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EDUCATION LAW

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"Education is the most powerful weapon which you can use to change the world."[1]

I INTRODUCTION

VARIOUS PROBLEMS and issues arising out of several aspects of education came for detailed consideration before the Supreme Court and the high courts. On the one hand right to receive education received expansive interpretation, on the other the national entrance test for medical courses came to be struck down. A Constitution bench had an occasion to consider the desirability of reservation on faculty posts teaching super specialty subjects. The power of the government to regulate conditions of service of teachers even in private schools, the freedom of employees of schools to elect the forum of adjudication as either labour courts or educational tribunals and the rights of the management of educational institutions were subjected to detailed interpretation. Overall, the rights of the seekers of education have been getting increasing attention in the courts. At the same time the perennial issues relating to those responsible for providing education including the institutions and teachers took much of the time and energy of the courts. Thus the march of the law was momentous both in variety and depth.

II RIGHT TO EDUCATION

Child rights commissions and right to education

For the effective monitoring of the implementation of right to education, the child rights commissions have very important roles. However many states did not even bother to constitute such commissions. In *Re: Exploitation of Children in Orphanages in State of Tamil Nadu* v. *Union of India*[2] the Supreme Court found that 19 states/Union Territories have not constituted commissions for protection of child rights under section 17 of the Commissions for Protection of Child Rights Act, 2005.[3]

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1 These words of Nelson Mandela were quoted and considered by the Supreme Court of India during the year under survey.

2 2013(1) SCALE 379(2).

3 Hereinafter referred to as CPCR Act, 2005.

The court also took notice that provisions related to these commissions are also contained in the Right of Children to Free and Compulsory Education Act, 2009[4] and that these commissions are necessary to monitor the implementation of the provisions of the Act. The court directed the counsel to seek specific instructions as to the steps already taken by the states for implementing the provisions of these Acts and, if not implemented, the time within which the necessary commissions would be constituted.

The apex court through another subsequent judgment and order in the same case issued specific directions in this regard, It held that the rights of children can be secured adequately only if the monitoring and controlling provisions contained in the three Acts, namely, the Commissions for Protection of Child Rights Act, 2005, the Right of Children to Free and Compulsory Education Act, 2009 and the Protection of Children from Sexual Offences Act, 2012 read with the Juvenile Justice (Care and Protection of Children) Act, 2000, are fully implemented. Supreme Court issued a series of directions to ensure compliance and implementation of the aforesaid Acts. The states were directed to ensure that the regulatory and monitoring bodies under these Acts are constituted and made functional within a period of three months from the date of receipt of a certified copy of this order. The states were also directed to provide detailed information with regard to the measures adopted and the action taken with regard to improving the conditions of children in various shelter homes *etc*. around the country, to eliminate trafficking of children under the garb of education and other promises, like employment *etc*.

Right to education to apply to pre-elementary classes

A division bench of the Delhi High Court considered the provisions of RTE Act, 2009 and the guidelines of the Government of India in the context of admission to pre-primary and pre-school classes while dealing with a PIL, a case filed *pro bono publico* questioning the guidelines dated 23.11.2010 framed by the Government of India, and the order dated 15.12.2010 passed by the Director, Department of Education, Government of National Capital Territory of Delhi concerning the admission of children in nursery classes in *Social Jurist, A Civil Rights Group* v. *Govt. of NCT of Delhi*.[5] The court found that the guidelines issued by Government of India and the order issued by Government of NCT of Delhi did not apply to 75% of the admission made to pre-elementary (pre-primary and pre-school) classes by private unaided schools, though they do apply to the remaining 25% admissions made by such schools to such classes in view of the proviso to section 12(1) of the Act. Since, the RTE Act, 2009 is not applicable to nursery schools, there cannot be any difference yardstick to be adopted for education to children up to the age of 14 years irrespective of the fact that it applies to only elementary education.

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4 Hereinafter referred to as RTE Act, 2009.

5 2013 AIR (Del) 52.

As far as the private unaided schools are concerned, the provisions of the Act, except the admission to the extent of 25% of the strength of the class, to the children belonging to the weaker sections and disadvantaged group, do not apply to the admissions made to the pre-elementary (pre-school and pre-primary) classes of such schools. Consequently, section 13 of the Act which prohibits collection of capitation fee and adoption of any screening procedure also did not apply to the admissions made to the remaining 75% of the pre-elementary classes of unaided private schools. Charging capitation fee is prohibited not only in RTE Act, 2009, but also in Delhi School Education Act, 1973 and the rules framed thereunder. Therefore, the court has held that it could not be said that if the RTE Act, 2009 did not apply to the 75% of the admissions made by private unaided schools to pre-elementary classes and they could charge capitation fee for such admissions.

The court found that it was the right time for the government to consider the applicability of RTE Act, 2009 to the nursery classes as well, as in many of the states admissions are made right from the nursery classes and the children so admitted are automatically allowed to continue from class-I. In that sense, the provisions of section 13 would be rendered meaningless insofar as it prohibits screening procedure at the time of selection. Importance of education is per se applicable to every child right from admission to nursery classes till it completes the eighth standard. Though there is an obligation on the state to provide free and compulsory education to children and the corresponding responsibility of the institution to accord the same, educational institutions cannot be allowed to run as 'Teaching Shops' as the same would be detrimental to equal opportunity to children. The court observed that to avail the benefit of the RTE Act, 2009 to a child seeking admission for nursery school as well, necessary amendment should be considered by the state and court hoped that the government may take the above observation in the right spirit and act accordingly.

Applicability of RTE to Sainik Schools

The question whether the reservations of 25% provided under the RTE Act, 2009 applicable to Sainik Schools was considered by a Division Bench of Punjab & Haryana High Court in the case of *Union of India* v. *Ashish (Minor)*.[6] The single bench of the high court had directed that the writ petitioner/respondent Ashish (minor) be admitted in class-6 of Sainik School under the 25% reserved category seats belonging to economically weaker sections and disadvantaged group of society. However, the division bench reversed the said order and found that Sainik School being a boarding school would not be covered under those schools to which the said reservation under the provisions of RTE Act, 2009 would apply. The court found that the provision of the RTE Act, 2009 providing reservation to 25% seats would not be applicable to boarding schools. The high court relied on the judgement of the Supreme Court in *Society for Unaided Private Schools of Rajasthan* v. *Union of India*.[7] The high court also took notice of the fact that the

6 AIR 2013 P&H 211.

7 2012 (6) SCC 1.

Sainik Schools did not start at class-1 but at class-6 and hence the provision of section 12(1) (c) of the RTE Act, 2009 for providing free and compulsory education to children from disadvantaged and economically weaker sections was not applicable to the Sainik Schools. However, it would be interesting to see whether the appropriate governments would make the required amendments in the provisions of law to apply the right to education even to the boarding schools such as Sainik Schools in view of such exclusions.

III STUDENTS RIGHTS

Withheld result of MBBS exam to be declared

In *Devasmita Chakraborty* v. *State of West Bengal* [8] appellants were students who were admitted in the MBBS course in the medical college established, pursuant to the affiliation granted by the West Bengal University of Health Sciences. But essentiality certificate was subsequently withdrawn as also the consent to affiliation. Medical Council of India (MCI) also withdrew its letter of permission. Appellants were not allowed to register their names for appearing in the examination for the academic session 2011-2012. On preferring writ petition, appellants were allowed to participate in the first year examination, but their results have been withheld in terms of an order in the writ petition. However, appellants' prayer for interim relief had been rejected, both in the writ petition as also in the appeal. Special leave petitions (SLP) were filed for a direction upon the concerned respondents to declare the results of the appellants for the first year MBBS Examination. The Supreme Court allowed the appeals and the interim applications and directed that the results of the examination taken by the appellants in respect of the first year MBBS course for the academic session, which had been kept in a sealed cover, as directed, be declared forthwith.

No compensation for cancellation of ineligible admission

The Supreme Court in *Priyadarshini College of Computer Science* v. *Manish Kumar*[9] reversed the order of the high court which had directed a college to pay compensation for cancellation of admission granted to ineligible student. The appellant-college had published a notice in respect of lapsed/vacant seats and applications were invited for admission with minimum 60% marks. Relying on the declaration made by respondent no.1 student in the admission form, the college admitted him in B.Tech for second year by taking the requisite fee. Subsequently, the college cancelled the admission of the student and refunded the entire fee since he was not having the required percentage of marks. In the writ petition filed by the student single judge of high court allowed the writ petition in part and directed the college to pay a compensation of Rs. 5 lakhs to him. The division bench confirmed the order of single judge. The Supreme Court found that the conclusion of single judge that the college had cheated the candidate by granting

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8 2013(2) SCALE 40.

9 2013(2) SCALE 56.

him admission taking fees from him knowing fully aware that he did not have the requisite qualification for grant of admission was contrary to the materials placed before the court. Advertisement calling for applications had specifically mentioned that minimum 60% marks in B.Sc. Maths was the eligibility criteria. In the enrolment form, he specifically stated that he secured 56% marks. Appellant-college could have rejected his application, however, in view of the assertion made by the student in clause 7 of the declaration that he had secured 60% marks, the college accepted his form and admitted him in the course he applied for. When the deficiency was pointed out by the university, the college refunded the entire fees received by it from the student. The apex court has also held that every candidate applying for a particular course in any college is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong.

Special needs of visually impaired students

Education for visually impaired students is a great hope for them and such a hope is the brightest bliss in their lives. In *Sambhavana* v. *University of Delhi*[10] the Supreme Court considered the special needs of visually impaired students in education and found that when the university had thought of imparting education in a different way, it had to bear in mind the need of sensitivity and expected societal responsiveness. A visually impaired student was entitled to receive special treatment. The court directed that the necessity of the visually impaired students should have primacy in the mind of the empowered committee of the university that has been constituted to look into the special needs of the students with disabilities and to give suggestions for suitable modifications. It is the need of the present time that the university shall look into the matter and mitigate the grievances of the visually impaired students as far as possible. The court permitted the appellant-organization to submit a representation indicating its grievances and the views to the said committee which shall be dealt with by the committee.

Under the constitutional scheme the state has to have policies for such categories of people. Article 41 of the Constitution of India casts a duty on the state to make effective provisions for securing, *inter alia*, the rights of the disabled and those suffering from other infirmities within the limits of economic capacity and development. It is imperative that the authorities look into the real grievances of the visually impaired people as that is the constitutional and statutory policy. Hence the court observed that the university has to live the role of *Loco Parentis* and show its concern to redress the grievances in proper perspective. The court took notice of the fact that history has recorded with pride that some men with visual impairment have shown high intellectual prowess. The anguish and despondency in the life of Milton, the famous English poet, did not deter him to

10 AIR 2013 SC 3825.

carry out the mission of his life. Lack of vision could not destroy his will power. Needless to say that he had the support of the society. The ancient sage "Ashtavakra" while laying down the traffic rules had categorically stated that the blind man has the first right on the road. Thus, the court found that emphasis had always been laid on the visually impaired persons for many a reason. It directed that the university should look into the matter and mitigate the grievances of the visually impaired students as far as possible.

Refund of study leave payment on non-completion of course

The Supreme Court considered the question of refund of study leave payment on non-completion of course within prescribed period in *Sant Longowal Institute of Engineering & Technology* v. *Suresh Chandra Verma.*[11] It held that if an employee of Central Government is granted study leave to pursue a specific course but failed to produce completion certificate within prescribed period he shall be required to refund the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India.

Respondent was lecturer in appellant institute and he was granted three years study leave with salary and allowance to pursue Ph.D. from IIT Kanpur. Appellant institute started recovery of payment for leave for non-production of completion of Ph.D. While granting study leave a bond was executed by respondent to join and serve in appellant institution for certain period and if failed to do would be liable to refund of payment made for the study leave. No provision was in the bond that if he fails to complete Ph.D. degree he shall refund the so paid amount. However, before completion of his study leave period, board of governors of the appellant made such provision. Writ filed by respondent was allowed by high court and affirmed by division bench which was challenged before the Supreme Court. The appellant took the plea that the said lecturer was governed by Central Civil Services Rules, 2008 therefore respondent was liable for refunding. Against this respondent's plea was that non-completion of Ph.D. was due to retirement of his guide and he had requested to the institution for extension of study leave period for further six month which was not allowed whereas another person was allowed similar request. The court found that applicability of central rule was not argued before the lower *fora* therefore there was no occasion for them to consider it. Non-extension of further leave could be raised by respondent before appropriate forum. Study leave is granted for mutual benefit that students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. Otherwise public fund cannot be spent. However, the court found that bond was vague with regard to the recovery in a situation of non-completion of Ph.D. degree. In these circumstances the Supreme Court held that appellant cannot be permitted to recover full amount and appeal was allowed to the extent of amount already recovered by the appellant.

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11 AIR 2013 SC 311.

The court explained that the purpose of granting study leave with salary and other benefits is for the interest of the Institution and also the person concerned so that once he comes back and joins the institute the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in public interest. Public money cannot be spent unless there is mutual benefit.

Improvement of division and not merely marks of an examinee

In *Pt. Ravishankar Shukla University* v. *Gopal Mishra*[12] the Supreme Court reversed the finding of the high court that the expression 'Division' used includes 'Marks'. Ignoring the context and plain meaning the high court directed the appellant university to issue marks sheet of subsequent examination in which examinee appeared for improvement despite no improvement in division. The Supreme Court found that the conclusion of high court was unacceptable.

The high court concluded that the word 'division' includes marks also. The Supreme Court found that it was unable to accept this conclusion. It was quite clear from a reading of clause 8 of the ordinance that there are three divisions that a student can obtain on the basis of the aggregate marks: those obtaining more than 60% aggregate marks are placed on the first division; those obtaining less than 60% aggregate marks but not less than 48% aggregate marks are placed in the second division and all other successful candidates obtaining less than 48% marks (and obtaining at least 36% aggregate marks) are placed in the third division. If the word 'division' is to include marks, as held by the high court, some of the clauses in the ordinance would lose their substance and meaning and the entire concept of divisions as against marks would be rendered meaningless.

Respondent secured aggregate of 49.54% marks in master of commerce examination; accordingly he appeared again in the repeat examination (next examination) as non-collegiate examinee for improvement as permissible under ordinance. Aggrieved by non-issue of marks sheet of subsequent examination, he preferred writ petition which was disposed of with direction to respondent university to disclose marks to appellant. University intimated him the marks obtained by appellant in repeat examination by writing a letter. Filed review of the order for specific direction for marks sheet but writ court dismissed it refusing to consider it like an appeal on merits. Division bench set aside the order passed by writ court and allowed appeal holding that word 'Division' used in the ordinance includes 'Marks' Supreme Court found that the ordinance in question permits improvement of division of an examinee and not merely his marks. Since the respondent improved

12. 2013 (10) SCALE 437.

his marks without improving his division, therefore, he was not entitled for any fresh degree or marks sheet.

No re-evaluation in absence of a provision for

A division bench of the Delhi High Court in *Rajesh Kumar Verma* v. *High Court of Delhi* [13] considered the question whether re-evaluation of answer-sheets should be ordered and found that re-evaluation is not permissible in the absence of a provision for re-evaluation. It was held that there must be a specific provision for re-evaluation on merits before it can be directed.[14]

Petitioner appeared in examination for appointment to Delhi Judicial Service. He secured qualifying marks in three papers but could not qualify civil law-I. Petition for re-evaluation and rechecking of the question 4(b), in which the petitioner had secured '0' zero marks out of 12.5 marks. The court found that the answer sheets of part-A of civil law-I, have been examined by one examiner and not by multiple or several examiners. Examiner uniformly applied the same standard while checking the answers of all the candidates. Substantial number of candidates have cleared the paper and secured good marks. The number of candidates securing '0' zero marks in part-A paper may be more, but this cannot be a ground to re-examine or re-evaluate the entire paper or even specific answers. The court observed that if it allowed re-examination or re-evaluation of the answer paper, in one case or even one question, the said exercise may have to be completed across the board, in all cases where candidates have secured '0' zero or one, two or low marks. Thus, if the plea of the petitioner is accepted, it will lead to unpalatable and incongruous situation which should be avoid. Any interference will lead to gross and indefinite uncertainty besides creating utter confusion. Answer papers have been checked by examiners who are proficient, well conversant and have knowledge of the subjects. In matters of evaluation by experts and the standards which should be adopted and applied, the courts cannot substitute or adorn the role of the examiner. It cannot substitute its own opinion regarding what marks could or should have been awarded, as the result. Interference is rare and justified only when there is a blatant miscarriage of justice as set out in *Sanchit Bansal* v. *Joint Admission Board*.[15]

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13 2013(198) DLT 199.

14 The court referred to the decisions in *Pramod Kumar Srivastava* v. *Chairman, Bihar Public Service Commission Patna* (2004)SCC(LS)883*; Dr. Muneeb Ul Rehman Haroon.* v. *Government of Jammu and Kashmir State* AIR 1984 SC 1585*; Board of Secondary Education* v. *Pravas Ranjan Panda* (2004) 13 SCC 383*; The Secretary*; *West Bengal Council of Higher Secondary Education* v. *Ayan Das* AIR 2007 SC 3098 *& H.P. Public Service Commission* v. *Mukesh Thakur* AIR 2010 SC 2620.

15 AIR 2012 SC 214. See also *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupesh Kurmarsheth* AIR 1984 SC 1543. And it

The court has also held in this case that having participated in the examination and taken the chance, the candidate cannot be allowed to object to the date of examination or submit that the examination should have been postponed

Denial of interdisciplinary transfer as per academic policy not justiciable

The Delhi High Court through a single bench held that courts should not substitute its own view over the expertise of an academic body and courts should leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The court in *Rajni Agarwal* v. *Union of India*[16] was considering whether the denial of inter-disciplinary transfer was discriminatory and violative of the principle of promissory estoppel. Petitioner was granted admission in accessory designing course of respondent. Petitioner made a request seeking transfer in the third semester from accessory designing to textile designing on account of medical reasons (allergy to saw dust). Request of the petitioner was considered and petitioner was asked to file an undertaking was made aware of consequences that in eventuality that NIFT Policy which may be formulated does not permit any change of discipline, she would be reverted back to parent department. Based on the policy formulated by the board of governors, the petitioner was denied inter-discipline transfer. The court found that no document was placed on record to support the plea that the petitioner was allergic either to saw dust or plaster of paris. Petitioner cannot derive any benefit of the policy which permits inter-discipline transfer on medical grounds. Undertaking submitted shows that petitioner was fully aware of the consequences. Petitioner having taken the calculated risk cannot seek refuge under the principles of promissory estoppel as the same are not applicable to the facts of the present case. Petitioner has not been discriminated and other students who had applied along with the petitioner had gracefully honoured the undertaking given by them. No justifiable reasons for judicial review of academic decision. The court relied on the judgments in *Guru Nanak Dev University* v. *Parminder Kumar Bansal,*[17] *CBSE* v. *Nikhil Gulati,*[18]*Adarsh Shiksha Mahavidyalaya* v. *Subhash Rahangdale,*[19] *University of Mysore* v. *C.D.Govinda Rao,*[20] *Tariq Islam* v. *Aligarh Muslim University.*[21]

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referred to the decisions in *Registrar, Rajiv Gandhi University of Health Sciences, Bangalore* v. *G. Hemlatha* AIR 2012 SC 3260*;* however the decisions in *Dr. B.K. Madhumohan* v. *State of Kerala* 2000(1)KLJ911 and *Sanchit Bansal's case* were distinguished.

16 2013(202) DLT 583.

17 (1993) 4 SCC 401.

18 (1998) 3 SCC 5.

19 (2012) 2 SCC 42.

20 AIR 1965 SC 491.

21 (2001) 8 SCC 546.

Right of the examinee for supply of answer sheets

In *Delhi Subordinate Services Selection Board* v. *Pushpendra Singh* [22] the Delhi High Court through its single bench held that it is the right of the examinee to get the copy of the answer sheets under the Right to Information Act, 2005. Examination was held by the Delhi Subordinate Services Selection Board for recruitment of TGT Physical Education teacher. The petitioner an unsuccessful candidate in the examination had sought a copy of his answer sheet in part-II (Main) of the examination. Central Information Commission (CIC) directed the public information officer (PIO) to provide the answer sheet of the respondent to him, after deleting the name of the examiner. Order of CIC was under challenge before the high court. OMR/Descriptive answer sheets of candidates who were not selected were to be retained for six months from the date of the declaration of the result. The court found that it was not the case of board that answer sheets were destroyed. The court directed that if the answer sheet was still available, the candidate was certainly entitled to its copy. The court relied on the decision in *Central Board of Secondary Education* v. *Aditya Bandopadhyay.*[23]

IV ADMISSION TO EDUCATIONAL INSTIUTIONS

Allotment of seat in professional course in violation of government orders

The Supreme Court in *Registrar of Jadavpur University* v. *Arindam Dutta Gupta*[24] has set aside the direction of high court to the university for allotment of seat in professional course and held that high court ought to have taken into account the respective various government orders and the circulars prevailing as on that date, insofar as admissions to the professional colleges are concerned.

Need to curb bogus admissions in aided schools

The Supreme Court has held that there was an urgent need to curb the bogus admissions and bogus staffs in aided schools in *State of Kerala* v. *President, Parent Teacher Association SNVUP.* [25] However it did not uphold the direction for police investigation instead of reliance on academic authorities since presence of police in academic atmosphere was unjustified. There was a complaint regarding bogus admissions and irregular fixation of staff by the assistant education officer (AEO), the super check cell. DPI directed to take action to fix the liabilities and recover the amount from the Headmaster under intimation to DPI and the super check officer. Headmaster and manager of the school filed a revision petition before the state government. In the meantime, President of the Parent Teachers Association/ respondent no.1 filed writ petition before the high court challenging the staff fixation order. Single judge dismissed the writ petition stating that the parent teachers

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22 2013(202) DLT 76.

23 (2011) 8 SCC 497.

24 AIR 2013 SC 1084.

25 2013 (2) SCC 705.

association had no *locus standi* in challenging the staff fixation order. It was challenged before the division bench of the high court wherein the bench, on the basis of report of superintendent of police, found that neither the finding of the director public instructions *(*DPI) based on inspections by super check cell nor the claim of the parent teachers association was correct since the police had found that at least 72 out of 187 students declared bogus by the DPI were real students of the school. Division bench concluded that since the super check cell, the education department lacked the investigating skill or the authority to collect information from the field, it would be appropriate that the verification of actual students in all the aided schools in the state would be done through the police. State of Kerala, aggrieved by the various directions given by the division bench, preferred appeal. The Supreme Court has found that even though the division bench was not justified in directing police intervention, the situation that has unfolded in this case was the one that as found in many aided schools in the state. Many of the aided schools in the state obtain staff fixation order through bogus admissions and misrepresentation of facts. Due to the irregular fixation of staff, the state exchequer incurs heavy financial burden by way of pay and allowances. The state has also to expend public money in connection with the payment of various scholarships, lump-sum grant; noon-feeding, free books *etc*., to the bogus students. A great responsibility is, therefore, cast on the general education department to curb such menace which not only burden the state exchequer but also will give a wrong signal to the society at large. The management and the headmaster of the school should be a role model to the young students studying in their schools and if themselves indulge in such bogus admissions and record wrong attendance of students for unlawful gain, how they can imbibe the guidelines of honesty, truth and values in life to the students. The investigation by the police with regard to the verification of the school admission, register *etc*., particularly with regard to the admissions of the students in the aided schools will give a wrong signal even to the students studying in the school and the presence of the police itself is not conducive to the academic atmosphere of the schools. The Supreme Court set aside the directions given by the division bench for police intervention for verification of the students' strength in all the aided schools. The court gave a direction to the education department, to forthwith give effect to a circular dated 12.10.2011 to issue unique identity development (UID) card to all the school children and follow the guidelines and directions contained in their circular. The court gave liberty to the government to adopt, in future, better scientific methods to curb such types of bogus admissions in various aided schools.

A privilege not to become a right to admission

In *Ayurved Shastra Seva Mandal* v. *Union of India* [26] the Supreme Court clarified that the privilege granted to the candidates cannot now be transformed into a right to be admitted in the course for which they had applied. Medical colleges were given opportunities to remove the shortcomings by granting them

26 2013(3) SCALE 213.

conditional permission for their students for the academic years. Applications were filed by a large number of students for admission in the institutions imparting education in the Indian form of medicine, with the leave of the court. The court found that leave was granted without creating any equity in favour of the applicants. Those who chose to file their applications did so at their own risk and it cannot now be contended that since they have been allowed to file their applications pursuant to orders passed by the court, they had acquired a right to be admitted in the different institutions to which they had applied.

Preference on domicile in a state violative of article 14

The Supreme Court found that preference was given only on the basis of residence or domicile in the State of Uttarakhand for admission to Post Graduate Medical Course and such preference on the basis of residence or domicile within a state was violative of article 14 of the Constitution. In *Nikhil Himthani* v. *State of Uttarakhand.*[27] The court referred to the decision in *Saurabh Chaudri* v. *Union of India,*[28]*Dr. Jagadish Saran* v. *Union of India,*[29]*Dr. Pradeep Jain* v. *Union of India,*[30] *Magan Mehrotra* v. *Union of India.*[31]

According to the eligibility criteria in the information bulletin, a domicile of Uttarakhand who has passed MBBS from a medical college of some other state having been admitted either through the 15% All India quota or through the pre-medical test conducted by the concerned state government has been made eligible for admission to a post-graduate medical course in the state quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to post-graduate course under the eligibility criteria. Preference therefore was given only on the basis of residence or domicile in the State of Uttarakhand. The court found that such preference on the basis of residence or domicile within a state has been held to be violative of article 14 of the Constitution in the case of *Dr. Pradeep Jain*[32] and *Magan Mehrotra* case[33]

The court allowed the writ petition and quashed the infringing clauses of the eligibility criteria in the information bulletin and declares the admissions made on the basis of the said clauses of the information bulletin as void. The respondents were directed to publish a fresh information bulletin and re-do the admissions to the post-graduate medical courses in the government colleges of State of Uttarakhand in accordance with law by the end of August, 2013 and also ensure that the colleges in which the students are admitted in post-graduate medical courses hold the required number of classes as prescribed by the MCI.

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27 2013(10) SCC 237.

28 (2003) 11 SCC 146.

29 (1980) 2 SCC 768.

30 (1984) 3 SCC 654.

31 (2003) 11 SCC 186.

32 *Supra* note 30.

33 *Supra* note 31.

Direction to adjust for next session

In *Aneesh D. Lawande* v. *State of Goa* [34] the Supreme Court considered whether the court can direct adjustment of affected students in next academic session and found that it cannot be directed as it was bound by rule of precedent. However as a special case the court gave the directions.

The court considered the issue whether the students who could not be adjusted in the seats of All India Quota that have been transferred to the state quota of that year could be adjusted next year. The court found that it will not be appropriate to issue directions to adjust the students in respect of the subsequent academic year, for taking recourse to the same would affect the other meritorious candidates who would be aspirant to get admissions next year. For doing equity to some in *presenti* the court could not afford to do injustice to others in future.

The Supreme Court while holding that institution of National Eligibility and Entrance Test (NEET) was not within jurisdiction of Medical Council of India (MCI) but directed for protection of students for current years. However, the State of Goa revived the existing rule and accordingly ousted the petitioners who were granted admission merit of NEET. In the present case the court has set aside their ousting. The court found that though adjustment under other quota is not possible under law but considering the peculiar facts the court invoked its power under article 142 of the Constitution to direct that there are 21 seats for Central Quota through NEET, these seats be filled by these students considering their inter se merits only for this session. It relied on the decision in *Priya Gupta* v. *State of Chhattisgarh*[35] and referred to the judgments in *K.S. Bhoir* v. *State of Maharashtra*,[36] *Faiza Choudhary* v. *State of Jammu and Kashmir*,[37] *Satyabrata Sahoo* v. *State of Orissa*,[38] and *Medical Council of India* v. *State of Karnataka*.[39]

The court found that from the earlier decisions two principles emerge: (i) that there cannot be direction for increase of seats and (ii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent years. However, considering the fact that the factual matrix of the present case was totally exceptional, the court decided to exercise our jurisdiction under article 142 of the Constitution to issue a direction so that it can act as a palliative at least for some of the students who had been given admissions under the rules.

Extension of time schedule for only government colleges not arbitrary

The challenge in *B.R. Ambedkar Medical College* v. *Union of India*[40] was by the private medical college to the extension of time schedule only for government

34 2014(1) SCC 554.

35 (2012)7 SCC 433.

36 (2001)10 SCC 264.

37 (2012)10 SCC 149.

38 (2012)8 SCC 203.

39 (1996)6 SCC 131.

40 2013 (10) SCC 280.

medical colleges contending that the same was arbitrary and offending article 14 of Constitution. The Supreme Court did not find any merit in the plea that the Central Government had extended time schedule only for government medical colleges and it was arbitrary and offending article 14 of the Constitution. The court found that the Central Government was within statutory jurisdiction to do so. Accordingly extension of time schedule only for government colleges by cogent reason was found neither arbitrary nor offending article 14 of the Constitution.

The court followed its decisions in earlier cases like *Mridul Dhar (Minor)* v. *Union of India*,[41] and *Priya Gupta* v. *State of Chhattisgarh*.[42] The court found that there is the imperative need to follow the time limit fixed by the Supreme Court in the matter of admission to MBBS/BDS courses in Mridul Dhar (Minor) case (supra) which was done in the interest of students' community, for admission to the Post Graduate and Super Specialty courses. Timely admission of the students to these courses is of utmost importance so that the students would get quality and timely education. In *Mridul Dhar* the court had clearly indicated that the time schedule for establishment of new college or to increase intake in existing college shall be adhered to strictly by all concerned, failing which defaulting party would be liable to be personally proceeded with.

State government/Union Territory can also set up a medical college and take additional intake of seats, apart from the other categories. In a given case, the Central Government, for reasons to be recorded in writing, can modify the time schedule in respect of any class or category of applicants mentioned hereinbefore. Such a power has been conferred on Central Government by virtue of Establishment of Medical College Regulations (Amendment), 2012. Establishment of Medical College Regulations (Amendment), 2012, provides for time schedule for grant of letter of permission by the MCI for establishment of a medical college as well as increase in admission capacity in MBBS course.

It was in exercise of that statutory power, the corrigendum has been issued by the Central Government modifying the time schedule to the government medical college alone out of the five categories mentioned. The court found that favouring the government medical college alone in such circumstances was not violative of article 14 of the Constitution.

MCI received the copy of the circular of 2013 after last date for receiving application, accordingly requested the Central Government for extension of time schedule. However, it was not possible for MCI to consider all applications of private medical colleges, therefore, requested the Central Government to extend the time schedule only for government colleges. The court held that there was no serious error in extending time schedule only for government medical colleges

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41 (2005) 2 SCC 65.

42 (2012) 7 SCC 433.

considering statutory power of Central Government. The court followed the law already declared in the decisions in *Mridul Dhar,*[43] *Priya Gupta* v. *State of Chhattisgarh.*[44]

V RESERVATION IN ADMISSION

Meritorious reserved candidates not to be counted in reserved quota

The candidates who belong to reserved category but get selected in the open competition on the basis of their own merit have a right to be included in the general/unreserved category. In *Samta Aandolan Samiti* v. *Union of India*[45] the Supreme Court considered the right of a candidate of reserved category selected in the merit list to be included in the general list. The petitioner raised the grievance that while making admissions in MBBS course, respondent/AIIMS was not strictly adhering to reservation policy and questioned the manner of allotting seats to candidates belonging to reserved category, alleging that AIIMS exceeded quota prescribed for reserved category candidates which had resulted in more than 50 % reservations of the seats, contrary to the law. The court found that the members of reserved category who get selected in open competition on basis of their own merit have a right to be included in the general list/unreserved category and not to be counted against the quota reserved for scheduled caste. It also found that in the present matter of admission to medical course, neither upper limit of 50% reservation was breached, nor any rights of the petitioners were violated nor the actions of respondents had been to their prejudice in any manner. The court relied on the decisions in *Ritesh R. Sah* v. *Dr. Y.L. Yamul,*[46] *Indira Sawhney* v. *Union of India*[47] and *Union of India* v. *Ramesh Ram.*[48]

The court found that the meritorious reserved candidates (MRC) were not to be included in the quota reserved for scheduled caste *etc.* It was an admitted position that if these persons are excluded, the respondents have not exceeded the quota meant for reserved category. The respondents, at the time of counseling, had only accorded a higher/better choice to these meritorious reserved candidates (MRC) who got recommended against general/unreserved seats *vis-a-vis* those reserved category candidates who are accommodated against their quota. It was, therefore, an inter-se adjustment between the two kinds of persons belonging to reserved category. In their *inter-se* merit, these persons who have been able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of

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43 *Supra* note 41.

44 *Supra* note 41.

45 2013(15) SCALE 118.

46 (1996) 3 SCC 253.

47 (1992) Suppl. 3 SCC 212.

48 (2010) 7 SCC 234.

candidates belong to reserved category. The court has held that if between these two categories of persons belonging to same class, higher choice is not given to the persons who are better in merit *viz*. the MRCs; it would clearly be injustice to them. The court took notice of the fact that this was precisely the issue which was referred for decision to the Constitution Bench in the case of *Ramesh Ram* case.

VI DEGREE AND QUALIFICATION

No approval from AICTE needed for MBA and MCA of affiliated colleges

Do the MBA and MCA courses run by affiliated colleges under a university require approval from AICTE under All India Council for Technical Education Act, 1987? In *Association of Management of Private Colleges* v. *All India Council For Technical Education*[49] the Supreme Court considered this question. As per definition of 'technical education' and non production of any material by the AICTE to show that MBA course is a technical education, the court held that MBA course is not a technical course within the definition of the AICTE Act. The court found that MCA came within the definition of technology since the same is a technical education but for the proper conduct of courses and regulation of MCA the role of AICTE must be advisory and for the same, a note should be given to the UGC for its implementation by it but not by the AICTE. The court also found that Institution means an institution not being university, and the university includes the institution deemed to be a university; therefore the affiliated colleges are excluded from the purview of technical institution definition of the AICTE Act.

Appellant colleges were running arts and science courses, most of which were affiliated to university. Member colleges of the appellant were running MBA and MCA courses which have not obtained the approval of the AICTE. Appellant colleges preferred writ petitions in the high court challenging the amended regulation dated 16.8.2000 mainly on the ground that it is *ultra vires* to the AICTE Act as the MBA/MCA courses which were being run by the appellants colleges did not fall under the definition of technical education as contained. It was also challenged on the ground that since the amended regulation had not been placed before the Houses of Parliament for approval they could not be enforced. High court dismissed the writ appeals thereby affirming the dismissal of writ petitions, and held that even though the university was not required to take permission from AICTE, its affiliated colleges were required to do so. The Supreme Court found that the approval from the AICTE was not required for obtaining permission and running MBA/MCA courses by the appellant colleges. The court granted the reliefs sought for in the writ petitions to the content not to seek approval from the AICTE for MBA MCA courses are concerned. The court referred to the decisions in *Bharathidasan University* v. *AICTE* [50] *TMA Pai Foundation* v. *State of Karnataka*,[51]

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49 2013(8) SCC 271.

50 (2001)8 SCC 676.

51 (2002)8 SCC 481.

and distinguished the ones in referred. *State of Tamil Nadu* v. *Adhiyaman Education and Research Institute*,[52]and *Jaya Gokul Educational Trust* v. *Commissioner and Secretary to Government High Education Department, Thiruvananthapuram.*[53]

The court has reiterated that the Supreme Court had already in the previous decisions exempted universities, its colleges, constituent institutions and units from seeking prior approval from the AICTE. It was also emphasized that the role of AICTE *vis-a-vis* universities was only advisory, recommendatory and one of providing guidance and AICTE had no authority empowering it to issue or enforce any sanctions by itself.

VII EDUCATIONAL INSTITUTIONS

Not to restrict education to Vedic alone

In *Maharshi Mahesh Yogi Vedic Vishwavidyalaya* v. *State of Madhya Pradesh* [54] the Supreme Court considered the constitutionality of the amendment to Maharshi Mahesh Yogi Vedic Vishwavidyalaya Adhiniyam, 1995 deleting the expression 'dissemination of knowledge' from section 4 thereby by restricting the scope of imparting education in any field other than *Vedas* and its practices. The court found that the deletion of the expression 'dissemination of knowledge', would have to be held to be an arbitrary action of the respondent state and thereby, violating equality in law and equal protection of law as enshrined under article 14 of the Constitution, in as much as all other universities, which were being controlled and administered by the states, Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, enjoy the freedom of setting up any course with the approval of the University Grants Commission, the appellant alone would be deprived of such a right and liberty by restricting the scope of imparting education in any field other than *Vedas* and its practices.

While considering the above, the court went into the meaning and relevance of the concept of education today and found that today education instead of reforming the human behaviour appeared to have failed to achieve its objective.

The court took notice of the India's obligation in view of the international covenants. The court found that a private organization, named the International Bureau of Education, was established in Geneva in 1924 and was transformed into an inter-governmental organization in 1929, as an international coordinating centre for institutions concerned with education. A much broader approach was chosen, however with the establishment of UNESCO in 1945. United Nations, on 10th December, 1948 adopted the Universal Declaration of Human Rights (UDHR). The Preamble to the UDHR stated that:[55]

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52 (1995)4 SCC 104.

53 (2005)5 SCC 231.

54 2013(8) SCALE 541.

55 *Available at*: http://www.un.org/en/documents/udce (Last visited on July 22nd 2014).

> every individual and organ of society....shall strive by teaching and education to promote respect for these rights and freedoms.....
>
> In accordance with the Preamble of UDHR, education should aim at promoting human rights by importing knowledge and skill among the people of the nation states.The role of international organizations regarding the implementation of the right to education is just not limited to the preparation of documents and conducting conferences and conventions, but it also undertakes the operational programmes assuring, access to education of refugees, migrants, minorities, indigenous people, women and the handicaps. India participated in the drafting of the declaration and has ratified the covenant. Hence, India is under an obligation to implement such provisions. As a corollary from the Human Rights perspective, constitutional rights in regard to education are to be automatically ensured.
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> The court has declared that the right to education will be meaningful only and only if all the levels of education reach to all sections of people, otherwise it will fail to achieve the target set out by our founding fathers, who intended to make the Indian society an egalitarian society. It referred to the decisions in Mohini *Jain* v. *State of Karnataka,*[56] *Unni Krishnan J.P.* v. *State of Andhra Pradesh,*[57] *M.C. Mehta* v. *State of Tamil Nadu,*[58]and *Bandhua Mukti Morcha* v. *Union of India*.[59] *State of Orissa* v. *Mamata Mohanty,*[60] and *Brown* v. *Board of Education*.[61]

The court referred to the concept of education as explained by great leaders. In order to understand education's consequential effects on the society at large, the Father of the Nation, Mahatma Gandhi, while referring to education has stated, "live as if you were to die tomorrow. Learn as if you were to live forever".

Later reinforced by Nelson Mandela, "Education is the most powerful weapon which you can use to change the world". The process of learning, as has been highlighted by the father of the nation, emphasizes the need for one to have an

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56 (1992) 3 SCC 666.

57 (1993) 1 SCC 645.

58 (1996) 6 SCC 756.

59 (1997) 10 SCC 549.

60 (2012) 1 SCC 762.

61 347 U.S. 483(1954).

everlasting thirst for acquiring knowledge by getting himself educated. It is stated that education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more than an animal. Education emancipates the human beings and leads to liberation from ignorance. According to Pestalozzi who is a Swiss pedagogue and educational reformer stated that education is a constant process of development of innate powers of man, which are natural, harmonious and progressive. It is said that in the 21st century, a nation's ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future. Accordingly the 21st century is termed as the 'century of knowledge'.

The court also considered the definitions of education given by great authors like Will Durrant. Mr. Will Durrant defines 'education' as the 'transmission of civilization'. George Peabody has defined 'education' as "a debt due from present to future generations". Education confers dignity to a man. The significance of education was very well explained by the US Supreme Court first, in the case of *Brown* v. *Board of Education* [62] in following words: "It is the very foundation of good citizenship. Today, it is principal instrument in awakening the child to cultural value, in preparing him for later professional training and in helping him to adjust normally to his environment." Thus the court concluded that a child is the future of the nation.

However the court found that amendment to section 9(2) of Maharshi Mahesh Yogi Vedic Vishwavidyalaya Adhiniyam, 1995 was valid. It was found that under the amended section 9(2), it was stipulated that after the first Chancellor, the board of management should prepare and submit a panel of three persons to the state government and out of the panel, one person should be appointed as Chancellor by the board of management, after obtaining the approval of the state government. As far as the period of holding office was concerned, there was no change in its terms. Even after the amendment, the management had the power of recommendation and they can recommend a person of eminence and renowned scholar of *Vedic* education and even if the ultimate appointment is to be made with the approval of the state government, since any such appointment can be only from the panel prepared by the board of management, such a stipulation contained in the amendment does not in any way impinge upon any right, much less the Constitutional Right or Fundamental Right of the appellant university . Hence, the court held that the said provision does not in any way offend article 14 of the Constitution, nor does it affect the autonomy of the appellant university.[63]

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62 347 U.S. 483(1954).

63 See, *State of Bombay* v. *Hospital Mazdoor Sabha; Rohit Pulp and Paper Mills Ltd.* v. *Collector of Central Excise;Kerala State Housing Board* v. *Ramapriya Hotels (P) Ltd.; Samantha* v. *State of Andhra Pradesh;K. Bhagirathi G. Shenoy* v. *K.P. Ballakuraya; Brindavan Bangle Stores* v. *Assistant Commissioner of Commercial Taxes;* and *CBI, AHD, Patna* v. *Braj Bhushan Prasad.*

Refusal to increase PG medical seats not arbitrary

The Supreme Court in *Sinhgad Technical Education Society* v. *Union of India* [65] considered approval for admission of 2 seats for MS (general surgery) degree every year instead of 6. Plea of the writ petitioner was that the decision of the board of governors in supersession of MCI's decision was arbitrary. The MCI had recommended that considering operative load of the petitioner, it should be granted approval for admission of 6 seats for MS (general surgery) degree every year instead of already granted 2. On perusal of the compliance report, the board of governors decided to confine the permission to only two seats. The court found that the said decision cannot be held to be wholly arbitrary or unreasonable calling for interference. Accordingly writ petition was dismissed.

National Eligibility cum Entrance Test (NEET) unconstitutional

The judgment of the Supreme Court setting aside the provision for having single NEET had attracted severe criticism in the press and media. In *Christian Medical College Vellore* v. *Union of India*[65] the Supreme Court by a majority of two judges against one set aside the four circulars issued by the Medical Council of India (MCI) and Dentists Council of India (DCI), two by each, to hold common entrance tests namely National Eligibility cum Entrance Test (NEET) for graduate and post graduate courses separately and also the regulation for introduction of common entrance tests to all medical colleges declaring them as unconstitutional. Petitioners had raised objection on competency of MCI and DCI to issue these four regulations by virtue of various sections of the MCI Act, 1956 and corresponding provisions of DCI Act, 1948 and further on the basis of rights guaranteed under articles 19(1) (g), 25, 26 & 30 of the Constitution. Petitioners also had further contented that mandatory requirement of draft consultation with states has not been made by MCI before issuance of regulations. The court rejected the pleas of MCI that a common entrance test would benefit poor students and found that the standard of education is not same in all states and each state has its own procedure and medium of instruction, hence a common entrance test shall go in favour of students from cities, but India needs doctors who can serve in challenging circumstances and challenging conditions.

Apart from the legal aspects, the court considered the practical aspect of holding a single NEET. Although, it had been argued that a single test would help poor students to avoid sitting for multiple tests, entailing payment of fees for each separate examination, the court poised a question as to who such poor students could be. There can be no controversy that the standard of education all over the country is not the same. Each state has its own system and pattern of education, including the medium of instruction. It cannot also be disputed that children in the metropolitan areas enjoy greater privileges than their counter-parts in most of the rural areas as far as education is concerned. Hence the court found that the decision

64 2013(10) SCC 550.

65 2014(2) SCC 305.

of the Central Government to support a single entrance examination would perpetuate such divide in the name of giving credit to merit. The court found that in a single window competition, the disparity in educational standards in different parts of the country cannot ensure a level playing field. The practice of medicine entails something more than brilliance in academics; it requires a certain commitment to serve humanity. India has brilliant doctors of great merit, who are located mostly in urban areas and whose availability in a crisis is quite uncertain. What is required to provide health care to the general masses and particularly those in the rural areas, are committed physicians who are on hand to respond to a crisis situation. Given the large number of people who live in the villages in difficult conditions, the country today has more need of such doctors who may not be specialists, but are available as general physicians to treat those in need of medical care and treatment in the far flung areas of the country, which is the essence of what was possibly envisaged by the framers of the Constitution in including article 30 in part III of the Constitution. The desire to give due recognition to merit is laudable, but the pragmatic realities on the ground relating to health care, especially in the rural and tribal areas where a large section of the Indian population resides, have also to be kept in mind when policy decisions are taken in matters such as this. While the country certainly needs brilliant doctors and surgeons and specialists and other connected with health care, who are equal to any in other parts of the world, considering ground realities, the country also has need for "barefoot doctors", who are committed and are available to provide medical services and health care facilities in different areas as part of their mission in becoming doctors.

The court also found that power to make regulation does not includes power to hold common entrance test (NEET) and that section 33(l) of the 1956 Act entitles the MCI to make regulations regarding the conduct of professional examinations, but the same, does not empower the MCI to actually hold the entrance examination, as has been purported to be done by the holding of the NEET. The power to frame regulations for the conduct of professional examinations is a far cry from actually holding the examinations and the two cannot be equated.

The power to set the standards for maintaining excellence of medical education in India has been dully recognized, however, such right cannot be extended to controlling all admissions to the M.B.B.S., the B.D.S. and the post-graduate courses being run by different medical institutions in the country.

The issues have already settled by judicial pronouncement. The court has held that by purporting to take measures to maintain high educational standards to prevent maladministration, the MCI and the DCI cannot resort to the amended MCI and DCI Regulations to circumvent the judicial pronouncements in this regard. The court followed the previous decisions' in *T.M.A. Pai Foundation* case.[66] The Supreme Court has consistently held that the right to administer an educational

66 *Supra* note 51. .See also *Ahmedabad St. Xavier's College Society* v. *State of Gujarat; St. Stephen's College* v. *University of Delhi; Islamic Academy of Education* v. *State of Karnataka; P.A. Inamdar* v. *State of Maharashtra.*

institution would also include the right to admit students, which right, could not be taken away on the basis of Notifications issued by the MCI and the DCI which had no authority, either under the 1956 Act or the 1948 Act, to do so. The MCI and the DCI are creatures of statute, having been constituted under the Indian Medical Council Act, 1956, and the Dentists Act, 1948, and have, therefore, to exercise the jurisdiction vested in them by the Statutes and they cannot wander beyond the same.

The court referred to the questions which have already been considered and decided in the *T.M.A. Pai Foundation* case wherein, it was categorically held that the right to admit students being an essential facet of the right of a private medical institution, and, in particular, minority institutions which were unaided, non-capitation fee educational institutions and so long as the process of admission to such institutions was transparent and merit was adequately taken care of, such right could not be interfered with. Even with regard to aided minority educational institutions it was indicated that such institutions would also have the same right to admit students belonging to their community, but, at the same time, it should also admit a reasonable number of non-minority students which has been referred to as the "sprinkling effect" in the *Leela Govind* v. *Kerala Education Society Senior Secondary School*.[67] The court also found that the right to run medical institution includes right to adopt procedure for admission which flows from articles 19(1) (g), 25, 26, 29(1) and 30 of the Constitution. Any legislation cannot violate these constitutional rights. Impugned regulation did not impose any reasonable restriction under article19 (6) of the Constitution. The concerned authorities could impose conditions for maintaining high standards of education including standard of teachers.

The court took notice that the four impugned notifications dated 21.12.2010 and 31.5.2012 make it clear, in no uncertain terms, that all admissions to the M.B.B.S. and the B.D.S. courses and their respective post-graduate courses, shall have to be made solely on the basis of the results of the respective NEET, thereby preventing the states and their authorities and privately-run institutions from conducting any separate examination for admitting students to the courses run by them. Although, article 19(6) of the Constitution recognizes and permits reasonable restrictions on the right guaranteed under article 19(1) (g), the course of action adopted by the MCI and the DCI would not, qualify as a reasonable restriction, but would amount to interference with the rights guaranteed under article 19(1) (g) and, more particularly, article 30, which is not subject to any restriction similar to article 19(6) of the Constitution. Over the years the Supreme Court has repeatedly observed that the right guaranteed under article 30, gives religious and linguistic minorities the right to establish and administer educational institutions of their choice, but not to maladminister them and that the concerned authorities could impose conditions for maintaining high standards of education, such as laying

67 2013(9) AD (Delhi) 144.

down the qualification of teachers to be appointed in such institutions and also the curriculum to be followed therein.

The court declared and quashed as being the "Regulations on Graduate Medical Education (Amendment) 2010 (Part II)" and the "Post Graduate Medical Education (Amendment) Regulation, 2010 (Part II)", whereby the MCI introduced the single NEET and the corresponding amendments in the Dentists Act, 1948, are *ultra vires* the provisions of articles 19(1) (g), 25, 26(a), 29(1) and 30(1) of the Constitution. However, decisions already taken on the basis of these regulations were directed to remain valid and untouched.

Granting approval by MCI below operative work load arbitrary

Is sanctioning seats for MS degree less than the number as per the operative workload arbitrary? The Supreme Court considered this question in *Sinhgad Technical Education Society* case[68] with regard to MS (OBG) Course in medical science, MCI had issued circular fixing norms of operative work load and sanction of seats for MS degree. As per circular, for one MS seat the required operative work load was 1 major surgery and two minor surgeries daily. The operative work load of petitioner was 3 major surgeries and 6 minor surgeries daily MCI granted approval for 2 seats only in stead of 3 seats. The court found that MCI was not right in granting letter of permission for only two seats. Accordingly MCI was directed to issue letter of permission as per norms.

Vice-Chancellor to be selected through transparent and fair method

In *Ram Tawakya Singh v. State of Bihar* [69] the Supreme Court has held that there is the requirement of a fair and transparent search mechanism for the appointment of Vice Chancellor and Pro-vice Chancellor under the Bihar State Universities Act, 1976. It found that though the statute expressly does not provide appointment through open advertisement but its provisions as a whole clarify that Vice-Chancellor must be a person reputed for his scholarship and academic interest or eminent educationist having experience of administering the affairs of any university. If article 14 which mandates that every action of the state authority must be transparent and fair has to be read in the language of these provisions, it becomes clear that the chancellor has to follow some mechanism whereby he can prepare panel by considering persons of eminence in the field of education, integrity, high moral standard and character who may enhance the image of the particular university.

The Supreme Court found that the facts disclosed in the case showed that the chancellor had been consistently flouting the mandate of law and making appointments of vice-chancellors and pro vice-chancellors without effectively consulting the state government and completely disregarding the requirement of

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68 *Supra* note 65.

69 2013(10) SCAL E 462.

academic excellence and experience. The appointments made by the chancellor in 2010 were quashed by the learned single judge who found that there was virtually no consultation with the state government. He opined that even though the chancellor has some flexibility in suggesting the names which may come to his knowledge or domain but he is duty bound to share the details with the state government and then decide who is suitable to be appointed as vice-chancellor. the division bench approved the view taken by the learned single judge and observed that the objective of making consultation with the state government mandatory is to ensure that the selection procedure is transparent and fair. The court observed that the state government has the means to enquire into the background of the candidates and provide inputs to the chancellor which could be extremely useful in making final choice of the candidate. the court also emphasised that consultation in such an important matter must be effective so that the chancellor may make final choice after considering the information and inputs given by the state government and that would obviate the risk of university being placed in the hands of wrong or unsuitable person.

To give a hearing even for non-renewal of recognition

The Supreme Court in *Swamy Devi Dayal Hospital & Dental College* v. *Union of India*[70] has held that it is essential to comply with the principles natural justice since non-renewal permission in the present academic session has an adverse affect bearing civil consequences. The court relied on its earlier decision in *Sahara India (Firm), Lucknow* v. *Commissioner of Income Tax, Central-1*.[71] In the present case, the petitioner had been accorded permission in these two specialties for the previous academic session. Non-renewal thereof in the present academic session has an adverse affect. It has visited the petitioner with civil and/or evil consequences barring the petitioner to enroll fresh students in this year. The court found that even in the absence of specific provision of giving a hearing, the hearing is required in such cases unless specifically excluded by a statutory provision.

The court was of the opinion that the cases of renewal cannot be excluded from the provisions of section 10A of the MCI Act. It was not disputed before the court that when the petitioner-college applied for renewal of the permission, the application was processed in accordance with the procedure laid down in section 10A. As per this procedure, when a request is received in the form of a requisite scheme, as required in sub-section (2) of section 10A of the Act, the same is to be processed in the manner provided under sub-section (3) thereof. Once it is found by the DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case scheme it is found to be deficient, sub-section (3) (a) of section 10A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, any, specified by the

70 2013(10) SCALE 608.

71 (2008) 14 SCC 151.

DCI. After the recommendation is sent by the DCI to the Central Government, Central Government is required to process the same in accordance with the procedure contained in sub-section (4) of section 10A. It can either approve or disapprove the scheme. However, in case the Central Government is proposing to disapprove the scheme, a final decision in this behalf can be taken only after giving the concerned person, authority or institution, a reasonable opportunity of being heard. This is the mandate of the proviso to section 10A (4) of the Act.

Thus, the procedure prescribed in section 10A contains the requirement of following this principle of natural justice at two stages. In the first place, by the DCI when it finds deficiencies while examining the school in the second stage at the level of the Central Government before it passes away adverse orders, as it is the final administrative authority vested with powers to pass such an order. The law, thus specifically requires that at the stage of a decision by the Central Government, again an opportunity of being heard is to be provided. This proviso, thus, acknowledges the need of and confers a very valuable right in favour of the petitioner.

It was a case the renewal of recognition for master degree in Dental Surgery (MDS) was declined without personal hearing. Petitioner was granted NOC by state government, affiliation by the university and ultimately recognition for 7 specialty courses of MDS by Central Government. Subsequently 2 more specialty courses *viz*., MDS were recognized for session 2012-13 but despite NOC by state and affiliation by the university, permission was not accorded by Union of India for renewal of recognition on inspection and verification inspection report of DCI for session 2013-14 without affording any personal hearing. Writ court went with Union of India. The Supreme Court found that DCI recommended negatively on the ground of non-fulfillment of required surgery in a month which was confronted by petitioner, but recommendation was sent without opportunity of hearing. The court found that hearing on both stages by DCI as well as by Union of India was required. The court relied on its earlier decisions in *Managing Director, ECIL, Hyderabad, Etc.* v. *Karunakar* [72]*Priyadarshini Dental College & Hospital* v. *Union of India*.[73]

The Supreme Court clearly found that the high court had not correctly interpreted the provisions of section 10A of the Act by holding that the cases of renewal of permission would not be covered by this section and therefore it was not necessary for the Central Government to give opportunity of being heard to the petitioner before rejecting the renewal permission.

Need to curb unethical practices by private medical colleges

In *Rohilkhand Medical College & Hospital, Bareilly* v. *Medical Council of India*,[74]the Supreme Court took notice of the unethical practices by private medical

72 (1993) 4 SCC 727.

73 (2011) 4 SCC 623.

74 2013(11) SCALE 183.

colleges and stressed the duty of governmental bodies including Central Bureau of Investigation (CBI) to curb these. It found that there was a mushrooming of large number of medical, engineering, nursing and pharmaceutical colleges, which had definitely affected the quality of education in this country, especially in the medical field which called for serious introspection. The court noticed that the present policy of the Central Government in the higher education is to provide autonomy of institutions, but adoption of unfair practices is a serious violation of the law. According to the court though some states had made some legislation in this regard but those were without teeth. The court therefore emphasised the extreme necessity of a Parliamentary legislation for curbing these unfair practices, which is the demand of our society.

According to the Supreme Court, Mushrooming of large number of medical, engineering, nursing and pharmaceutical colleges, which has definitely affected the quality of education in this country, especially in the medical field which calls for serious introspection? Private medical educational institutions are always demanding more number of seats in their colleges even though many of them have no sufficient infrastructural facilities, clinical materials, faculty members, *etc*. Reports appear in every now and then that many of the private institutions which are conducting medical colleges are demanding lakhs and sometimes crores of rupees for MBBS and for post-graduate admission in their respective colleges. Recently, it is reported that few MBBS seats were sold in private colleges of Chennai. The court found that it could not lose sight of the fact that these things are happening in our country irrespective of the constitutional pronouncements by the Supreme Court in TMA Pai Foundation that there shall not be any profiteering or acceptance of capitation fee *etc*. Central Government, Ministry of Health and Family Welfare, CBI or the Intelligence Wing have to take effective steps to undo such unethical practices or else self-financing institutions will turn to be students financing institutions.

The court found that this was an apt occasion to ponder over whether we have achieved the desired goals, eloquently highlighted by the Constitution Bench judgments of this court in *T.M.A. Pai Foundation*,[75] and *P.A. Inamdar* v. *State of Maharashtra*.[76]

The Supreme Court noticed that the CBI's investigation, revealed a sorry state of affairs, which was an eye-opener for taking appropriate remedial measures in future so that medical education may attain the goals envisaged by the IMC Act and the Regulations and serve the community. CBI had to charge-sheet none other than the then Union Minister of Health and Family Welfare, itself which depict how the educational system in this country is deteriorating. Many of regulatory bodies like MCI, AICTE, and UGC *etc*. were also under serious clout in the recent years. CBI, in the year 2010, had to arrest the President of the MCI for accepting

75 See *supra* note 51.

76 (2005)6 SCC 537.

bribe to grant recognition to one Medical College in Punjab. Later, it is reported that the CBI found that the President of the MCI and its family members possessed disproportionate assets worth of 24 crores. The court referred to these instances only to indicate the falling standards of our educational system at the highest level, sometime even at the level of the Central Government making a serious inroad to the right to life guaranteed to the citizens of the country under article 21 of the Constitution of India.

Clause (2) of regulation 3 clearly states that only such medical colleges shall be eligible under these Regulations that enjoy minimum 10 years of standing from the date of grant of initial letter of permission by the Central Government. So far as the petitioner is concerned, they have completed only eight years, consequently, Regulations 2013 would not apply to them.

The court took notice of the unprecedented growth of the technical and medical Institutions in this country which has resulted in widespread prevalence of various unethical practices. Collection of large amount by way of capitation fee running into crores of rupees for MBBS and post-graduate seats, exorbitant fee, donation *etc*., by many of such self financing institutions, has kept the meritorious financially poor students away from those institutions. Pressure, it is also seen, is being extended by various institutions, for the additional intake of students, not always for the benefit of the student community and thereby serve the community, but for their own betterment.

The court also took judicial notice of the fact that many a times the medical colleges and engineering colleges and others are being established after availing large amounts by way of loans from the financial institutions and other borrowings, with no funds of their own, and once the college gets approval and students are admitted, loan availed of is being repaid from the capitation fee charged from the students and ultimately that amount constitute their capital. Many a times, even without any sufficient facilities they put pressure on the various agencies and the Central Government and get approval overlooking the regulatory authority, like MCI, which adversely affects the quality of medical education in this country.

Surprise inspection of medical college without notice by MCI

In *Manohar Lal Sharma* v. *M.C.I.*[77] the Supreme Court considered the powers and functions of the MCI in maintaining standards of medical education and held that it had the power to supervise the qualifications or eligibility standards for admission into the medical institutions. In furtherance of this purpose, for approval of new medical college or increase in seats of existing medical college it has power and duty to verify its capacity and sufficiency of faculties as per determined standards. The court relied on its earlier decisions in *State of Kerala* v. *Kumari T.P. Roshana*[78] and *Medical Council of India v. State of Karnataka*.[79]

77 2013(10) SCC 60.

78 AIR 1979 SC 765.

79 (1998) 6 SCC 131.

In the present case, approval for second batch was granted on intervention of court and while disposing that case the court had made an observation that nothing was impediment to grant approval in question. Accordingly third batch was also granted permission, but in a routine inspection, MCI found material irregularity and insufficiency of infrastructure and faculty. Thereafter show cause notice was issued with direction for compliance to medical college, accordingly respondent college filed compliance report. Thereafter board of governors decided for surprise inspection. Committee specifically constituted for the purpose, conducted surprise inspection and found material irregularity and insufficient infrastructure and low quality of faculty. Relying on surprise inspection board of governors decided to revoke approval for third batch (2013-14), but respondent college appeared and placed earlier order of this court showing observation that nothing impediment on granting approval, accordingly approval was granted in the light of observation by this court. Granting of such approval was challenged under writ and MCI also filed application in SLP for modification/clarification of earlier order. MCI is within its power to conduct surprise inspection to verify compliance of its direction. No prior notice is required for such surprise inspection. The Supreme Court found that power to grant permission or not to grant permission of MCI is not quasi judicial function and it is completely administrative function, therefore, no requirement of rigid compliance of rule of natural justice.

Managing committee not to have casual approach towards court.

The Supreme Court in *Esha Bhattacharjee* v. *Managing Committee of Raghunathpur Nafar Academy* [80] found that the member of managing committee had behaved with a casual approach towards court's order and stressed on the requirement of alertness. It held that the members of management committee of school like secretary ought not to approach towards the court's order in a casual manner and are required to behave with responsibility. The court observed that neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice.

Reasonable delay in recommendation by DCI permissible

In *Educare Charitable Trust* v. *Union of India* [81] the Supreme Court found that the stipulated time of 40 days for recommendation from the date of taking decision was reasonable. The court noticed that as per explanation given by DCI, the decision making of governing council is time taking for the reason of scattered residence of its member all over India. Accordingly 40 days time for recommendation from date of taking decision by governing council was found to be reasonable.

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80 2013(11) SCALE 418.

81 2013(11) SCALE 569.

VIII STAFF AND SERVICE CONDITIONS

UGC's enhanced age not to apply to unwilling states

On the question of enhanced age for superannuation, different state had varying stands in *Jagdish Prasad Sharma* v. *State of Bihar*[82] the Supreme Court considered the permissibility of enhancement of age for superannuation by UGC and whether it would impact on opportunities to youths. UGC had issued regulation/ circular for bearing of 80% share in enhanced amount due to revised pay structure of state universities subject to enhancement of age for superannuation. States of U.P. and Kerala raised objections that enhancement of age for superannuation restricts the opportunities for youths; therefore, UGC cannot impose condition precedent of enhancing age for 80% share of Central Government. The court found that the state government was at liberty to frame its own laws relating to education in the state and is not, therefore, bound to accept or follow the regulations framed by the UGC. However, such states who implemented the scheme, the consequences envisaged in the scheme itself would automatically follow.

The court found that as far as the States of Kerala and U.P. are concerned, they have their own problems which are localised and stand on a different footing from the other states, none of whom who appear to have the same problem. Education now being a list III subject, the state government is at liberty to frame its own laws relating to education in the state and is not, therefore, bound to accept or follow the regulations framed by the UGC. However, within this class of institutions there is a separate group where the state governments themselves have taken a decision to adopt the scheme. In such cases, the consequences envisaged in the scheme itself would automatically follow.

But the court also observed that if they wish to adopt the regulations framed by the commission under section 26 of the UGC Act, 1956 the states will have to abide by the conditions as laid down by the commission.

Desirability of reservation in super specialty faculties

Is the reservation policy in favour of SC/ST/OBC applicable to posts of super-specially faculties of AIIMS, New Delhi? This question was referred to be decided by a Constitution Bench in *Faculty Association of AIIMS* v. *Union of India*[83] the Constitution Bench of the Supreme Court considered the desirability of reservation in super specialty faculties of AIIMS.The court referred to its earlier judgments in *Indra Sawhney* v. *Union of India*;[84] *Jagdish Saran* v. *Union of India*[85] and *Dr.*

82 2013(8) SCC 633.

83 2013(9) SCALE 198.

84 [(1992) Supp. (3) SCC 215].

85 [(1980) 2 SCR 831].

Pradeep Jain v. *Union of India*.[86] *Dr. Preeti Srivastava* v. *State of M.P.*[87] Also *Commissioner of Income Tax, Hyderabad-Deccan* v. *Vazir Sultan and Sons*.[88]

The bench took a view that the main issue regarding reservation at the super-specialty level had already been considered in *Indra Sawhney's* case by a nine-judge bench. Having regard to such decision, the court was not inclined to take any view other than the view expressed by the nine-judge bench on the issue. Apart from the decisions in *Dr. Jagadish Saran's* case and *Dr. Pradeep Jain's* case the court considered the decision in *Preeti Srivastava's* case which was also decided by a bench of five judges.

The court took notice of the fact that in paragraph 836 of the judgment in *Indra Sawhney's* case it was observed that while the relevance and significance of merit at the stage of initial recruitment cannot be ignored, it cannot also be ignored that the same idea of reservation implies selection of a less meritorious person. It was also observed that at the same time such a price would have to be paid if the constitutional promise of social justice was to be redeemed. However, after making such suggestions, a note of caution was introduced in the very next paragraph in the light of article 15 of the Constitution. A distinction was, however, made with regard to the provisions of article 16 and it was held that article 335 would be relevant and it would not be permissible not to prescribe any minimum standard at all. Of course, the said observation was made in the context of admission to medical colleges and reference was also made to the decision in *State of M.P.* v. *Nivedita Jain*,[89] where admission to medical courses was regulated by an entrance test. It was held that in the matter of appointment of medical officers, the government or the public service commission would not be entitled to say that there would not be minimum qualifying marks for scheduled castes/scheduled tribes' candidates while prescribing a minimum for others. In the very next paragraph, the nine-judge bench while discussing the provisions of article 335 also observed that there were certain services and posts where either on account of the nature of duties attached to them or the level in the hierarchy at which they stood, merit alone counts. In such situations, it cannot be advised to provide for reservations. In the paragraph following, the position was made even clearer when their lordships observed that they were of the opinion that in certain services in respect of certain posts, application of rule of reservation may not be advisable in regard to various technical posts including posts in super specialty in medicine, engineering and other scientific and technical posts.

However, the posts involved in the case were the posts of assistant professors (formerly known as lecturers). The court did not apply the two fold test that is (a) the nature of duties and (b) the level in the hierarchy. Instead the bench went on to

86 [(1984) 3 SCR 942].

87 (1999) 7 SCC 120.

88 1959 Supp (2) SCR 375.

89 (1981) 4 SCC 296.

make on unwarranted and unconstitutional observation that "the very concept of reservation implies mediocrity"

Thereafter, while disposing of the appeals the bench attempted to impress upon the Central and state governments to take appropriate steps in accordance with the views expressed in *Indra Sawhney's* case and in this case, as also the other decisions referred to in the judgment, keeping in mind the provisions of article 335 of the Constitution.

The above judgment censed finding of the review petition by its order dated 16.01.2014, clarifying that it was for the Central Government to take a decision as to whether there should be a reservation for super specialty posts.

Government to regulate employees of private schools.

In *Deepali Gundu Surwase* v. *Kranti Junior Adhyapak Mahavidyalaya (D.Ed.)*[90] the Supreme Court considered the power of state government to regulate the recruitment and conditions of service of employees in private schools. It considered the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 in the context of the management's power to suspend an employee of a private school without the approval of the competent authority and found that the management was bound to pay subsistence allowance.

The court found that the Act was enacted by the legislature to regulate the recruitment and conditions of service of employees in certain private schools in the state and to instill a sense of security among such employees so that they may fearlessly discharge their duties towards the pupil, the institution and the society. Another object of the Act is to ensure that the employees become accountable to the management and contribute their might for improving the standard of education. Rule 35 of the rules empower the management to suspend an employee with the prior approval of the competent authority. The exercise of this power is hedged with the condition that the period of suspension shall not exceed four months without prior permission of the concerned authority. The suspended employee is entitled to subsistence allowance under the scheme of payment (rule 34) through co-operative bank for a period of four months. The court also held that if a termination of an employee is declared *ultra vires* statute or in violation of natural justice by a competent judicial/quasi judicial body or court, it entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The earlier decisions in *J.K. Synthetics Ltd*. v. *K.P. Agrawal*[91] was overruled and the decision in *Hindustan*

90 2013(10) SCC 324.

91 (2007) 2 SCC 433.

Tin Works Private Limited v. *Employees of Hindustan Tin Works Private Limited* [92]were followed.

Courts to keep hands off in academic matters

Fixing minimum qualification of teachers by implementing recommendation of expert committee cannot be held as arbitrary. UGC as an expert body was entrusted with the duty to maintain standards of teaching in universities. Fixing criteria for eligibility of teachers has a direct nexus with standard of teaching. Such fixation of eligibility criteria was for mere implementation of experts recommendation and was not arbitrary or violative of article 14 of the Constitution.

In *University Grants Commission* v. *Neha Anil Bobde (Gadekar)*[93] the Supreme Court held that in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts.

The court relied on its earlier judgment in *University of Mysore* v. *C.D. Govinda Rao*,[94] *Tariq Islam* v. *Aligarh Muslim University*,[95] and *Rajbir Singh Dalal* v. *Chaudhary Devi Lal University*.[96]

Shiksha Karmi/Guruji not to be equated with trained teachers

In *Gopal Chawala* v. *State of Madhya Pradesh*[97] the Supreme Court considered whether shiksha karmi/ guruji appointed under education scheme after training, can be equated with teachers. Petitioners were appointed as shiksha karmi/ guruji under education guarantee scheme. Training was given to them for two years and were issued certificate of diploma in education. Chief Education Officer, Janpad Panchayat passed an order granting certain benefits to the petitioners which are available to Adhyapak cadre but same was subsequently withdrawn. Challenging order of cancellation, writ petitions preferred and same got dismissed. Supreme Court has held that the petitioners were appointed on the basis of an Education Scheme after coming into force of the Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993, by which certain posts were created as Shiksha Karmies, Samvidakarmi *etc*. There was nothing to show that petitioners have undergone any process of selection as such. The court found that their claim that they should be equated with the teachers appointed following the statutory rules could not be accepted.

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92 (1979) 2 SCC 80.

93 2013(10) SCC 519.

94 AIR 1965 SC 491.

95 (2001) 8 SCC 546.

96 (2008) 9 SCC 284.

97 2013(13) SCALE 507.

A single judge and the division bench, on facts had found so and the Supreme Court found no illegality in those findings. The single judge, noticing that the amount of honorarium is shockingly inadequate in the present scenario, gave a direction to the state government to examine whether the said amount could be enhanced. The Supreme Court also held that the only relief that can be granted to the petitioners was the one which the single judge has granted.

Concurrent remedies available before labour court and education tribunal

In *Guru Nanak Public School* v. *Arjun*[98] the Delhi High Court through a single bench decision has held that the remedies available to an employee under the Delhi School Education Act, 1973 and the one available under the Industrial Disputes Act, 1947 were concurrent. It held that on termination of the services, the employee can choose his remedy.

On termination of services of respondent/employee, he filed a direct industrial dispute before the labour court against the petitioner/school. The school took the plea of abandonment of service by the employee in written statement. The school also failed to lead any evidence despite repeated opportunities. Labour court held that the petitioner had failed to establish that the respondent/workman had abandoned his duties and services of the respondent were held illegally terminated as they proceeded without any enquiry. The school challenged the same alleging that jurisdiction of the courts constituted under the ID Act, 1947 is excluded as school is governed by the provisions of Delhi School Education Act, 1947 The court found that it has not been pointed out by reference to the Delhi Education Act, 1947 or the ID Act, 1947 that the remedy available to the respondent under the ID Act 1947,was excluded by virtue of the enactment of Delhi School Education Act, 1973. The only provision pointed out was section 25 of the Delhi School Education Act, 1973 which excludes the jurisdiction of the civil court in respect of matters in relation to which the authorities under the said Act are empowered to act. The high court found that the remedies available to the respondent were concurrent and that exclusion of jurisdiction of the courts/tribunals under the ID Act, 1947 cannot lightly be inferred. Hence it was held that the employee could have elected to invoke its remedy under the Delhi School Education Act, 1973 or could have elected to invoke the remedy under the ID Act. Since he had made his election to invoke the remedy under the ID Act, 1947. he cannot be denied the relief thereunder only because he could have also sought his remedy under the Delhi School Education Act, 1973.

Disciplinary committee ratifying the charge-sheet by Managing committee

A division bench of the Delhi High Court In *Managing Committee, Naval Public School* v. *Neera Chopra*[99] considered the effect of issuance of charge-

98 2013(199) DLT 54.

99 2013(136) DRJ 601.

sheet by chairman of managing committee and not by disciplinary committee. The respondent no.1, employed as a principal in the appellant school, was issued a charge-sheet by chairman of managing committee of school. Disciplinary committee was constituted after issuance of charge sheet. Members of the disciplinary committee ratified the charge sheet issued by the managing committee and respondent was removed from services. The education tribunal had set aside order of removal of service on ground that charges framed by the managing committee was contrary to the relevant rule 120 and therefore illegal and non-est and void *ab initio* and incapable of ratification. Tribunal directed reinstatement of respondent no.1, with 50% of the back wages and all consequential benefits. Single judge affirmed the findings of tribunal. In appeal against same the high court held that the scheme of the rules permits the managing committee of the school to, before constitution of the disciplinary authority at least form an opinion of the nature of the charges against an employee guilty of misconduct. It cannot be said that the action of the managing committee of the school in framing the charges is *ex facie* illegal or contrary to the rules. The use of the expression "definite charges" in rule 120 is also indicative of 'tentative charge' having already been framed by the managing committee. Once it is found that in the scheme of the rules, the managing committee of the school before seeking nomination on the disciplinary authority has already proposed the charges, no reason for holding that it is not possible for the disciplinary authority to, if of the opinion that the charges proposed or tentatively framed by the managing committee are appropriate, to adopt the same charges. Thus without it being shown that the result would have been any different had the approval been prior rather than *post facto*, the order imposing punishment could not be interfered with. The appeal was allowed by the division bench. The court relied on the decisions in *Samarth Shiksha Samiti* v. *Directorate of Education,*[100] *Mamta* v. *School Management of Jindal Public School,*[101] *B.S. Verma* v. *Delhi Administration,*[102] It also distinguished and held not applicable the decision in *Marathwada University* v. *Seshrao Balwant Rao Chavan.*[103]

The task of National Literacy Mission covered under industry

In *Directorate of Adult Education* v. *Birender Kumar*[104] the Delhi High Court through a single bench held that the task of furtherance of objectives of National Literacy Mission was covered under 'industry' as per the ID Act, 1947. Petitioner directorate was entrusted with the task of developing model teaching and learning materials and harnessing all kinds of media for furtherance of the objectives of National Literacy Mission. Central Government Industrial Tribunal (CGIT), by the

100 180 (2011) DLT 93.

101 (2011) 5 ADD 630.

102 48 (1992) DLT 49.

103 (1989) 3 SCC 132.

104 2013(200) DLT 769.

impugned award has held that the termination of the services of the three respondent workmen was neither just nor fair and legal. This was challenged by petitioner alleging that petitioner was not an industry. The court found that even though the role of the state in combating illiteracy and promoting education is deeply entrenched in the Directive Principles of State Policy, but the same cannot be considered as a regal or strictly sovereign function. Functions of the petitioner, qualify as functions in the nature of public welfare. Petitioner does much good to the society by promoting adult education but the same cannot be done without a systematic workforce engaged by the petitioner to meet its objectives. Respondents were engaged as peons on daily wage basis, and not in relation to any sovereign work of the government. Therefore, petitioner clearly falls within the definition of industry as per section 2(j) of the Act. The court relied on the decisions in *D.N. Banerji* v. *P.R. Mukherjee*[105] and *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa.*[106] It also referred to the decisions in *Des Raj* v. *State of Punjab.*[107] *General Manager, Telecom* v. *A. Srinivasa Rao*[108] and *Municipal Corporation of Delhi* v. *Female Workers (Muster Roll).*[109]

The court found that there was no merit in the submission of the petitioner that it undertakes functions of a sovereign nature. Even otherwise, it is a settled position of law that within government departments, if there are units which are industries and the same are substantially severable, then the said units should be considered as industry within section 2(j) of the act. The court did not accept the argument that the administration department of the petitioner where the respondents were employed was not an industry. The nature of employment of the respondents was as peons on daily wage basis, and not in relation to any sovereign work of the government.

Plea of lack of monetary ability to deny pay commission scale

Could the plea of lock of monetary ability of the school be maintainable to deny the scale recommended by pay commission? In *Meenu Saxena* v. *Arya Vidya Mandir*[110] the Delhi High Court through its single bench considered the maintainability of the plea of lack of monetary ability of the school to deny the claim of teachers and other employees in the school, for payment of salaries in terms of the reports of the 5th and 6th Pay Commissions as adopted by the Director of Education Service and Labour Law. It held that the lack of monetary ability in a school to make payments of monetary emoluments to teachers & employees in terms of pay commission reports is not a ground to justify non-payment. It also

105 (1953) 4 SCR 302.

106 AIR 1978 I LLJ 349.

107 (1988) 2 SCC 537.

108 (1997) 8 SCC 767.

109 (2000) SCC (LS) 331.

110 2013(202) DLT 216.

relied on the decisions in *T.P. Singh* v. *Guru Harkishan Public School*,[111] and *Rukmani Devi Public School* v. *Sadhna Payal*.[112]

Reasonable maximum period of extension of probation

The Delhi High Court through its single bench In *Hamdard Public School* v. *Directorate of Education*[113]considered the issue of extension of probation period of teachers and other employees under Delhi School Education Rules, 1973. When the rules or the appointment letter does not provide for the maximum period of extension of probation or of automatic confirmation a reasonable period would considered the maximum. It also held that a reasonable period will have to be dependent on the facts of each case and rule 105 must be so interpreted that the reasonable period therein should ordinarily be around three years, should not extend beyond five years in most of the cases, and, in the rarest or rare cases, one more year upto 6 years may be considered. The court referred to the law already settled in the decisions in *Head Master, Lawrence School, Lovedale* v. *Jayanthi Raghu*,[114] *Kathuria Public School* v. *Director of Education*,[115] and *Delhi Public School* v. *Shalu Mahendroo &*[116], *Sharda Devi* v. *State of Bihar*.[117]

IX MINORITY EDUCATIONAL INSTIUTIONS

No minority status if trustees are from non-minority state

The Supreme Court in *Dayanand Anglo Vedic (DAV) College Trust and Management Society* v. *State of Maharashtra*[118] considered the question whether members of a linguistic non-minority in one state can establish a trust or society in another state and claim minority status in that state. Principal Secretary and Competent Authority, Minority Development Department passed an order of withdrawal of the recommendation for the appellant-society as linguistic minority institution on the ground that the earlier order granting recommendation was under the mistake that the trustees of the appellant were residing in the State of Maharashtra. Division Bench of high court, in writ petition preferred by appellant institution, refused to interfere with the order of withdrawal of minority status of the appellant institution. In appeal, the Supreme Court has upheld the view taken by high court that though the appellant claimed linguistic minority status, but all

111 2013 (3) AD (Delhi) 482.

112 LPA No. 286/2012, decided on 11.5.2012

113 2013(202) DLT 111.

114 (2012) 4 SCC 793.

115 123 (2005)DLT 89.

116 (2013)196 DLT 147.

117 (2003) 3 SCC 128.

118 2013(4) SCC 14.

the trustees of the appellant-society were residing in the area where majority language is Hindi and that the state government had a right to correct the mistake if any of the certificate granting minority linguistic status which was granted contrary to law as admittedly the trustees of the appellant did not reside in the State of Maharashtra, where Hindi speaking people are linguistic minority. The court has also held that in order to claim minority/linguistic status for an institution in any state, the authorities must be satisfied firstly that the institution has been established by the persons who are minority in such state; and, secondly, the right of administration of the said minority linguistic institution is also vested in those persons who are minority in such state. The right conferred by article 30 of the Constitution cannot be interpreted as if irrespective of the persons who established the institution in the state for the benefit of persons who are minority, any person, be it non-minority in other place, can administer and run such institution. The court relied on the earlier decisions in *T.M.A. Pai Foundation*[119] *P.A. Inamdar,*[120] and *In re Kerala Educational Bill, 1957*.[121]

Minority institution also to implement pay commission recommendation

The Delhi High Court through single bench decision in *T.P. Singh* v. *Guru Harkrishan Public School*[122] held that in the context of Delhi School Education Act, 1973even Minority educational institutions are liable to implement of recommendation of 6th Pay Commission in paying salaries payable to teachers. It found that even with respect to unaided minority institutions, government has a right to provide for certain regulations pertaining to pay and allowances *etc*. It also observed that in the case of *School Management of GHPS Hari Nagar* v. *Gurvinder Singh Saini*,[123] directions had been issued to implement the recommendations of pay commission. Appeal against said judgment has been pending in Supreme Court, however no stay has been granted.[124]

Holding of DPC for selection of principal not required in Minority School

In *Leela Govind v. Kerala Education Society Senior Secondary School*[125] the Delhi High Court through a single bench considered whether in Minority school holding of Departmental Promotion Committee (DPC) for selection of principal is

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119 See *supra* note 51.

120 See *supra* note 66.

121 1959 SCR 995.

122 *Supra* note 111.

123 MANU/DE/2600/2011.

124 See also *G. Vallikumari* v. *Andhra Education Society; Sindhi Education Society* v. *Chief Secretary, Govt.-NCT of Delhi; School Management of GHPS Hari Nagar* v. *Gurvinder Singh Saini*. It also distinguished and held as not applicable the decision in *Satimbla Sharma* v. *St. Paul's Senior Secondary School*.

125 2013(9) AD(Delhi) 144.

required. It held that a minority school has a complete right to choose its own teachers and the State has no right to interfere in the selection of the teachers or the principal by the minority school. It relied on the decision in *Sindhi Education Society* v. *Chief Secretary, Govt. of NCT of Delhi.*[126] It also relied on a judgment in.

No representative of the DOE necessary for selection of teacher in minority school

In *St. Anthonys Girls Sr. Sec. School* v. *Govt. of NCT of Delhi*[127] the Delhi High Court through a single bench held that there was no necessity of the presence of an advisor nominated by Director of Education for the selection and appointment of TGT (Sanskrit) in an aided minority school. Director of Education passed the impugned order on a specious ground that interview for selection was held in August, 2011 and the judgment of the Division Bench in the case of Queen Mary's School came to be passed subsequently on 21.11.2011, holding that Rule 96 as a whole does not apply to minority aided schools. When the show-cause notice was issued by Director of Education, judgment in the case of Queen Mary's School had already been passed. Therefore, it could not have been urged on behalf of Director of Education that petitioner/school is allegedly bound by principle of estoppel and that in spite of categorical ratio of Queen Mary's School, Director of Education is still entitled to appoint an advisor in the selection committee in terms of Rule 93(3)(b)(v) of the Delhi School Education Rule, 1973. The court allowed the writ petition and quashed the impugned order and declared that the selected teacher was entitled to be appointed as TGT (Sanskrit) of petitioner-school in terms of the decision as recorded in Minutes of Meeting of petitioner/school. The court relied on the decision in *Queen Mary's School Thru its Principal* v. *U.O.I.*[128]

X CONCLUSION

The implementation of Right to Education Act, 2006 received substantial judicial support during the last year. However, the judicial scrutiny exposed the lack of concern of many states including their failure even to constitute Child Rights Commission where 19 states/Union Territories were found wanting. The courts also had to step in to solve the problems in implementing the RTE Act, especially those relating to its applicability to pre-elementary classes and boarding schools. The special needs of visually impaired students had to be brought to the notice of the concerned authorities. Another important development was the judicial notice taken by the courts about the rampant commercialization of education, especially the professional education. In the context of medical education, the courts have noticed that even though the present policy of the Central Government

126 (2010) 8 SCC 49. See also *Smitha Krishnan* v. *Directorate of Education.*

127 2013(205) DLT 744.

128 185 (2011) DLT 168 (DB)

in higher education was to provide autonomy to institutions, the failure to curb unfair practices and profiteering was glaring. The falling standards of our educational system and the unethical practices, have all led to serious inroads to the right to life guaranteed to the citizens under article 21 of the Constitution of India. Even though the courts have given a great impetus to the mission of education, the Supreme Court was found doing a difficult balancing act protecting the interests of the students on the one hand and at the same time upholding the right of private managements to have their right of administration including the one to admit students while striking down the national entrance test for medical admissions. A Constitution Bench of the Supreme Court also was seen making some unsupported observations while considering the desirability of reservation in the appointment of assistant professors on posts in specialty and super specialty in medicine. The apex court gave liberal and purposive interpretation while reading the necessity of transparency and fairness in the method of appointing vice-chancellors even in the absence of a statutory requirement. Similarly it read into the relevant provisions the mandate to follow the principles of natural justice even in the cases of non-renewal of recognition to colleges. As a whole, the law on education has taken giant steps thanks to the Supreme Court of India and several high courts.