant was advised to, by taking special coaching classes or by other extra effort, makeup said deficiency if any. Writ petition was allowed by directing respondent no.4/Maharaja Agrasen College to admit appellant to B.Com. (Hons.) programme in academic session 2014-15.[20]

The court had also considered the aspect, whether the appellant/writ petitioner would be able to cope up with the course without having studied Mathematics in higher secondary and which subject his contemporaries would have studied and whether the same comes in the way of grant of relief to the appellant/writ petitioner. After having given its anxious consideration to the matter, the court came to the conclusion that the same would not come in the way of grant of relief to the appellant/writ petitioner. The court pointed out two reasons. It was not as if study of mathematics in higher secondary was mandatory for admission to B.Com. (Hons.). If it was so, the same would have formed the part of the minimum criteria for admission to the said course/programme laid down by the respondent university. Not only so, several other colleges are not insisting on the same. Secondly, even the respondent no. 4 College, under the FYUP, was not insisting upon the said eligibility criteria. When the appellant/writ petitioner under the FYUP could have studied B.Com. (Hons.) without having studied Mathematics in higher secondary, there was no reason why the appellant/writ petitioner should be held ineligible merely because the respondent university had switched over from FYUP to the three year programme.

AIR 1990 Kant 225; *Fateh Kumari Sisodia* v. *State of Rajasthan*, AIR 1997 Raj 191; *University of Kerala* v. *Sandhya P. Pai* , AIR 1991 Ker 396.

19 146 (2014) DRJ 193.

20 The court relied on the decisions in *Visveswaraya Technological University* v. *Krishnendu Halder* (2011) 4 SCC 606; *Mamta Bansal* v. *State of Punjab* (2002) ILR 1Punjab and Haryana 558; *Visveswaraya Technological University* v. *Krishnendu Halder* (2011) 4 SCC 606; *Sangeeta Srivastava* v. *U.N. Singh*, AIR 1980 Delhi 27; *Varun Saini* v. *Guru Gobind Singh Indraprastha University,* 2014 (12) SCALE 184; *Asha* v. *Pt. B.D. Sharma University of Health Sciences* (2012) 7 SCC 389.

The central body, the Delhi University, had not laid down the eligibility criteria of having studied the subject of Mathematics in higher secondary for admission to the B.Com. (Hons.) course, though of course it had permitted the colleges to lay down additional criteria; however the additional criteria insisted upon by the respondent no.4 college in the facts and circumstances aforesaid, was found to be arbitrary.

No right to give examination beyond span period

In *Amit Kumar* v. *Delhi University* [21] a division bench of the High Court of Delhi considered the challenge to the prescription of span period or maximum period to give examinations. These cases were concerned with the maximum period, also called the span period, prescribed by the University of Delhi and Jamia Millia Islamia University for completing the various courses/programmes being conducted by the said universities. Petitions were filed against the order of university by which university refused to conduct special exams to pass because there was span period to complete course. The single bench had found that the order of university for completing course in span period was valid. In appeal the division bench also found that the students could not be said to have any right to complete course/ programme, in whatever time they may deem proper. Students having taken admission to university were governed by rules and regulations thereof. Students even otherwise had no right to claim that there should be no span period for completing educational course/programme. Universities were found to be fully empowered to lay down such span period and/or to determine whether any relaxation with respect thereto is to be given or not. In the absence of any span period, students may indefinitely block seats, other facilities and amenities in educational institution. There was generally continuity in syllabus/curriculum in successive semesters/years of educational course and long break may interfere therewith, impacting course. Therefore, court could not interfere in such orders. However, the universities were directed to take a decision for the need of span period and any relaxation in exceptional cases.

IV ADMISSION TO EDUCATIONAL INSTIUTIONS

State quota medical admissions to be adjusted even if in excess

In *State of Madhya Pradesh* v. *Suresh Narayan Vijayvargiya*[22] the Supreme Court considered the excess admissions to medical college beyond sanctioned seats in violation of the interim orders of the court and directed to rectify them. Total sanctioned strength for the academic year 2011-12 was 150 students, but contemnors/respondent/medical college had filled up 245 seats, though the college was authorized to fill up only 43 seats. Respondents filled up 95 seats, which would have gone to the state quota. The court found that due to contemnors' illegal and unlawful acts by admitting students over and above sanctioned strength, the students who were later admitted from the list of state quota, could not get the quality medical education, which otherwise they would have got. In addition to

21 2015 (2) ADR 32.

this, they were also driven to unnecessary litigation before the high court creating uncertainty to their future. Therefore, it was ordered that admission of students under state quota for academic year 2011-12 in the medical college was valid and legal and appropriate steps should be taken by the state government and the Medical Council of India to regularize the admission. Excess admissions were directed to be adjusted in the coming session and balance seats be adjusted. The court referred to the decision in *Mridul Dhar (Minor)* v. *Union of India*.[23] Respondent/medical college filled up entire seats in medical college by themselves without sharing seats with state government in violation of interim order passed by the Supreme Court. Respondents took up a stand that, after notifying their institution as a university under the Private University Act, 2007, the Madhya Pradesh (Admission and Fee Regulatory Committee) Act, 2007 ceased to apply, hence, they were not bound by the orders passed by the Supreme Court. This stand taken by the contemnors was also found to be not correct, since section 7(m) of the Private University Act, 2007 provides that admission shall not be started till the concerned statutes and ordinances are approved as per section 35 of the Act, which states that the statutes and ordinances shall come into force only upon publication in the official gazette. The court has further held that the respondents cannot take refuge under a notification issued under a statute to defeat the interim orders passed by the court which are binding on the parties, unless varied or modified by the court. The court also referred to the decisions in *TMA Pai Foundation* v. *State of Karnataka* [24]

Quantum of interview marks different for admission and employment

The scope of allocating quantum of different marks in interview and written test for the purpose of admission in an educational institution as different from that of selection for employment was under consideration by the apex court in *Bishnu Biswas* v. *Union of India.*[25] The court has held that appropriate allocation of marks for interview, where selection is to be made by written test as well as by interview, would depend upon the nature of post and no straight-jacket formula can be laid down. The court also expressed the view that there would be a distinction between cases of employment and of admission for an academic course with regard to the quantum of marks to be allocated for the interview. For purpose of admission in an education institution, allocation of interview marks would not be very high but for purpose of employment, allocation of marks for interview would depend upon the nature of post.[26]

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22 (2014) 11 SCC 694.

23 (2005) 2 SCC 65.

24 (2002) 8 SCC 481; *T.R. Dhananjaya* v. *J. Vasudevan* (1995) 5 SCC 619 & *Mohd. Aslam alias Bhure, Acchan Rizvi* v. *Union of India* (1994) 6 SCC 442.

25 (2014) 5 SCC 774.

26 See generally, *Ashok Kumar Yadav* v. *State of Haryana*, AIR 1987 SC 454, *Munindra Kumar* v. *Rajiv Govil*, AIR 1991 SC 1607; *Mohinder Sain Garg* v. *State of Punjab* (1991) 1 SCC 662; *Kiran Gupta* v. *State of U.P.*, AIR 2000 SC 3299; *Satpal* v. *State*

Rounding off marks impermissible in absence of such a guideline

In *West Bengal Joint Entrance Examination Board* v. *Sarit Chakraborty* [27] the Supreme Court has held that in the matter of admissions applying the principle of rounding off marks from 44.6% to 45% was impermissible in the absence of such a guideline either in the brochure issued by the examination board or in (AICTE) Regulations. Respondent no. 1, a general category candidate had secured 44.6% marks in aggregate in Physics, Mathematics and Chemistry in the joint entrance examination conducted by the state examination board for the purpose of admission in the engineering colleges. In order to qualify in the written examination a candidate had to obtain not less than 45% in the aggregate in all three papers. As the board did not permit respondent no. 1 to participate in the counselling, respondent no. 1 filed writ petition. The high court held that the principle of rounding-off should be applied to all candidates who may have received 44.5% marks or above but below 45% marks in aggregate as 45% marks in aggregate being the minimum required. The Supreme Court found that there was no guideline for permitting the principle of rounding-off of marks and hence the high court was not justified in ignoring the guidelines and directing the board to round off the marks from 44.6% to 45%.

No relief if illegal admission process not challenged promptly

The Supreme Court considered the question of the possible reliefs which could be granted in the cases of illegality in admissions to professional colleges and the principles to be followed in granting such reliefs in *Chandigarh Administration* v. *Jasmine Kaur.*[28] The court relied on its earlier decisions in *Neelu Arora (Ms)* v. *Union of India*.[29] Respondent, being a Canadian citizen, was an NRI and sought admission to M.B.B.S. course in NRI category quota. As the definition of NRI as specified in the prospectus issued by appellants/Chandigarh administration and government medical college, denuded her of such status, the respondent preferred a writ petition to strike down the stipulation in the prospectus providing for eligibility and merit for NRI seats for M.B.B.S. course. Division bench of the high court had in the impugned order that once definition clause of nonresident Indian (NRI) was found to be invalid by the single judge, respondent ought to have been granted admission into M.B.B.S. course and directed for creation of an additional seat. The court found that compliance of direction of division bench would certainly cause serious prejudice to the appellant/Jessica Rehsi who

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of Haryana, 1995 Supp (1) SCC 206; *Ajay Hasia* v. *Khalid Mujib Sehravardi*, AIR 1981 SC 487; *Mehmood Alam Tariq* v. *State of Rajasthan*, AIR 1988 SC 1451; *State* of *U.P*. v. *Rafiquddin* , AIR 1988 SC 162; *Anzar Ahmad* v. *State of Bihar,* AIR 1994 SC 141; *Jasvinder Singh* v. *State of J&K* (2003) 2 SCC 132.

27 2015 (2) SCALE 162.

28 (2014) 10 SCC 521.

29 (2003) 3 SCC 366.See also, *Aneesh D. Lawande* v. *State of Goa* (2014) 1 SCC 554; *Faiza Choudhary* v. *State of Jammu and Kashmir* (2012) 10 SCC 149.

had been ranked in sixth place, *i.e.,* in sixth vacancy meant for NRI category candidates for admission for academic year 2014-15. Failure to challenge relevant provision immediately after issuance of prospectus in April, 2013 would loom large before court. Respondent did not display due diligence in making a challenge to relevant clause relating to first category of NRI quota of 2013-14 prospectus. Further, as she had already secured a seat in dental course and creation of an additional seat was consistently not encouraged by the Supreme Court, direction for creation of an additional seat in month of January,2014 for academic year 2014-15 by the division bench could not be implemented. The apex court found that if the direction of the division bench was allowed to operate, it would amount to paying a premium for respondent's inexplicable delay in working out her remedies. Appeals filed by Chandigarh Administration and government medical college as well as by Jessica Rehsi were allowed.

However, the Supreme Court has laid the following principles to be applied in similar cases in the future:[30]

> (1) The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the courts or the Board and midstream admission should not be permitted.
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> (2) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.
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> (3) If a candidate is not selected during a particular academic year due to the fault of the Institutions/Authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.
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> (4) When a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission.

30 *Supra* note 28 at 539.

(5) If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non-selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

(6) If it is found that the candidate acquiesces or waives his/her right to claim relief before the Court promptly, then in such cases, the legal maxim vigilantibus non dormientibus aequitas subvenit, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

(7) No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

(8) There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply next academic year.

(9) There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

(10) Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical.

Shifting the branch of choice in admission to post graduate medical course

In *Bonnie Anna George* v. *Medical Council of India* [31] the Supreme Court found that the non-grant of permission for shifting the branch of choice in admission to post graduate medical course despite availability of vacant seat illegal. The court ordered compensation to be paid by the college to the candidate but refused to order admission since no midterm admission could be allowed in view of the strict compliance with the schedule of admission process by Medical Council of India.

Petitioner had secured thirteenth rank in category 'A' and joined medical college/second respondent in post graduate course (PG) *i.e.,* M.D. Pathology. On availability of two vacancies under NRI quota, the petitioner paid necessary fee for participating in the third counseling. In category 'A' upto 12th rank holders

31 (2014) 10 SCC 767.

seats had already been allotted based on their options exercised in second counseling for M.D. general medicine and she was next in order of merit; however she was denied her choice. She preferred a writ petition for directing respondents to permit her to shift her PG. course from M.D. Pathology to M.D. General medicine in available vacant seat under NRI quota within the college. As per rules, any NRI seat which fell vacant could be offered only to NRI candidate in first instance and only thereafter it could be shifted to category 'A'. There was no justification at all in the said stand while depriving Petitioner of her right to opt for that seat which was vacated by NRI candidate. The court found that it was a deplorable conduct of second respondent in having dealt with the right of the petitioner in such a casual manner by which she was disabled from making a choice to a course for which she was very passionately waiting and a course which was very much available for her option during the third counseling. The court also found that it could not also be said to be an innocuous move in the context of the rule relating to refund of the fees. For an NRI seat the prescribed fee was US$ 1,25,000 which was equivalent to approximately Rs.75 lakhs as against annual fee of Rs.3,98,000/- for 'A' category candidates. As per refund rules, when somebody vacates the seat on last date of admission, he/she is entitled for refund of full fee except administrative fee and any other expenses incurred by institution towards candidate. However, such refund of full fee need not be made if seat vacated by candidate could not be filled up by institution. Therefore, when NRI seat of M.D. general medicine was vacated and if seat was filled up by a candidate of 'A' category then second respondent would be bound to refund entire fee paid by NRI candidate except administrative expenses and other expenses towards candidate. Since, second respondent was ultimately successful in not filling up seat and thereby applying refund rules, concerned NRI candidate need not be refunded with full fee on ground that seat vacated by him could not be filled by second respondent. In this context the court found that there was much to be doubted as regards conduct of second respondent in depriving the petitioner to exercise her right for opting for the available NRI category seat, while in law, she had every right to seek for such an option. Though the court came to the conclusion that depriving the petitioner of the opportunity to opt for available NRI seat in M.D. general medicine during third counseling was wholly unjustified, it refused to grant the reliefs as prayed by the petitioner on the ground that the schedule fixed by Medical Council of India and the Supreme Court was being scrupulously followed and there was no extraordinary situation to violate the said schedule and no mid stream admission should be allowed. Instead the court directed the second respondent to pay a compensation of Rs.5,00,000/- apart from refunding sum of Rs.13,000/- which the petitioner had to pay for her readmission to very same PG course of M.D. Pathology.

Fundamental duty to achieve excellence in formal education

In *Varun Saini* v. *Guru Gobind Singh Indraprastha University* [32] the Supreme Court considered the fundamental duty to achieve excellence as contemplated

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32 2014 (12) SCALE 184.

under article 51A of the Constitution in the context of formal education. Time schedule for admission was extended as a special case. The court found that education is the spine of any civilised society. Formal education has its own significance, for it depends upon systemic imparting of learning regard being had to the syllabus prescribed for the course and further allowing space for cultivation by individual endeavour. The sacrosanctity of formal education gains more importance in the field of technical studies because theory, practical training and application in the field cumulatively operate to make a student an asset to the country and, in a way, enables him to achieve excellence as contemplated under article 51A of the Constitution.

These observations came in a batch of writ petitions for extension of time schedule which would logically give rise to conducting of another round of counseling. It was contended in the writ petitions that more than six thousand seats were vacant and there were thousands of students who had qualified in the CET and there was no justification not to fill up those seats. As the fact situation depicted larger public interest and to ultimately subserve the cause of justice, time for on-line counselling was extended by the court till October 24, 2014. It was clarified that time schedule originally fixed in Parshvanath Charitable Trust case has to be treated as the schedule for all coming years. Any modification that has been done, have been passed for academic session 2014-15 in special features of case.[33]

The court commanded the university to hold counseling in such a manner within the stipulated time in the schedule so that all the seats are filled up if there are eligible candidates for such counselling. The University cannot behave like an alien to the national interest. The court took note of another aspect that a blame game had been going on by the educational institutions on the one hand and the AICTE and the university on the other, and on certain occasions between the AICTE and the University. The court observed that such kind of cavil and narrowness was likely to create a concavity in the educational culture of the country. Therefore, the court asked all concerned to remember that education charters the way where a civilized man slaughters his prejudices. Any education properly imparted is a constant allurement to learn. It is inconceivable that the authorities who are in charge of controlling the sphere of education to behave like errant knights justifying their own fanciful deeds. Law expects a rational perception, logical approach and a studied and well-deliberated decision from all the authorities. The court directed that a concerted effort has to be made by the AICTE and the university to avoid recurrence of this kind of piquant and agonising situations.

Migration of a student from one medical college to another

In *Lipika Gupta* v. *Union of India* [34] the Supreme Court considered the question of migration of a student from one medical college to another under Graduate

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33 See *Parshvanath Charitable Trust* v. *All India Council for Technical Education* (2013) 3 SCC 385; *Association of Management of Private Colleges* v. *All India Council for Technical Education* (2013) 8 SCC 271.

34 2014 (12) SCALE 533.

Medical Education Regulations, 1997. There were vacancies available in the transferee college. Applicant, who was studying at Basaveshwara Medical College (BMC), Chitradurga, applied for 'No Objection Certificate' (NoC) for being considered for transfer to Bangalore Medical Council & Research Institute. BMC granted NoC but it was not considered by Bangalore Institute because of a letter of clarification issued by Directorate of Medical Education, State of Karnataka on the basis of Government Notifications. The court found that the Director of Medical Education, Karnataka, misconstrued clause 6 of the regulations, that conveys imposition of certain conditions, namely, there should be vacancy in college where migration is sought and migration has to be restricted to 5% of sanctioned intake of college during the year and no migration will be permitted on any ground from one medical college to another located within same city. Disqualification in clause 6 does not apply to applicant. In view of actual intake capacity being 250, 13 vacancies were available for migration. Thus, applicant was entitled to apply for migration to Bangalore Institute, and, accordingly, applicant and other students were permitted to apply within the specified time.

V RESERVATION IN ADMISSION

Article 15(5) introducing reservation for admission in private institutions valid

The validity of the Constitution (93rd Amendment) Act, 2005 was under challenge before the Supreme Court. This amendment inserted clause (5) in article 15 of the Constitution to provide that nothing in article 19(1)(g) of the Constitution shall prevent the state from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state. This amendment was occasioned by the earlier judgments of the Supreme Court. The court had held in *T.M.A. Pai Foundation* case and *P.A. Inamdar* case that the state can under clause (6) of article 19 make regulatory provisions to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of the management. However, the court had also held in the aforesaid two judgments that nominating students for admissions would be an unacceptable restriction in clause (6) of article 19 of the Constitution. Thereafter the Parliament stepped in and in exercise of its amending power under article 368 of the Constitution inserted clause (5) in article 15 to enable the state to make a law making special provisions for admission of socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes for their advancement. The challenge to the validity of this amendment was rejected by a five judge bench of the Supreme Court in *Pramati Educational & Cultural* case.[35] The court held that this amendment has not altered in any way the basic structure of the Constitution of India.

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35 *Supra* note 3.

Article 14 to apply to state quota seats in private PG medical colleges

In *Vishal Goyal* v. *State of Karnataka*[36] the Supreme Court considered the permissibility of reservation for institutional preference in admission to post graduate medical courses. The petitioners had challenged the validity of sub-clause (a) of clause 2.1 of two information bulletins for post graduate medical and dental courses for PGET-2014, and prayed for appropriate directions to respondents to permit petitioners to participate in admission process of MD/MS/MDS and other post graduate medical and dental courses in the State of Karnataka. By virtue of sub- clause (a) of clause 2.1 of the two information bulletins, petitioners were debarred from appearing in entrance tests for admissions to post graduate courses, in State of Karnataka even though they had studied MBBS/BDS in the institutions in the State of Karnataka. The court allowed the writ petitions and declared that sub-clause (a) of clause 2.1 of two information bulletins for post graduate medical and dental courses for PGET-2014 are *ultra-vires* to article 14 of the Constitution and null and void. Respondent State of Karnataka was directed to publish fresh information bulletins and do admissions to post graduate medical and dental courses on the basis of the results of entrance test already held.[37]

The court found that in sub-clause (a) of clause 2.1 of the two information bulletins, the expression 'A candidate of Karnataka Origin' who only was eligible to appear for entrance test had been so defined as to exclude a candidate who had studied MBBS or BDS in an institution in the State of Karnataka but who did not satisfy the other requirements of sub-clause (a) of clause 2.1 of the information bulletin for PGET-2014. Thus, the institutional preference sought to be given by sub-clause (a) of clause 2.1 of the information bulletin for PGET-2014 was clearly contrary to the judgment of the Supreme Court in *Pradeep Jain's* case.

Sub-clause (a) of clause 2.1 of the two Information Bulletins does not actually give institutional preference to students who have passed MBBS or BDS from colleges or universities in the State of Karnataka, but makes some of them ineligible to take the entrance test for admission to post graduate medical or dental courses in the State of Karnataka to which the information bulletins apply.

The Supreme Court had in *Pradeep Jain* case said that the scheme of institutional preference could not apply to private medical and dental colleges or institutions unless they were instrumentalities or agencies of the state or opt to join the scheme. The reason for this was that private medical and dental colleges or institutions not being state or its instrumentalities or its agencies were not subject to the equality clauses in article 14 of the Constitution. The court has now clarified that the moment some seats in the private medical and dental colleges or institutions come to the state quota, which have to be filled up by the state or its instrumentality or its agency which are subject to the equality clauses in article 14 of the

36 (2014) 11 SCC 456.

37 See *Dr. Pradeep Jain* v. *Union of India* (1984) 3 SCC 654; *Magan Mehrotra* v. *Union of India* (2003) 11 SCC 186 ; *Saurabh Chaudri* v. *Union of India* (2003) 11 SCC 146; *Dr. Dinesh Kumar* v. *Motilal Nehru Medical College, Allahabad* (1986) 3 SCC 727; *Nikhil Himthani* v. *State of Uttarakhand* (2013) 10 SCC 237.

Constitution, the principles laid down by the Supreme Court in *Pradeep Jain's* case will have to be followed while granting admissions to the seats allotted to the state quota in post graduate medical and dental courses even in private colleges.

Carry forward of reserved seats in admission to subsequent years not permissible

In *Pankaj Kumar Tiwari* v. *Vice Chancellor, University of Delhi* [38] a division bench of the Delhi High Court has reiterated the principle that carry-forward of reserve seats of previous years candidates in admission was impermissible. A writ petition was filed impugning denial by respondents/University to three appellants admission to LL.B course in academic year 2013-14. Appellants sought interim relief of directing respondents to reserve three seats in LL.B course commencing in academic year 2014-15, to enable appellants to be admitted thereto, if they succeeded in their petition, without undergoing admission test for year 2014-15, placing reliance on *Parmender Kumar* v. *State of Haryana.*[39] They filed the appeal on rejection of the interim relief. The court found that the issue cannot be said to have been 'decided' in *Parmender Kumar* case. In *Faiza Choudhary* v. *State of Jammu & Kashmir*[40] also Supreme Court unequivocally held that carry-forward principle is inapplicable and vacant reserved seats for previous years cannot be filled up by a candidate of previous year's merit list/waiting list. The court relied on the decisions of the Supreme Court in *Faiza Choudhary* case.[41]

VI DEGREE AND QUALIFICATION

Requirement of recognition of a degree by MCI cannot be implied

In *Purshotam Kumar Kaundal* v. *State of Himachal Pradesh*[42] the Supreme Court considered whether the eligibility criteria for promotion should be a degree recognised by the Medical Council of India (MCI) though the said requirement of recognition by the MCI was not mentioned in the service rules. Respondent no. 5 obtained a post graduation degree in Pharmacology from Maharishi Dayanand University, Rohtak in 1991. His application for consideration for promotion to the post of assistant professor was not considered on the ground that he did not possess an M.D. degree in Pharmacology duly recognized by MCI. The high court found respondent no. 5 eligible for being considered for promotion on the basis that eligibility criteria only required a recognized post graduation degree and not required a post graduation degree recognized by the MCI. This was challenged before the Supreme Court. The court found that there was no fault with view taken by high court. Service rules mainly concern themselves with a recognized post graduation degree. There is nothing to suggest that recognition of the post

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38 2014 (5) AD (Delhi) 473.

39 (2012) 1 SCC 177.

40 (2012) 10 SCC 149.

41 *Dr. Mundhe Kailas Maharudra* v. *AIIMS, New Delhi* 2010 (119) DRJ 611; *Rajat Goel* v. *Ministry of Human Resource and Development (Govt of India),* SLP(C) No.9544/2012.

42 AIR 2014 SC 1479; (2014) 2 SCR 470.

graduation degree must be by the MCI. On the contrary, wherever recognition by the MCI is postulated, there is a specific reference to it in the service rules. Except the post graduation degrees specified in service rules, it merely requires a recognized post graduate degree for meeting the eligibility criteria. While dismissing the appeal, the court directed that in view of the fact that respondent no. 5 was wrongly not considered for promotion to the post of assistant professor in pharmacology, he deserved to be now considered and if found suitable, entitled to all consequential benefits.

VII EDUCATIONAL INSTITUTIONS

State to prohibit commercialization of education

The state's competence to prohibit commercialization of education was under consideration before the Supreme Court in *Institute of Law* v. *Neeraj Sharma*.[43] The court opined that the discretionary power conferred upon public authorities to carry out necessary regulations for allotting land for purpose of constructing a public educational institution should not be misused.[44] The court found that the fundamental right to establish and run an educational institution is subject to reasonable restrictions under article 19(6) of the Constitution. Therefore, state is within its competence to prohibit 'commercialization of education'. It also relied on the decision in *Modern School* v. *Union of India.*[45]

The appellant/institute of law was allotted land at rate of Rs.900/- per sq. yard by administration of Union Territory of Chandigarh (UTC), for 99 years on lease hold basis with condition that initial lease period will be 33 years and renewable for two like periods only if lessee continues to fulfil all conditions of allotment. Rate was fixed by Chandigarh Administration by notification under Punjab Development Regulation Act, 1952 fixing land rates for allotment to educational institutions in UTC. Respondent no.1 challenged the legality and validity of allotment of land. High court by impugned order, cancelled the allotment of land and directed UTC to take necessary corrective steps in the matter in consonance with constitutional philosophy of article 14 and further directed UTC to take policy decision for allotment of educational institutional sites in favour of eligible persons so as to ensure that allotments were made objectively and in a transparent manner. Challenging the orders of the high court the appellant/institute filed appeal in the Supreme Court. The court found that the high court had rightly held that the policy followed by Chandigarh Administration where allotment of land was done in favour of appellant-Institute without giving any public notice and in absence of a transparent policy based upon objective criteria and without even examining fact that UTC was already under extreme pressure of over population and even in case of allotment of school sites by making no attempt to enforce clause 18 of Chandigarh Scheme, 1996, thereby confining the said provision

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43 (2015) 1 SCC 720.

44 See *Union of India* v. *Jain Sabha, New Delhi* (1997) 1 SCC 164; *Akhil Bhartiya Upbhokta Congress* v. *State of M.P* (2011) 5 SCC 29.

45 (2004) 5 SCC 583.

merely to statute book, is arbitrary, unreasonable and unjust and is opposed to provisions of article 14. The court dismissed the appeal. Court disregarded the plea of charitable intention or philanthropic goal behind the establishment of the appellant educational institution as the establishment of the same does not serve any public interest and court cannot allow the allottee to make money or profiteer with the aid of the public property.

The screening committee acted in a manner which is contrary to the principles laid down by this court in the judgments cited above in allotting the land in question in favour of the first appellant. High court has rightly held that the policy followed by the Chandigarh Administration where the allotment of land was done in favour of the appellant-institute without giving any public notice and in the absence of a transparent policy based upon objective criteria and without even examining the fact that the UTC is already under extreme pressure of over population and even in the case of allotment of school sites by making no attempt to enforce clause 18 of the Scheme, 1996, thereby confining the said provision merely to the statute book, is arbitrary, unreasonable and unjust and is opposed to the provisions of article 14 of the Constitution of India.

Private benefit at the cost of public in the name of land-allotment for education not permissible and contrary to constitutional values

In *Raunaq Education Foundation* v. *State of Haryana*[46] the Supreme Court found that resumption of land on failure to utilize it as per specified terms was proper. State of Haryana acquired more than 76 acres of land belonging to gram panchayat, for the petitioner to start an educational complex for the benefit of residents. After due enquiry, resumption order was passed and land re-vested in gram panchayat, holding that petitioner failed to utilize the land for the purpose for which it was given, except a part of it. The order of government was affirmed by the high court. The court found that the track record of petitioner was to take private benefit from land of village, taken over by state at petitioner's instance to advance education a public cause. Once it is found that beneficiary of such allotment has abused its position to its advantage and to the disadvantage of public, court cannot interfere with fair order passed by a competent authority resuming the land. Court relied on the decision in *B.L. Wadhera* v. *Union of India*.[47]

The division bench of the high court considered the contention that construction was raised during pendency of proceedings. It was found that interim order dated May 24, 2001 permitting construction was subject to result of the writ petition. Moreover, even thereafter no proper utilization of land was shown to have been made, though the brochure of school painted a rosy picture. Thus, the track record of the petitioner was to take private benefit from the land of the village, taken over by the state at petitioner's instance to advance education - a public cause. Such individual and private benefit at the cost of public cannot be permitted and is contrary to constitutional values to be followed by the state of advancing welfare of the society. A finding of fact has been recorded by the

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46 (2015) 1 SCC 767.

47 (2002) 9 SCC 108.

competent authority about the failure of the petitioner to carry out the terms and conditions of allotment which finding has been duly upheld, concurrently by the single judge and the division bench. Supreme Court found that public interest will not in any manner be advanced by interference by it on a mere offer to serve poor children when track record of the petitioner had been to advance individual interest at the cost of the village.

Religious educational institution is charitable under Income Tax Act

In *Commissioner of Income Tax* v. *Dawoodi Bohara Jamat*[48] the Supreme Court considered whether establishment of Madarsa or institutions to impart religious education to masses would qualify as a charitable purpose qualifying under the head of education under the provisions of section 2(15) of the Income Tax Act, 1961 Act. It held that it is entitled to qualify as a charitable one.[49]

Revision of Fee structure with reasonable profit in private schools

In *D.A.V. College Managing Committee* v. *Laxminarayan Mishra*[50] the question involved was of the permissibility of revising the fee structure in the private schools taking into account reasonable profit. Fee structure revised by DAV Public Schools was not approved by the state government. The high court also held against appellant that revision of fee structure could not be justified by appellant that it is commensurate with the facilities provided to students. Against it the appeal was preferred before the Supreme Court. The Supreme Court allowed the appeal and held that it was re-assured by fee committee's report that appellant and institutions represented by it had been allowed only reasonable profit to which they were entitled under law. Hence the court directed that appellant and concerned educational institutions represented by it shall be entitled to revise their fee structure with immediate effect as per recommendations of fee structure committee. The court also cautioned the concerned authorities that if a private educational institution met all the requirements of obtaining NoC and affiliation *etc*. then its claim for revision of fees should be considered expeditiously on permissible parameters. It referred to the decision in *T.M.A. Pai Foundation* case. The court also clarified that the objections, if any, should be entertained only from the parents' representatives and not from individual parents. An individual may at times be reckless and may harm the educational prospects of all the students of the school. If a claim for revision of fees is stalled for long due to meritless objections, it can affect academic standards on account of disgruntled staff and teachers who may even quit the institution for want of appropriate salary and perks. Such state of affairs with regard to the concerned schools has been highlighted on behalf of the appellant. The selected parents' representatives, on the other hand, are expected to be more responsible as a body.

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48 2014 (4) SCALE 16.

49 *Barralet* v. *IR*, 54 TC 446.

50 2014 (7) JT 626; 2014 (5) SCALE 108.

Imposition of mother tongue affects the fundamental rights under articles 19, 29 and 30 of the Constitution

In *State of Karnataka* v. *Associated Management of (Government Recognised Unaided English Medium) Primary & Secondary Schools*[51] a five judge bench of the Supreme Court has ruled that prescribing medium of instruction in schools to be mother tongue in the primary school stage in classes I to IV has no direct bearing and impact on determination of standards of education, and hence will affect the fundamental rights under articles 19(1) (a) and 19(1) (g) of the Constitution. The court found that prescription of mother tongue cannot be considered as a mere regulatory measure by state. The court has held that the earlier decision of Supreme Court in *English Medium Students Parents Association* v. *State of Karnataka*[52] is not an authority for the proposition that prescription of mother tongue in classes I to IV in primary school can be compelled by the State as a regulatory measure for maintaining the standards of education. The court referred to its decision in *Gujarat University* v. *Shri Krishna Ranganath Mudholkar*[53]

Though the experts may be uniform in their opinion that children studying in classes I to IV in the primary school can learn better if they are taught in their mother tongue, the state cannot stipulate as a condition for recognition that the medium of instruction for children studying in classes I to IV in minority schools protected under articles 29(1) and 30(1) of the Constitution and in private unaided schools enjoying the right to carry on any occupation under article 19(1) (g) of the Constitution would be the mother tongue of the children. The court held that the imposition of mother tongue affects the fundamental rights under articles 19, 29 and 30 of the Constitution.

The court has further held that a private unaided school which is not a minority school and which does not enjoy protection of articles 29(1) and 30(1) of the Constitution can choose a medium of instruction for imparting education to the children in the school. However, all educational institutions can be subject to regulations by the state for *inter alia* maintenance of proper academic standards.[54]

The court has also held that freedom of speech and expression will include the right of a child to be educated in the medium of instruction of his choice and the only permissible limits of this right will be those covered under clause (2) of article 19 of Constitution and court cannot exclude such right of a child from the right to freedom of speech and expression only for the reason that the state will have no power to impose reasonable restrictions on this right of the child for purposes other than those mentioned in article 19(2) of the Constitution.

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51 (2014) 9 SCC 485.

52 (1994) 1 SCC 550.

53 AIR 1963 SC 703.

54 See *D.A.V. College* v. *State of Punjab* (1971) 2 SCC 269, *In Re The Kerala Education Bill* 1957 (1959) 1 SCR 995; *T.M.A. Pai Foundation* v. *State of Karnataka* (2002) 8 SCC 481.

Grant-in-aid a constitutional obligation in view of right to education

In *State of Uttar Pradesh* v. *Pawan Kumar Divedi* [55] the Supreme Court through a five judge bench considered whether there is an obligation on the state to provide aid to privately managed primary schools and primary sections of privately managed high schools. In view of differing opinions of two three judge benches the five judge bench had to consider the issue as to whether teachers of privately managed primary schools and primary sections of privately managed high schools were eligible to receive their salaries from state government. The court found that if a junior basic school (classes I to V) is added after obtaining necessary recognition to a recognized and aided senior basic school (classes VI to VIII), then surely such junior basic school becomes integral part of one school, *i.e.,* basic school having classes I to VIII. Accordingly the view taken by three-judge bench in *Vinod Sharma* v. *Director of Education (Basic) U.P.*[56] was affirmed and the appeals of state government were dismissed. The opinion of the two judge bench in *State of Uttar Pradesh* v. *Pawan Kumar Divedi* [57] differing from the *Vinod Sharma* case decision was rejected.

Constitutional obligation of the state to provide for free and compulsory education of children till they complete the age of 14 years is beyond doubt now. The note appended to clause (xxvi), para 1 of the Educational Code (revised edition, 1958), *inter alia*, provides that basic schools include single schools with classes I to VIII. If a junior basic school (classes I to V) is added after obtaining necessary recognition to a recognized and aided senior basic school (classes VI to VIII), then surely such junior basic school becomes integral part of one school, *i.e.,* basic school having classes I to VIII. The expression 'junior high school' in the 1978 Act is intended to refer to the schools imparting basic education, *i.e.,* education up to VIII class. One does not find it is appropriate to give narrow meaning to the expression 'junior high school' as contended by the senior counsel for the state. That legislature used the expression junior high school and not the basic school as used and defined in the 1972 Act, is insignificant. The view, which is taken, is fortified by the fact that in section 2(j) of the 1978 Act, the expressions defined in the 1972 Act are incorporated.

The view taken by the high court in the first round that classes I to VIII taught in the institution are one unit, the teachers work under one management and one head master and, therefore, teachers of the primary classes cannot be deprived of the benefit of the 1978 Act, cannot be said to be a wrong view. Rather, it is in accord and conformity with the Constitutional scheme relating to free education to the children up to 14 years.

Refusal of university to grant affiliation not proper when conditions fulfilled

In *Rungta Engineering College, Bhilai* v. *Chhattisgarh Swami Vivekanand Technical University*[58] Supreme Court found that the refusal by the university to

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55 (2014) 9 SCC 692.

56 (1998) 3 SCC 404.

57 (2006) 7 SCC 745.

58 2014 (11) SCALE 582.

grant affiliation was untenable and improper. Petitioner college made an application to respondent university to grant affiliation which was rejected in a meeting of executive council of the university. The petitioners challenged it on the ground that respondents decided not to grant affiliation on basis of considerations which were factually incorrect and areas which were not within their legal competence to exercise. Respondent resisted on ground that petitioner college did not satisfy various conditions contemplated under AICTE norms. The court found that all objections raised by executive council of university squarely fell within the sweep of one or other areas which only AICTE has exclusive jurisdiction to deal with. None of them fell within the area legally falling within domain of respondents. AICTE, on inspection of fist petitioner college reported that first petitioner college fulfils all conditions prescribed by norms and standards laid down by AICTE. Respondents did not make any specific assertion that such a report of AICTE is factually incorrect. Assuming for sake of argument that, in opinion of respondents, petitioner college has not in fact fulfilled any one of conditions required under norms specified by AICTE, only course of action available for respondents was to bring shortcomings noticed by them to notice of AICTE and seek appropriate action against petitioner college. Therefore, the court found that the decision of respondent not to grant affiliation to first petitioner college was wholly untenable and liable to be set aside.[59]

Requirement of maintaining the standard in medical colleges

In *B.R. Ambedkar Institute of Dental Sciences and Hospital* v. *Union of India*[60] a division bench of the High Court of Delhi considered the question of maintenance of standard in medical colleges. The court held that it was inconceivable that a medical or dental college would not be required to in the subsequent years to maintain the standard which it was required to have for permission to commence the course. The court found that the denial to approve starting of new courses in medical/dental college on the ground of deficiencies as per inspection report was proper. The appellants, a minority college and its chairman, filed petitions impugning two recommendations of respondent no.4/Dental Council of India to Government of India to disapprove application of appellant no.1 for starting Master of Dental Sciences (MDS) course in appellant no.1 Institute in two subjects. Permission was denied for the reason of "deficiency of clinical material for 100 BDS seats and for starting PG course". Respondents subsequently on representation of appellants agreed that clinical material available was sufficient, but still refused

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59 The court relied on the decisions in *State of Tamil N.* v. *Adhiyaman Educational & Research Institute* (1995) 4 SCC 104; *Jaya Gokul Educational Trust* v. *Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram, Kerala State* (2000) 5 SCC 231; *Bhartia Education Society* v. *State of H.P.,* (2011) 4 SCC 527.

60 141 (2014) DRJ 434.

permission for reason of several other deficiencies with respect to staff, journals, equipments, library *etc*.[61]

The court has held that "Any relief as sought if granted to the appellants would result in the appellants admitting students for imparting education in a course for which the appellants' college does not have the appropriate infrastructure and which the appellants are ill equipped to impart and which will be to the detriment of the students so admitted by the appellants and ultimately to the detriment of the society at large which will be serviced by the students qualifying from the institute/ college of the appellants not equipped to impart such training and the qualification acquired by the said students itself would thus be deficient".

Refusal of approval as educational under income tax arbitrary

In *Council for the Indian School Certificate Examinations* v. *Director General of Income Tax* [62] a division bench of the Delhi High Court found that the rejection of approval under section 10(23C)(vi) of Income Tax Act, 1961 on the ground of non-genuine activities as erroneous. By impugned order, Respondent declined to grant approval under section 10(23C) (vi) of the Act, holding that activities of petitioner not genuine as petitioner was functioning for profit purposes in the garb of education. The court found it indisputable that the petitioner conducts examination for class 10th and 12th students with respect to schools that are affiliated with petitioner. Nature of predominant activity, therefore, cannot be questioned. There is no doubt about genuineness of this activity of petitioner, thus conclusion drawn by respondent that activities of petitioner were not genuine merely because a contract entered into by petitioner has been brought into question, is not warranted. It is also not respondent's case that petitioner carries on any activity other than for educational purpose. Thus finding of respondent that activities of the petitioner are not genuine is erroneous.

Contract entered into with the RJB-APL was for furthering the object for which the petitioner was established. Introducing computerization in the functioning of the petitioner, including providing an interface with the schools which are affiliated with the petitioner, as well as the students enrolled with the petitioner, was considered necessary and it cannot be contended that any sum spent towards the modernising and computerization would not be towards the object of the petitioner society. The problem essentially arises on account of the apprehension that the contract awarded to RJB-APL entailed payments in excess of the value received by the petitioner. It is also suggested that RJB-APL had been chosen in a non transparent manner and the concerned persons who were in charge of the affairs of the petitioner society were derelict in not evaluating the work performed by RJB-APL. Clear distinction must be drawn between inefficient utilization of funds and utilization of funds for objects other than that for which a society has

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61 See the decisions of the apex court in *Chairman, All India Railway Recruitment Board* v. *K. Shyam Kumar* (2010) 6 SCC 614; *Manohar Lal Sharma* v. *Medical Council of India* (2013) 10 SCC 60.

62 210 (2014) DLT 686.

been established. Merely, because the funds of the petitioner may not have been utilized in the best possible manner cannot lead to a conclusion that they have not been applied to the object for which the petitioner has been established. It is not essential that all decisions made by the management of a society yield optimum results. A management of a society which is either negligent or has not performed its functions diligently with the requisite skill may be guilty of mismanaging the affairs of the society. But it would be quite another thing to state that the funds have not been deployed wholly and exclusively for its objects. A well managed society may use its funds optimally, while a society that it is not as well managed may deploy its funds inefficiently but the same would not be synonymous with the funds been deployed for purposes other than its objects. There is no other stated object for which the funds of the petitioner society have been deployed. The contract entered into with RJB-APL may not be the best decision from the standpoint of the prescribed authority and perhaps in the opinion of the prescribed authority, the petitioner society may have ended up paying more than the value of services received. But the same cannot be read to mean that the resources of the petitioner have been deployed for purposes other than for its objects. The words "wholly and exclusively to the object for which it has been established" must be read to mean that the income should not be applied for any purpose other than the object for which the institution has been established. Thus, the application of funds must be for carrying on the purpose for which the petitioner has been established and not for any other purpose. In the present case, the assessee entered into the contract with RJB-APL for development, implementation and maintenance of an e-enabled system for managing registration of schools/students, examination of answer sheets, collating of results etc. RJB-APL had, undisputedly, developed and maintained a website of the petitioner, developed software for assisting in the activities carried on by the petitioner. The results of ICSC and ISC for the year 2009 was collated and disseminated by use of the e-enabled services developed and implemented by RJB-APL. The registration of schools/students was carried out, during the relevant period, through the system developed and implemented by RJB-APL. However, in view of the complaints received, the contract with RJB-APL was terminated and the amount payable to it for the work already done was determined and agreed between the assessee and RJB-APL and the balance was refunded by RJB-APL. The amount incurred by the petitioner for modernization and computerization cannot be stated to be for the purposes other than the object as specified in the petitioner's charter. The same cannot be mistaken to be deployed for any other purpose. Thus, any irregularity in the manner in which the contract had been entered into with RJB-APL would not be sufficient for a conclusion that the respondent had not deployed its funds for the purposes of its objects.

Concession with prescribed infrastructure impermissible

In *Meenakshi College of Pharmacy & Research Centre* v. *All India Council for Technical Education* [63] a division bench of the High court of Delhi whether it

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63 211 (2014) DLT 422.

is permissible to allow concession with prescribed infrastructure while granting approval for new technical educational institution under All India Council for Technical Education Act, 1987. The court stressed on the importance of availability of prescribed infrastructure before being eligible to impart education and held that AICTE cannot be expected to grant approvals without being satisfied that prescribed infrastructure and amenities exist. The court also found that the inspection by AICTE of any proposed technical institution under section 10 (k) for grant of approval for starting new technical institution is not governed by inspection provided for in section 11 of the Act.

Petitioner made an application to respondent/AICTE seeking approval for conducting Diploma in Pharmacy with intake of 180 seats. It was rejected by respondent/AICTE after pointing out eight deficiencies in petitioner college. The petitioner challenged it seeking alternate direction commanding AICTE to re-inspect college of petitioner to verify whether deficiencies found by expert committee have been rectified. The court found that the nature of approval to be given by respondent/AICTE is such which depends upon existence of prescribed infrastructure and amenities at site and cannot thus be given without visit to site. Two visits/inspections already conducted are more than enough and merely because petitioner controverts reports of visits, is no ground to repeatedly direct such visits. Procedure prescribed in regulations for dealing with applications for approval of setting up new institutions does not cause any prejudice whatsoever to applicant and is compliant of principles of natural justice. The petition was dismissed with costs.

Though undoubtedly, the regulations do not provide for the result of the inspection under regulation 4.13 to be communicated to the applicant and regulations 4.18 to 4.20 do not provide for grant of an opportunity of hearing to the applicant before rejection of the application for approval on the basis of the said result of inspection, but regulation 5.1 as aforesaid provides for an appeal there against. It is thus not as if the applicant remains/goes unheard. The applicant is indeed granted a hearing, though under the nomenclature of an appeal before the appellate committee of the AICTE and which appeal the petitioner in the present case did indeed prefer.

The procedure followed by the appellate committee in the matter of the appeal preferred by the petitioner is also indicative of the same providing a complete opportunity of hearing. As aforesaid, the rejection of the application of the petitioner for approval was on eight deficiencies as per the report of the inspection under regulation 4.13 and which deficiencies were communicated to the petitioner in the letter of rejection. The petitioner, in the appeal preferred before the appellate committee, placed before the appellate committee its version *qua* the said eight deficiencies and on the basis of the said version/ explanation of the petitioner, the appellate committee placed the matter before its scrutiny committee before whom the petitioner produced documentary proof including in the form of photographs of its infrastructure, to contend that the deficiencies did not indeed exist. The scrutiny committee of the appellate committee being satisfied on the basis of the said documentary proof of the deficiencies indeed not existing, again constituted an expert committee for visit of the college premises of the petitioner. However, the said expert committee during the visit also found the deficiencies and on the

basis whereof the application of the petitioner for approval was rejected. Regulation 5.3 makes the said decision final.

State university does not have extraterritorial jurisdiction

In *Godwiin Samraj D.P.* v. *M. Abdul Salam* [64] a division bench of the High Court of Kerala considered the question whether a university functioning under a state statute can have extraterritorial jurisdiction and have authority to conduct study centre beyond its territorial jurisdiction. The Calicut University was directed to close down all overseas study centres immediately. The court has also held that the directions issued by the University Grants Commission (UGC) are binding on all universities. Public interest litigation was filed seeking, *inter alia*, a direction to Calicut University and its officials to close down their offshore campuses. Petitioners pointed out that offshore centre have been established by the university and its officers in blatant violation of directions issued by the UGC and that there is mismanagement and corruption in sanctioning study centres outside territorial jurisdiction of the university. University contended that these study centres are not affiliated to the University and are purely "private parallel institution, helping and guiding the student community in their effort to become a Graduate/Post graduate". UGC pointed out that university cannot conduct courses outside its territorial jurisdiction. The court has held that a university functioning under a state statute cannot have extra-territorial jurisdiction and hence, Calicut University does not have authority to conduct study centre beyond its territorial jurisdiction. The bench directed Calicut University to close down all its study centres functioning outside its territorial jurisdiction.

Acquisition of land belonging to college does not serve public purpose

In *A.C. Grice* v. *U.P. Avas Evam Vikas Parishad* [65] a division bench of the High Court of Allahabad at Lucknow considered the challenge to the notification acquiring the land of a college, namely, La Martiniere College (for boys). The writ petition was filed against notification whereby land of the college was acquired. The court found that the land of college, hospitals and other like establishment dealing with public subjects like education, medical, technical education, charity work, social service *etc*. should not be acquired except in national interest. Acquisition of land in question belonging to college shall not serve public purpose but deprive students to avail facility of extra curriculum activities like sports etc and shall be against constitutional ethos. The court held that the impugned notification and notices issued by respondents for acquisition of land was not in public interest and that the acquisition seemed to be an instance of abuse of process of law and suffered from vice of arbitrariness and it did not serve public purpose. It appears that the court considered that the land belonged to a minority institution under article 30 of the Constitution and referred to the extent of minority rights as interpreted by the Supreme Court in *TMA Pai* case and *Inamdar* case. However, it

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64 ILR 2015(2) Ker 39.

65 2014 (10) ADJ 159.

is not clear whether the petitioner had relied on article 30 (1A) of the Constitution of India and the interpretation to the same as already given by the Supreme Court.

VIII STAFF AND SERVICE CONDITIONS

Central Government to decide on reservation in super specialty posts

In *Union of India* v. *Faculty Association of AIIMS* [66] the Supreme Court through a five judge bench dealt with the review petitions preferred by the Union of India and others seeking the review of the five judge decision whereby reservation in super specialty faculty posts in Medical education was doubted. Clarifying the bench stated that it is for Central Government to take a decision as to whether there should be a reservation for super specialty posts.

Education of tiny tots not to suffer for want of teachers

In *Bodoland Territorial Council* v. *Hon'ble Gauhati High Court*[67] the Supreme Court reiterated that for want of teachers the education of the tiny tots was seriously prejudiced which should not be allowed to continue. The court directed that the process of recruitment of teachers be implemented. By impugned order, division bench of high court prohibited appellant/council from completing process of selection initiated in the year 2005 in middle and primary schools of its four districts. The court found that education of tiny tots was seriously prejudiced for want of teachers and therefore appellant should be allowed to proceed with implementation of selection process already concluded pursuant to its letters of 2011. Impugned order was set aside and appellant was allowed to seek for approval of SIU of State of Assam, and State of Assam, to process appellant council's claim for such approval expeditiously and pass orders.

Teachers serve purpose of oasis in field of education

In *State of Uttar Pradesh* v. *Shiv Kumar Pathak* [68] the Supreme Court stressed on the importance of filling up the posts of assistant teachers especially in the context of the fundamental right to education under article 21A of Constitution of India and RTE Act and hence issued directions to appoint teachers. Advertisement was issued to fill up vacancies in post of assistant teachers, who have to impart education to students of classes, I to V. On dispute being raised on appointments, appointment letter mentioned that appointment shall be subject to result of these appeals and not claim any equity because of appointment, for it is issued on basis of direction passed by the Supreme Court. The court observed that as per information, three lakhs posts were lying vacant as on that day. The court found that in a situation, where posts would lie vacant, students go untaught and schools look like barren in a desert waiting for an oasis. Teacher shall serve purpose of oasis in the field of education. The court issued directions to competent authority

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66 2014 (13) JT 12; 2014 (13) SCALE 89 (1).

67 2014 (9) SCALE 325.

68 2014 (14) SCALE 194.

to file a compliance report, failing which they should face consequences as law provides and law does not countenance disobedience of law and orders of court.

The court has observed that primary education can be equated to the primary health of a child. When a child is educated, the nation marches towards civilization. No student can inculcate or cultivate education without guidance. Definitely not a child, who is supposed to get primary guidance from a teacher, for him he is like a laser beam. The State, as the guardian of all citizens and also with a further enhanced and accentuated responsibilities for the children, has a sacrosanct obligation to see that the children are educated. Almost two thousand years back, Kautaliya had stated that the parents who do not send their children to have the teachings, deserves to be punished. Similar was the climate in England almost seven centuries back. Thus, the significance of education can be well recognized. The court found that it could not conceive that the posts would lie vacant, students go untaught and the schools look like barren in a desert waiting for an oasis.

Vital role and security of employment of teachers in view of right to education

The importance of enabling the teachers to go about their job, unworried about their career prospects and feeling secure about their employment was under consideration in *Delhi Cantonment Board* v. *Raj Kumari Sachdeva*[69] by a division bench of the Delhi High Court. The Respondents who were qualified to be trained graduate teachers were appointed as assistant teachers in the schools run by the appellant/board and these schools at that time were up to primary level only. The court found that despite performing their teaching duties to the fullest, the appellants had failed to promote or grant the requisite pay scale of TGT to the respondents, who continued to be on the post and draw salaries equivalent of assistant teachers. Board was alive to the applicability of the Act and the rules with respect to qualifications to be held by teachers, norms for determination of the cadre-strength in each school, categorization of teachers and filling-up of posts. Board necessarily had to, after up-gradation took place and sanction of posts were granted in 2005, work-out the necessary seniority and other attendant benefits that such teachers were to be given on the basis of existing norms which prescribed the cadre's representation of TGTs/PGTs in each school. The court also has held that vital role is played by the teachers in the light of the fundamental right to education guaranteed under article 21A of the Constitution of India, and the newly enacted RTE Act. Delay by the executive agencies, including the board with regard to settling the terms of employment of teachers or even delaying the recruitment of teachers cannot but have grave and adverse impact upon the quality of education. The court reiterated that whilst the executive agencies are bound by articles 14 and 16 of the Constitution and do grant pay scales that are prescribed by law or rules, equal importance is to be given to better the conditions of service of such of the teachers who continue to discharge their duties and functions.

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69 2014 (10) AD (Del) 198.

Transfer from one school to another impermissible even if under same society

In *Hamdard Education Society* v. *Abdul Rehman*[70] a division bench of the High Court of Delhi has held that the transfer of an employee to another school established by the same society was impermissible. The respondent, Abdul Rehman was appointed as a lower division clerk in Rabea Girls Public School, established by Hamdard Education Society. An office order was issued directing him to report to director (administration & academics) and join Hamdard Public School (Hostel), another school established by Hamdard Education Society having separate and independent recognition from competent authority under Delhi School Education Act, 1973 and Rules, 1973. He challenged by filing a WP(C) and succeeded. Appeal was filed by Hamdard Education Society as well as by Rabea Girls Public School. The court found that employer-employee relationship in a recognized school is between managing committee of recognized school and employee concerned and the society which established the school is not the employer. Each and every school established by a parent society is an independent juristic entity having its own scheme of management and managing committee. Thus, employees appointed by managing committee of a school are not employees of other schools established by parent society. If a teacher is transferred from one school to another, the seniority list of teachers drawn up in a school would be rendered meaningless. This would be an additional reason to hold that employees of one recognized school cannot be transferred to another recognized school merely because the two schools have been established by the same parent society.

IX MINORITY EDUCATIONAL INSTIUTIONS

Exclusion of minority institutions from quota rule under article 15(5) is also valid.

In *Pramati Educational & Cultural Trust* v. *Union of India*[71] the Supreme Court through a five judge bench decision while upholding the validity of the amendment introducing clause (5) to article 15 of the Constitution of India, rejected the challenge to the exclusion of minority institutions under article 30 from the applicability of that provision. The challenge was on the ground that clause (5) of article 15 of the Constitution was violative of article 14 of the Constitution as it excluded from its purview the minority institutions referred to in clause (1) of article 30 of the Constitution and also that clause (5) of article 15 excludes both unaided minority institutions and aided minority institutions alike and is thus violative of article 14 of the Constitution.

Aided minority schools also cannot be under right to education law of 2009

In *Pramati Educational & Cultural Trust* case[72] the Supreme Court through a five judge bench decision has held that the Right of Children to free and Compulsory Education Act, 2009 insofar as it applies to minority schools, aided or unaided,

70 211 (2014) DLT 364; 2014 (10) AD (Del) 142; 143 (2014) DRJ 585.

71 *Supra* note 2.

72 *Ibid*.

covered under clause (1) of article 30 of the Constitution is *ultra vires* the Constitution. Accordingly, writ petition filed on behalf of Muslim Minority Schools Managers' Association was allowed. The earlier three judge bench decision in *Society for Unaided Private Schools of Rajasthan* v. *Union of India*[73]was partly overruled.

In RTE Act, section 12 (1) (b) read with section 2 (n) (iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of 25 per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school.

The court also found that under section 12(1) (c) read with section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of article 15 of the Constitution, the court had held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In the opinion of the court, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of article 30 of the Constitution is *ultra vires* the Constitution. The five judge bench held that the majority judgment of the Supreme Court in *Society for Unaided Private Schools of Rajasthan* case insofar as it holds that the 2009 Act is applicable to aided minority schools was not correct.

Can a minority institution exercise its right without declaration as such by government?

A two judge bench of the Supreme Court was dealing with this question in *Chandana Das* v. *State of West Bengal.*[74] However the two judges differed in their conclusions and reasoning. The case arose from the appointment of teachers in Khalsa Girls High School, Calcutta. The appellants were appointed as teachers on temporary basis in Khalsa Girls High School, Calcutta. Appointments were not approved by district inspector of schools, according to whom any such appointment could be made only on recommendations of School Service Commission established

73 (2012) 6 SCC 102.

74 2014 (14) JT 118; 2014 (14) SCALE 1.

under Rules, 1969. Appellants approached high court preferring writ petition which were allowed by single judge holding that institution in which appellants were appointed being a linguistic minority institution was entitled to select and appoint its teachers. Division bench dismissed the writ petition holding that since institution in which appellants were appointed was a recognised aided institution, the management of the institution was bound to follow mandate of rule 28 which permitted appointments against a permanent post only if candidate was recommended for any such appointment by school service commission. The high court had further held that appellants having been appointed beyond sanctioned staff strength at relevant point of time and de hors rules could not claim any approval in their favour. The writ petitioners filed appeals in the Supreme Court.

T.S. Thakur J held that once respondent no.4/institution is held to be a minority institution entitled to protection of article 30 of the Constitution and right to appoint teachers of its choice who satisfy conditions of eligibility prescribed for such appointments under relevant rules is implicit in their rights to administer such institutions. Such rights cannot be diluted by the state or its functionaries insisting that appointment should be made only with approval of director or by following the mechanism generally prescribed for institutions that do not enjoy minority status. He has held that the mechanism provided for making appointments under rule 28 has no application to minority educational institutions and allowed the appeals with a direction to respondents to grant approval to appointment of appellants with effect from date vacancies became available for such appointments.

However, R. Banumathi J disagreed and found that respondent-school did not produce any document to show that it has been accorded minority status and in absence of any order by competent authority, respondent- school would be bound by mandate contained in the rules as applicable to non-minority institutions and dismissed the appeals. According to Banumathi J, merely because an educational institution is established by a religious or linguistic minority, it does not automatically become a minority institution for the purposes of claiming right of administration and for getting grant-in-aid. The concerned educational institution so established by the religious or linguistic minority must be recognized or granted the status of minority institution by the competent authorities. The fourth respondent-school was established by the Sikh community in 1932 and adopted its constitution and bye-laws in 1945. That Sikh community being a minority in the State of West Bengal does not necessarily imply that the fourth respondent-school would be minority institution as per law. According to the official respondents, minority status was never granted to the fourth respondent-school and only special constitution of management was granted to the school. Banumathi J held that as the fourth respondent-school was never declared to be a minority institution by the competent authorities, the judgment in *T.M.A. Pai Foundation's* case is not applicable to the fourth respondent-school.

The appeals were allowed in terms of the judgment pronounced by T.S.Thakur J and the appeals were dismissed in terms of the judgment pronounced by Banumathi J. In view of the difference of opinion expressed by the judges, these appeals were directed to be listed before a three-judge bench for resolving the conflict. The papers were directed to be placed before the chief justice of India for

constituting an appropriate bench. It would be interesting to watch which of these two views would find favour with the new three judges bench.

X CONCLUSION

The year under survey may be remembered for the giant strides which the interpretation of the educational rights has taken. Right to education amendment (article 21A) of the Constitution providing for free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine was interpreted in such way that it was saved from the challenge to its validity. Laying down that even the unaided private schools are also obliged to provide free and compulsory quality education to disadvantaged and weaker sections the constitutional validity of the RTE Act was upheld. The validity of the Constitution (93rd Amendment) Act, 2005 which inserted clause (5) in article 15 of the Constitution also withstood the challenge before a five judge bench.[75] This amendment provided for reservation in admissions even in unaided private educational institutions except those of the linguistic and religious minorities.

The RTE Act, was interpreted reading it with PWD Act by a division bench of the Delhi High Court to ensure providing of the free and compulsory education to the children with special needs came.[76] The provisions were interpreted to mean that the state has the flexibility of directing segregation of the 25% quota set apart for persons from disadvantaged groups and weaker sections, to ensure widest representation of all such categories and at the same time, to safeguard against the possibility of only one of those categories securing admission in respect of the entire quota set apart for the purpose. The necessity of a transparent and non-discriminatory admission procedure even for unaided pre-elementary classes was stressed by a division bench of the High Court of Guahati.[77]

The students rights got a little restrictive but realistic interpretation laying down that the time limit to apply for change of name was not unreasonable, that no leniency could be shown to those who resort to unfair means in examinations and that there is no right to give examination beyond span (prescribed maximum) period.

The commercialization of education also came to be considered by the courts. It was emphasized the state has the competence and duty to prohibit commercialization of education and that private benefit at the cost of public in the name of land-allotment for education was contrary to constitutional values and hence not permissible. At the same time the courts permitted revision of fee structure with reasonable profit in private schools.[78]

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75 *Supra* note 2.

76 *Pramod Arora* v. *Hon'ble Lt. Governor of Delhi,* 2014 (10) AD (Delhi) 241.

77 *Children Welfare Association* v. *The State of Assam,* AIR 2015 (NOC) 359 (Gau.)

78 *D.A.V. College Managing Committee* v. *Laxminarayan Mishra*, 2014 (7) JT 626; 2014 (5) SCALE 108.

The importance of enabling the teachers to go about their job, unworried about their career prospects and feeling secure about their employment was reiterated.[79] The right to education was interpreted to benefit the teachers to the effect that the education of tiny tots should not suffer for want of teachers and that the teachers serve the purpose of oasis in the field of education. It was also interpreted by a five judge bench of the apex court to stress the corresponding obligation on the state to grant aid for the salary of teachers of primary schools.[80]

However, there is ample scope for discussion on the soundness of the reasons given by the five judge bench of the Supreme Court in the ruling against the imposition of mother tongue even in primary classes.[81] Similar is the case with another five judge verdict and its reasons for completely excluding both the aided and unaided minority run schools from purview of the right to education law of 2009.[82] The march of the law on education is yet to reach its destination, as the very education endeavor itself.

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79 *Delhi Cantonment Board* v. *Raj Kumari Sachdeva,* 2014 (10) AD (Delhi) 198.

80 *State of Uttar Pradesh* v. *Pawan Kumar Divedi* (2014) 9 SCC 692.

81 *State of Karnataka* v. *Associated Management of (Government Recognised - Unaided - English Medium) Primary & Secondary Schools* (2014) 9 SCC 485.

82 *Supra* note 2.