REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (C) NO. 1368 OF 2004
IN
CIVIL APPEAL NO. 2700 OF 2001

Action Committee, Un-Aided Pvt. Schools & Ors. …Petitioners

Versus

Director of Education, Delhi & Ors. …Respondents

[WITH REVIEW PETITION (C) NO. 1420 OF 2004 IN CIVIL APPEAL NO. 2704 OF 2001, REVIEW PETITION (C) NO. 1421-1422 OF 2004 IN CIVIL APPEAL NOS. 2705-2706 2004, REVIEW PETITION (C) NO. 1423 OF 2004 IN CIVIL APPEAL NO. 2703 OF 2001 AND REVIEW PETITION (C) NO. 1774 OF 2004 IN CIVIL APPEAL NO. 2701 OF 2001]

SUPREME COURT OF INDIA
JUDGMENT

J U D G M E N T

S.B. SINHA, J :

1. The Parliament enacted the Delhi School Education Act, 1973 (for short "the Act") to provide for better organization and development of school education in the National Capital Territory of Delhi (NCT) and for matters connected therewith or incidental thereto. The Act deals with education at pre-primary stage, primary stage, secondary stage and senior secondary stage.

2. The Act contains an interpretion clause defining a large number of words mentioned therein including ‘aided school’, ‘minority school’ and ‘unaided minority school’.

Section 3 of the Act empowers an “Administrator” to regulate education in schools. Section 5 provides for the scheme of management of every recognized school in terms of the rules framed under the Act. It provides for the mode and manner in which fees and other charges to be levied and collected by the schools.

Section 18 provides for a ‘school fund’ known as the “Recognised Unaided School Fund”; Sub-section (4) whereof mandates that income derived by unaided schools by way of fees shall be utilized for such educational purposes as may be prescribed.

Section 24 provides for inspection of schools; sub-section (3) whereof reads as under:

> “(3) The Director may give directions to the manager to rectify any defect or deficiency found at the time of inspection or otherwise in the working of the school.”

Section 27 of the Act contains a penal provision. Rule making power of the Administrator is specified in Section 28 thereof, clauses (r), (s), (u), (v) and (w) of Sub-section (2) whereof read as under:

> "(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
>
> r) fees and other charges which may be collected by an aided school;
>
> s) the manner of inspection of recognised schools
>
> u) financial and other returns to be filed by the managing committee of recognised private schools, and the authority by which such returns shall be audited;
>
> v) educational purposes for which the income derived by way of fees by recognised unaided schools shall be spent;
>
> w) manner of accounting and operation of school funds and other funds of a recognised private school;"

3. In exercise of the said rule making power, the Government of National Capital Territory of Delhi framed rules known as the Delhi School Education Rules, 1973 (for short "the Rules").

Chapter XIII of the Rules is divided in three parts. Part A deals with fees and other charges in aided schools, Part B deals with fee concessions and Part C provides for pupils' fund.

Chapter XIV deals with 'School fund'.

I may notice Rules 172, 173, 177(1), 177(2)(b), (c), (d), (e) (3) and (4), which read as under:

> **"172. Trust or society not to collect fees, etc., schools to grant receipts for fees, etc., collected by it.** -- (1) No fee, contribution or other charge shall be collected from any student by the trust or society running any Recognized school; whether aided or not.
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> (2) Every fee, contribution or other charge collected from any student by a Recognized school, whether aided or not, shall be collected in its own name and a proper receipt shall be granted by the school for every collection made by it.
>
> **173. School Fund how to be maintained.—**(1) Every School Fund shall be kept deposited in a nationalized bank or a scheduled bank or any post office in the name of the school.
>
> (2) Such part of the School Fund as may be approved by the Administrator, or any officer authorized by him in this behalf, may be kept in the form of Government securities.
>
> (3) The Administrator may allow such part of the School Fund as he may specify in the case of each school, (depending upon the size and needs of the school) to be kept as cash in hand.
>
> (4) Every Recognised Unaided School Fund shall be kept deposited in a nationalized bank or a scheduled bank or in a post office in the name of

the school, and such part of the said Fund as may be specified by the Administrator or any officer authorized by him in this behalf shall be kept in the form of Government securities and as cash in hand respectively :

Provided that in the case of an unaided minority school, the proportion of such Fund which may be kept in the form of Government securities or as cash in hand shall be determined by the managing committee of such school."

177. Fees realized by unaided recognized schools how to be utilized -

(1) Income derived by an unaided recognized school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school.

Provided that savings, if any, from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school, or for one or more of the following purposes, namely :-

a) *** ***;

b) *** ***or

c) assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run.

(2) the savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely :-

(a) *** *** ***;

(b) the needed expansion of the school or any expenditure of a development nature;

(c) the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;

(d) co-curricular activities of the students;

(e) reasonable reserve fund not being less than ten per cent, of such savings;

(3) Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub-rule (2).

(4) The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered."

4. One Delhi Abibhavak Mahasangh filed a Writ Petition impleading therein about thirty unaided recognised public schools, Union of India, Government of National Capital Territory of Delhi and some other Government Departments to take necessary steps to regulate admissions in the recognised unaided private schools in Delhi in order to avoid and to check demand of illegal money in the name of donations by the schools at the time of admissions; to frame a policy or to make necessary amendments in the law regulating recognition and conditions thereof stipulating with regard to admission and payment of fee etc. of the recognised unaided private schools. It was alleged that the private schools had been indulging in large scale commercialization of education which had reached an

alarming situation on account of the failure of the government to perform its statutory functions under the Act and the Rules besides failing to insist on schools to follow the affiliation bye-laws and the bye-laws framed by the Central Board of Secondary Education.

5. Indisputably, the Director of Education, Delhi issued an order dated 10.09.1997, directing:

> "1. No Registration Fee of more than Rs. 25/- (Rupees Twenty Five) per student prior to admission shall be realised.
>
> 2. No Admission Fee of more than Rs. 200/- (Rupees Two Hundred) per student at the time of initial admission shall be realised. Admission Fee shall not be realised again from any student who is once given admission . The Admission Fee realized from any student exceeding Rs. 200/- (Rupees Two Hundred) in the academic year 1997-98 shall be refunded to the parents/students within 15 days of the date of the issue of the direction.
>
> 3. No caution money/security of more than Rs. 500/- (Rupees Five Hundred) per student shall be realized. The caution money thus collected shall be kept deposited in a scheduled bank in the name of the concerned schools and shall be refunded to the school at the time of his/her leaving the school along with bank interest thereon. The caution money collected in the session 1997-98 exceeding Rs. 500/- shall be refunded to the parents/students within 15 days of the issue of the directions.

> 4. No separate science fee or computer fee shall be realized from any student up to the secondary stage.
>
> 5. The fee structure of the school (excluding admission fee, caution money, science fee and computer fee) shall be reviewed in a meeting having the proper representatives of parents and the nominee of the Director of Education, to consider the feasibility of reducing the fees and funds keeping in view the actual financial requirement of the school."

6. Several writ petitions were filed by the managements of various Unaided Private Schools questioning the said directions. The principal questions which fell for consideration before the High Court were:

> "…whether unaided recognised schools are indulging in commercialisation of education. Are the students and their parents being exploited? If it is so, has the Government power to issue the impugned order to control and check menace of commercialisation and exploitation. The further question is whether the Government has performed its statutory functions as envisaged by the Act and the Rules. If not, what directions are required to be issued."

7. The High Court took notice of the provisions of the Act and various Rules issued thereunder as also the background under which the impugned order dated 10.09.1997 was issued.

A Committee headed by Mr. J. Veera Raghvan, former Secretary in the Ministry of Human Resource Development had been constituted to study the fee structure of the private recognized unaided schools along with other charges, which in turn noticed wide variations in the tuition fees charged by the private institutions. It filed its report suggesting guidelines in respect of disbursement of the funds.

The High Court noticed the recommendations of the Committee for the year 1997-98 and the circulars which were issued pursuant thereto.

The High Court also referred to the decision of this Court in Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645] to opine that no citizen has a fundamental right to deal in education. It furthermore referred to other decisions of this Court wherein Rule 177 of the Rules came up for consideration.

It was held:

> "(i) It is the obligation of the Administrator and or Director of Education to prevent commercialisation and exploitation in private unaided schools including schools run by minorities.

(ii) The tuition fee and other charges are required to be fixed in a validly constituted meeting giving opportunity to the representatives of Parent Teachers Association and Nominee of Director of Education of place their viewpoints.
(iii) No permission from Director of Education is necessary before or after fixing tuition fee. In case, however, such fixing is found to be irrational and arbitrary there are ample powers under the Act and Rules to issue directions to school to rectify it before resorting to harsh measures. The question of commercialisation of education and exploitation of parents by individual schools can be authoritatively determined on thorough examination of accounts and other records of each school.
(iv) The Act and the Rules prohibit transfer of funds from the school to the society or from one school to another.
(v) The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.
(vi) The inspection of the schools, audit of the accounts and compliance of the provisions of the Act and the Rules by private recognised unaided schools could have prevented the present state of affiars.
(vii) The authorities/Director of Education has failed in its obligation to get the accounts of private recognised unaided schools audited from time to time.
(viii) The schools/societies can take voluntary donations not connected with the admission of the ward.
(ix) On the peculiar facts of these petitions there is no per se illegality in issue of the impugned circular dated 10th September 1997.
(x) An independent statutory Committee, by amendment of law, if necessary, deserves to be constituted to go into factual matters and adjudicate disputes which may arise in future in

> the matter of fixation of tuition fee and other charges.
> (xi) The Government should consider extending Act and Rules with or without modifications to all schools from Nursery onward."

8. The High Court directed the appointment of a Committee comprising of Ms. Justice Santosh Duggal, a retired Judge of its Court as a Chairperson with power to nominate two persons – one with the knowledge of Accounts and other from the field of education in consultation with the Chief Secretary of NCT of Delhi. The Duggal Committee in terms of the said direction submitted its report to the respondent No. 1.

9. During the pendency of appeal before this Court, pursuant to the report submitted by the Duggal Committee, the Director of Education issued a notification on 15.12.1999, the preamble whereof reads as under:

> "Whereas by the judgment dated 30th October, 1998, in C.W.P. No. 3723 of 1997 (Delhi Abhibhavak Magasangh Vs Union of India, AIR 1999 Del 124), the Hon'ble High Court of Delhi had considered the order No. DE.15/Act/Spl.Incp/150/97/1293 -2093 dated 10th September, 1997 and had issued certain directions;
>
> And whereas in pursuance of the aforesaid orders of the Hon'ble High Court of Delhi, a committee was constituted by the Govt. of NCT of Delhi vide notification No. 323 dated 7th December, 1998 with (Ms.) Justice (Retd.)

Santosh Duggal as Chairperson to decide the claims in fee like and other charges levied by individual recognized unaided school for the period covered by the orders referred to above and the report submitted by the Committee has been considered by the Government of NCT of Delhi;

And whereas the report submitted by the Committee, after going through the accounts submitted by the schools, cites a number of irregularities and malpractices, relating to collection and utilization of funds, indulged in by the schools.

Now, therefore, I, S.C Poddar, Director of Education, Govt. of NCT of Delhi hereby direct the managing committees/manages of all recognized unaided schools in the NCT of Delhi under sub-section (3) of section 24 read with sub -section (4) and (5) of section 18 of the Delhi School Education Act, 1973 read with rules 50, 51,177 and 180 of Delhi Schools Education Rules, 1973 and all other powers enabling me in this behalf, as follows:

Direction Nos. 7 and 8 thereof, read as under:

"7. Development fee, not exceeding ten per cent, of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head alongwith and income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account.

> 8. Fees/funds collected from the parents/students shall be utilized strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973. No amount whatsoever shall be transferred from the Recognized unaided school fund of a school to the society or the trust or any other institution."

10. The said appeals were disposed of by a judgment and order dated 27.04.2004 since reported in (2004) 5 SCC 583.

This Court took into consideration the cost of inflation between 15.12.1999 and 31.12.2003. In addition to the said directions given by the Director of Education in its order dated 15.12.1999, other and further directions were also issued.

11. Indisputably, Unni Krishnan (supra), on the basis whereof the judgment of the High Court rested, was overruled by a n Eleven-Judge Bench of this Court in T.M.A. Pai Foundation and Others v. State of Karnataka and Others [(2002) 8 SCC 481].

For clarification of T.M.A. Pai Foundation (supra), another Constitution Bench was constituted being Islamic Academy of Education & Anr. v. State of Karnataka & Ors. [(2003) 6 SCC 697]. Later on, a larger

bench comprising of Seven-Judges of this Court was again constituted for clarification of T.M.A. Pai Foundation (supra) and Islamic Academy of Education (supra) in P.A. Inamdar and Others v. State of Maharashtra and Others, the decision whereof is reported in (2005) 6 SCC 537.

12. When judgment in the instant case was pronounced, this Court did not have the benefit of the decision of this Court in P.A. Inamdar (supra).

13. Review petitions were filed by the petitioners herein for review of the aforementioned judgment dated 27.04.2004.

14. Noticing that the correctness or otherwise of Islamic Academy of Education (supra) had been referred to a larger bench and with a view to maintain consistency as also having regard to the fact that the issues raised in the review applications have far reaching implications, notices were directed to be issued.

15. It is in the aforementioned backdrop, after the decision of this Court in P.A. Inamdar (supra), this matter has been placed before us.

16. Mr. Soli J. Sorabjee, Mr. Salman Khurshid, learned senior counsels and Mr. Romy Chacko, learned counsel appearing on behalf of the petitioners, in support of the Review Petitions, urged:

(i) In view of the larger bench decision of this Court in P.A. Inamdar (supra), the directions issued by the Director of Education which have been upheld by this Court cannot be sustained as the schools and in particular the minority schools have a greater autonomy in laying down their own fee structure.

(ii) Although collection of any amount for establishment of the school by a trust or a society is forbidden, the transfer of fund by one school to another school under the same management being permissible in terms of Rule 177 of the Rules, the directions prohibiting such transfer by the Director of Education in its order dated 15.12.1999 must be held to be illegal.

(iii) The decision of T.M.A. Pai Foundation (supra) with regard to construction of Article 19(1)(g) of the Constitution of India should be considered in its correct perspective as there exists a distinction between 'profit' and 'profiteering'.

(iv) The status of a minority institution being on a higher pedestal, as has been noticed in T.M.A. Pai Foundation (supra), the impugned

directions could not have been issued by the Director of Education which would affect the autonomy of the minority institution.

17. The basis for issuing the directions by the High Court was, as noticed hereinbefore, premised on Unni Krishnan (supra). Unni Krishnan (supra) has since been overruled in T.M.A. Pai Foundation (supra) holding that the right of a citizen of India to set up educational institutions is a fundamental right. It was furthermore held that the right of the minority to set up educational institution, however, is not absolute being subject to regulations. So far as the statutory provisions regulating the facets of administration of an educational institution are concerned, in case of unaided minority institutions, the regulatory measure of control, however, should be minimum. The conditions of recognition as also conditions of affiliation although are required to be complied with but in the matter of day to day management like appointment of staff, both teaching and non-teaching, and in its administrative control, they should have freedom from any external controlling agency. It was furthermore held that fees to be charged by unaided institutions cannot be regulated; however, no institution should charge capitation fee.

18. Clarifying T.M.A. Pai Foundation (supra) and Islamic Academy of Education (supra), it was held in P.A. Inamdar (supra):

> "26. These matters have been directed to be placed for hearing before a Bench of seven Judges under Orders of the Chief Justice of India pursuant to Order dated July 15, 2004 in P.A. Inamdar and Ors. v. State of Maharashtra and Ors.,(2004) 8 SCC 139 and Order dated July 29, 2004 in Pushpagiri Medical Society v. State of Kerala and Ors., (2004) 8 SCC 135. The aggrieved persons before us are again classifiable in one class, that is, unaided minority and non-minority institutions imparting professional education. The issues arising for decision before us are only three:
>
> (i) the fixation of 'quota' of admissions/students in respect of unaided professional institutions;
>
> (ii) the holding of examinations for admissions to such colleges, that is, who will hold the entrance tests; and
>
> (iii) the fee structure.
>
> 27. In the light of the two orders of reference, referred to hereinabove, we propose to confine our discussion to the questions set out hereunder which, according to us, arise for decision:-
>
> (1) *** ***
>
> (2) *** ***
>
> (3) Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

> (4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by Islamic Academy?
>
> 69. With regard to the ambit of the constitutional guarantee of protection of educational rights of minorities under Article 30, learned counsel submits that both religious and linguistic minority, as held in Pai Foundation , are to be determined at the State level. On this understanding of the concept of 'minority', Article 30 has to be harmoniously construed with Article 19(1)(g) and in the light of the Directive Principles of the State Policy contained in the Articles 38, 41 and 46. Rights of minorities cannot be placed higher than the general welfare of the students and their right to take up professional education on the basis of their merit.
>
> 109. And yet, before we do so, let us quote and reproduce paragraphs 68, 69 and 70 from Pai Foundation to enable easy reference thereto as the core of controversy touching the four questions which we are dealing with seems to have originated therefrom…"

Noticing in extenso paragraphs 68, 69 and 70 of T.M.A. Pai Foundation (supra), it was held:

> "129. In Pai Foundation, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees."

As regards, regulation of fee, it was opined:

> "139. To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution, as per the law declared in Pai Foundation. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form (Paras 56 to 58 and 161 [Answer to Q.5(c)] of Pai Foundation are relevant in this regard)."

It was concluded:

> "146. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of the student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure."

19. The short question which arises for consideration is as to whether any direction contained in any statute, statutory rules as also statutory directions,

should be revisited in terms of the Seven-Bench decision of this Court in P.A. Inamdar (supra).

20. I may, however, at the outset notice that before the High Court as also before us the constitutionality of the provisions of the Act as also the Rules framed thereunder are not in question. There cannot furthermore be any doubt whatsoever that a citizen's fundamental right contained in Article 19(1)(g) of the Constitution of India would be subject only to reasonable restrictions as envisaged under Clause (6) thereof. Reasonable restriction in terms of the aforementioned provision can be laid down inter alia by reason of a legislative act.

21. In Unni Krishnan (supra), it was held that no citizen has any fundamental right to set up an educational institution. Some guidelines had been issued. Those guidelines indisputably have been held to be unconstitutional in T.M.A. Pai Foundation (supra) and in P.A. Inamdar (supra), and, thus, I have no hesitation to hold that the directions contained in the said order dated 15.12.1999 cannot be upheld. The Director of Education moreover exercised its authority illegally and without jurisdiction.

The doctrine of res extra commercium being not applicable in relation to imparting of education by private unaided institutions or even private aided institutions, it is difficult to conceive as to how restrictions relying on or on the basis of the doctrine which is wholly inapplicable could be extended thereto. I, therefore, am of the opinion that the principle laid down in Unni Krishnan (supra) which has been overruled in T.M.A. Pai Foundation (supra) cannot be made to apply directly or indirectly. It may be noticed that in Union of India & Ors. v. M/s Martin Lottery Agencies Ltd. [2009 (7) SCALE 34], it is stated as under:

> "The concept of *res extra commercium* may in future be required to be considered afresh having regard to its origin to Roman Law as also the concept thereof. Conceptually business may be carried out in respect of a property which is capable of being owned as contrasted to those which cannot be. Having regard to the changing concept of the right of property, which includes all types of properties capable of being owned including intellectual property, it is possible to hold that the restrictions which can be imposed in carrying on business in relation thereto must only be reasonable one within the meaning of Clause (6) of Article 19 of the Constitution of India."

It is also of some interest to note that opinions in the academic field are being expressed that res extra commercium is an expression wrongly used in the last sixty years by this Court and other High Courts. No activity can be called "res extra commercium". It is either permitted or not. Having

regard to its conceptual roots to Roman law, it would mean only those things which are not incapable of being ownership and, thus, any matter which is res extra commercium were things incapable of ownership be vests in res in commercio. [See Arvind Datar, "Privilege, Police Power and Res Extra Commercium – Glaring Conceptual Errors" 21(1) National Law School of India Review 133 (2009)]

Subba Rao, J. moreover in Krishnan Narula v. Jammu & Kashmir [AIR 1967 SC 1368] stated, "if the activity of a dealer in ghee is business then how does it cease to be business if it is in liquor?

22. The circular letter issued by the Director of Education dated 15.12.1999 may now be considered.

23. Sub-section (3) of Section 24 of the Act does not confer any power on the Director to issue directions.

24. The order dated 15.12.1999 is not a statutory order. Such a statutory order also could not have been issued under the directions of the High Court as the very premise on which such directions have been issued does not survive any longer in view of the decision of this Court in T.M.A. Pai Foundation (supra).

25. Direction Nos. 7 and 8 issued by the Director of Education in its order dated 15.12.1999, which have been noticed by this Court in paragraph 11 of the judgment reported in (2004) 5 SCC 583, are contrary to Clause (c) of the proviso appended to Rule 177(1) of the Rules. Whereas any fee, contribution or other charge cannot be collected from any student by a trust or a society running a recognised school, collection of such fee is not prohibited by a school. What is restrainted is that all collections should be made by a school in its own name and receipt therefor shall be given.

26. All regulations applicable to aided or unaided recognised institutions, therefore, must be found in the statute and/ or the Rules. The Rules, in my opinion, require to be revisited by the State in the light of the decision of this Court in P.A. Inamdar (supra), but herein I am not concerned therewith.

27. Rule 177 of the Rules provides for utilisation of the fees realised by unaided recognised schools. There is no regulation as regards fee. Fee, of course, should not be such which would amount to profiteering. So far as utilisation of savings from the fees collected by such school by its managing committee is concerned, the same can be utilised for the purpose of assistance of any other school or educational institution under the

management of the same society or trust by which the first mentioned school is run.

28. Submission of Mr. S. Wasim A. Qadri and Mr. Ashok Agarwal, learned counsel appearing on behalf of the respondents that having regard to the fact that the scheme for management of the school, as contained in Section 5 of the Act, does not permit utilisation of the fee collected by a managing committee of the school by another managing committee of another school and, thus, the word 'management' should be given a restricted meaning, cannot be accepted. [See Official Trustee of W.B. v. Stephen Court 2006 (14) SCALE 285]

Clause (c) of the proviso appended to Rule 177(1) of the Rules itself raises a distinction. It uses both the words "managing committee" and "management". They must be held to have different meanings.

Clause (c) of the proviso appended to Rule 177(1) refers to the management of the same society or trust which means there may be more than one school which is under the same management. If the word "management" is substituted by the word the "managing committee", the same would lead to an anomalous situation. The very fact that grant of

assistance to any other school or educational institution, subject of course to the limitations provided for therein being permissible, it, in my opinion, would not be correct to contend that the managing committee of a school can under any circumstances render any financial assistance to the managing committee of the another school. Such assistance can be rendered if both the schools are under the management of the same society or trust.

29. I, in view of the statement of law laid down in P.A. Inamdar (supra), am of the opinion that the authorities of all the schools, particularly, unaided schools, may lay down its own fee criteria. Imposition of regulation, however, only is permissible for the purpose of exercising of control over profiteering and not earning of a profit which would include reasonable return of the investment made. I say so because in T.M.A. Pai Foundation (supra), this Court itself held:

> "50. The right to establish and administer broadly comprises of the following rights:-
>
> (a) ***
>
> (b) to set up a reasonable fee structure…
>
> 54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in

> charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.
>
> 56… The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the government.
>
> 57… There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution."

On a perusal of T.M.A. Pai Foundation (supra) and P.A. Inamdar (supra), it can be inferred that private unaided institutions are permitted to have a profit but not permitted to profiteer. They have also been given autonomy subject to reasonable restrictions in the interest of minority institutions permissible under Article 30 (1) and in the interest of general public under Article 19(6) of the Constitution of India. It would, in my opinion, be incorrect to lay down any general rule and enforce them on a private unaided institutions by way of gap-filing exercise and discipline or otherwise, despite the fact that Rule 177 of the Rules occupies the field. Such restrictions sought to be imposed, for all intent and purport, take away the autonomy regime of the unaided schools which are applicable to these institutions in terms of the aforementioned Constitution Bench decisions.

The institutions, in view of the aforementioned decisions of the larger bench, admittedly are entitled to earn some profits and as such any direction contrary thereto or inconsistent therewith by directing them to maintain books of account on the principles applicable to non-business organization/not-for-profit organization. Even otherwise such directions run contrary to the ordinary accounting principles and/or Income Tax Laws.

30. Contention of Mr. Chacko so far as extent of right of the minorities in establishing their institutions has never been raised before us in the main matter. The contention which did not fall for consideration in the main judgment cannot be a subject matter of review.

It also goes without saying that the judicial discipline mandates the Bench comprising of two or three Judges to follow the Constitution Bench decisions having regard to Article 141 of the Constitution of India. (See State of West Bengal v. Ashish Kumar Roy & Ors. [(2005) 10 SCC 110]

31. I, therefore, clarify the judgment that any direction issued by the High Court, by the rule making authority or any statutory authority must be in conformity with the decision of this Court in T.M.A. Pai Foundation (supra) as clarified by the decision of this Court in P.A. Inamdar (supra).

32. Before parting, however, I may notice that the Government of NCT of Delhi has not amended the statutory rules on the basis of the recommendations of the Duggal Committee. I have only considered herein the validity of the directions issued by the Director of Education in terms of the order dated 15.12.1999. While, thus, it will be open to the State to amend its rules, it goes without saying, the management of the schools shall also be at liberty to challenge the validity thereof if and when such a question arises.

33. The decision of this Court to the aforementioned extent is modified. Review petitions are disposed of accordingly. No costs.

…………………………..J.
[S.B. Sinha]

New Delhi;
August 07, 2009

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (C) No. 1368/04

In

CIVIL APPEAL No. 2700/01

Action Committee, Un-Aided Pvt. Schools & Ors. .....Petitioners

Versus

Director of Education, Delhi & Ors. ....
Respondents

with

R.P.(C) No. 1420/04 in C.A. No. 2704/01, R.P.(C) Nos. 1421-1422/04 in C.A. Nos. 2705-2706/01, R.P. (C) No. 1423/04 in C.A. No. 2703/01 and R.P. (C) No. 1774/04 in C.A. No. 2701/01

J U D G M E N T

S.H. KAPADIA, J.

By these review petitions under Order XL Rule 2 of the Supreme Court Rules 1966 read with Article 137 of the Constitution of India the petitioners (Action Committee Un-Aided Pvt. Schools & Ors.) seeks review

of Judgment dated 27.4.2004 passed in Civil Appeal No. 2700/01 and others.

Facts:

2. On 8.9.1997 a PIL was filed in the Delhi High Court by Delhi Abibhavak Mahasangh (Parents' Association) being writ petition no. 3723/97 challenging the fee hike in various schools in Delhi. One of the charges in the writ petition against Unaided Recognized Schools was transfer of funds by the Schools to the societies/trusts and/or to other schools run by the same society/trust, which according to the Mahasangh was in violation of Delhi School Education Act, 1973 ("1973 Act") and Rules framed thereunder. Simultaneously, the Action Committee of Unaided Private Schools also filed civil writ petition no. 4021/97 in the same High Court inter alia praying for setting aside Order dated 10.9.1997 issued by the Director of Education (DoE). It may be noted that vide Order dated 10.9.1997, DoE found that in some cases surplus money was transferred to parent societies and other schools in violation of Rule 177. Accordingly, DoE directed that fees and funds collected from the parents be utilized in accordance with rule 177.

3. Rules 172, 175, 176 and 177 of the Delhi School Education Rules, 1973 are quoted hereinbelow:

> "**172**. **Trust or society not to collect fees, etc., school to grant receipts for fees, etc., collected by it**.—(1) No fee, contribution or other charge shall be collected from any student by the trust or society running any recognised school; whether aided or not.
>
> (2) Every fee, contribution or other charge collected from any student by a recognised school, whether aided or not, shall be collected in its own name and a proper receipt shall be granted by the school for every collection made by it.
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> * * *
>
> **175**. **Accounts of the school how to be maintained.**— The accounts with regard to the School Fund or the Recognised Unaided School Fund, as the case may be, shall be so maintained as to exhibit, clearly the income accruing to the school by way of fees, fines, income from building rent, interest, development fees, collections for specific purposes, endowments, gifts, donations, contributions to Pupils' Fund and other miscellaneous receipts, and also, in the case of aided schools, the aid received from the Administrator.
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> **176**. **Collections for specific purposes to be spent for that purpose**.—Income derived from collections for specific purposes shall be spent only for such purpose.
>
> **177**. **Fees realised by unaided recognised schools how to be utilised.**—(1) Income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school:
>
> Provided that savings, if any, from the fees collected by such school may be utilised by its managing committee

for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely—

(a) award of scholarships to students;
(b) establishment of any other recognised school; or
(c) assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first-mentioned school is run.

(2) The savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely—

(a) pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;
(b) the needed expansion of the school or any expenditure of a developmental nature;
(c) the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
(d) co-curricular activities of the students;
(e) reasonable reserve fund, not being less than ten per cent, of such savings.

(3) Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the school concerned and shall not be included in the savings referred to in sub-rule (2).

(4) The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils' Fund are administered."

4. Directive dated 10.9.1997 issued in this regard reads as follows:

> "(f) Fees and funds collected from the parents shall be utilized strictly in accordance with rule 177 of the Rules. No amount whatsoever, shall be transferred from the Recognised Unaided School Fund of a school to the Society or the Trust, as the case may be, running that school nor shall any expenditure be incurred which is not beneficial to the students or the employees of that school."

5. On 30.10.1998, both the petitions referred to hereinabove were disposed by a common judgment by the Delhi High Court in the case of **Delhi Abibhawak Mahasangh v. Union of India & Ors.** reported in 76 (1998) DLT 457.

6. Relevant paragraphs from the judgment of the Delhi High Court read as follows:

> "**20.** The background under which the impugned order were issued as discernable from government files may now be noticed. It seems that the government received complaints that number of public schools had arbitrarily increased fees and other charges without any justification. A special committee was constituted to conduct special inspections mainly to examine the justification of increasing the fees. The inspection was restricted to few prominent schools. To carry out the inspection 5 different teams comprising of officers of Directorate of Education were constituted to look into the matter of accounts and to also examine whether fees charged is commensurate with the facilities provided to the students and teachers. The inspection teams were required to examine 5 years accounts and examine amounts received from students as fees/other charges under each head including donations, security, building fund, activity fees, laboratory fees, games fees, horse riding fees etc. besides transportation/bus charges and the amounts actually spent under the specified heads.

The committee was also required to examine if there was any surplus under any head and how the surplus money was used. The financial transactions between the school management and the society were also required to be checked. The inspection of 16 schools was conducted. From a perusal of the inspection reports, the government found gross financial mismanagement and violation of various provisions of the Act and the Rules and observed that almost all the schools were charging exhorbitant admission fee, caution money, tuition fee and other charges under various heads in violation of Section 18(4)(b) of the Act read with Rule 176. The Government also observed that by charging the exhorbitant amounts schools had generated large amount of surplus funds and in some of the cases it was found that surplus money had been transferred to the parent Society in violation of Rule 177. Some of the Managing Committees of the Schools had transferred the school fund for establishing the schools even outside Delhi. The utilisation of the funds was not found to be in the manner prescribed under Rule 177. It was found that the schools were spending money in purchasing and maintaining luxury cars etc. which were not useful and necessary for the benefit of the students. It was observed that the financial irregularities had been noticed in all the schools which were inspected under Section 24(2) of the Act and the possibility of such irregularities by other unaided recognised schools could not be ruled out. Noticing that the Directorate of Education does not have sufficient infrastructure to carry out special inspections of about 800 such schools, the general directions in public interest were decided to be issued. This is the background under which the impugned order dated 10th September 1997 was issued.

…

34. Chapter IV of the Rules deal with school funds. Rule 172, interalia, prohibits Trust or Society running any recognised school to collect fee contribution or other charges from any student. Amounts have to be collected

only by the School and kept in school fund as provided in Rule 173. Rule 176 provides that income derived from the collection for specific purposes shall be spent only for such purpose. Rule 177 states as to how the fee collected by unaided schools is to be utilised. It, inter alia, stipulates that funds collected for specific purpose shall be spent solely for the exclusive benefit of the students. Since considerable emphasis was laid by the parties on Rule 177 it will be useful to reproduce the same as under:-

'177. Fees realised by unaided recognised schools how to be utilised-

(1) Income derived by an unaided recognised schools by way of fees shall be utilised in the first instance for meeting the pay, allowances and other benefits, admissible to the employees of the school.

Provided that savings, if any from the fees collected by such school may be utilised, by its managing committee for meeting capital or contingent expenditure of the school, or for one or more or the following educational purposes, namely:-

(a) award of scholarships to student;
(b) establishment of any other recognised school, or
(c) assisting any other school or educational institution, nor being a college, under management of the same society for trust by which the first mentioned school is run.

(2) The savings to in sub-rule (1) shall be arrived at after providing for the following, namely:-

(a) pension, gratuity and other specified retirement and other benefits admissible to the employees of the school:

(b) the needed expansion of the school or any expenditure of a development nature;

(c) the expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation.

(d) co-curricular activities of the students.

(e) reasonable reserve fund, not being less than ten percent of such savings.

(3) Funds collected for specific purposes, like sports, cocurricular activities, subscriptions for excursions or subscription for magazine, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub rule (2).

(4) The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund are administered.'

…

36. In M.C.D. Vs. Children Book Trust, 1992(3)SCC390 the Apex court has held that Rule 177 requires the utilisation of the income only for the purpose mentioned in that Rule. The Rules do not contemplate transfer of fund from School to Society. Such transfer of funds are in disregard of the Rules. Such transfers cannot, by any process of reasoning, be held as voluntary contributions received by the Society. The school being a separate entity premises occupied by the school will belong to it and not to the Society. The Supreme Court has noticed with approval the observations made by this court in Safdarjung Enclave Educational Society Vs. Delhi Municipal Corporation, AIR 1989 Delhi 266, to the effect that the Society was being run purely on commercial lines for purposes of profit and it is the receipt of income generated from the Society in the form of building fund and donations etc. which are forced on students and their guardians and the same were not

voluntary contributions. In our view, these observations would not be diluted merely because the same were made in the context of exemption for payment of house tax under Section 115(4) of the Delhi Municipal Corporation Act, 1957. The Safdarjung Enclave Educational Society was running Green Field School recognised under the Act.

…

54. Assuming power to regulate fee etc. can be inferred from Section 24, a bare perusal of Section shows that it does not confer any general power on Director of Education. Reading of sub-section (3) and (4) of Section 24 shows that only specific directions in respect of a particular school in which a defect or deficiency may be found at the time of inspection or otherwise, can alone be issued. On failure to comply with any directions given under sub-section (3), the Director of Education, as contemplated by sub-section (4), can take suitable action including withdrawal of recognition etc. It was contended that assuming Section 24 could be applied, the 16 schools on inspection of which alleged defects and deficiencies were found then action against only those schools, after following the procedure laid down in the Act and the Rules, could alone be taken. We may also note another Rule which shows that if any school indulges in commercialisation of education, the Director of Education is not powerless to take appropriate action. Rule 50 in Chapter IV provide for condition for recognition of private schools. Under the said rule a recognised school has to continue to follow the conditions specified in the Rules. Sub rule (iv) of Rule 50 provides that the school is not run for profit to any individual, group or association of individuals or any other person. If the Director of Education finds that the school is being run for profit, such a school would be violating a condition of recognition and thus it can be asked to rectify it failing which to face the consequences which may be withdrawal of recognition as a result of not continuing to fulfill the condition of recognition. The

Director of Education would be justified in asking the school to explain facts which according to Director of Education may show that the school is being run for profit. The school is obliged to explain facts to the satisfaction of Director of Education. If it is unable to do so, the Director of Education can ask the school to reduce the fee and other charges which according to the Director show that the school is indulging in the profit motives. In our view, it would not be open to the school to say that the Director of Education has no power to direct the school to reduce the fee and other charges as no such power vests in respect of unaided schools because Section 17(1) & (2) of the Act applies only to aided schools. The direction to reduce the fee and charges is to avoid straightaway taking the extreme step of withdrawal of recognition or taking over the school. It is an opportunity given to the school so that the Director of Education may not resort to withdrawal of recognition or steps for taking over of the management are not taken. It only amounts to granting an additional opportunity to the school so that on compliance the extreme action of withdrawal of recognition or taking over of management etc. may be avoided. But for the findings and recommendations of Raghvan report which makes the present case as quite peculiar and to which we will advert a little later, we find force in the submission that Section 24 and Rule 50 are applicable to specific schools which may be found to be violating these provisions. Despite this conclusion, we feel that the problem here is peculiar which necessitated issue of general order which per se cannot be held to be illegal in facts and circumstances of these cases.

…

62. In Mrs. Y. Theclamma Vs. Union of India and others, 1987 (2) SCC 516, the question that came up for consideration before the Supreme Court was whether Section 8(4) of the Delhi School Education Act which, inter alia, provided that no employee shall be suspended without the approval of the Director of Education would

be applicable to the minority institutions or not. The case of the minority institutions was that it encroached upon their right under Article 30(1) of the Constitution. Relying upon the decision in the case of Frank Anthony Public School the Supreme Court held that the endeavor of the court in all cases has been to strike a balance between the Constitutional obligation to protect what is secured to the employees under Article 30(1) and the social necessity to protect the members of the staff against arbitrariness and victimisation. It was accordingly held that Section 8(4) cannot be said to have encroached upon the right of the minorities under Article 30(1).

66. In view of the aforesaid discussion our conclusions may be summarised as under:-

(i) It is the obligation of the Administrator and or Director of Education to prevent commercialisation and exploitation in private unaided schools including schools run by minorities.

…

> (iii) No permission from Director of Education is necessary before or after fixing tuition fee. In case, however, such fixing is found to be irrational and arbitrary there are ample powers under the Act and Rules to issue directions to school to rectify it before resorting to harsh measures. The question of commercialisation of education and exploitation of parents by individual schools can be authoritatively determined on thorough examination of accounts and other records of each school.
>
> (iv) The Act and the Rules prohibit transfer of funds from the school to the society or from one school to another.
>
> …

67. Having bestowed our thoughtful consideration to the submission of counsel for the parties and afore-noticed detail facts and circumstances, we are of the view that an independent Committee deserves to be appointed for the period covered by impugned order dated 10th September, 1997 up to start of academic session in the year 1999, to look into the cases of the individual schools and determine, on examination of record and accounts etc. Whether increase of tuition fee and other charges, on facts would be justified or not. Eliminating the element of commercialisation and in light of this decision the Committee would determine fee and other charges payable by students of individual schools. We do not think that it would be desirable at present to permit any further increase than what has already been permitted by order dated 11th December, 1997. We would, therefore, extend the aforequoted order dated 11th December, 1997 till decision of cases of individual schools by Committee appointed by this judgment.

68. We, accordingly, appoint a Committee comprising of Ms. Justice Santosh Duggal, a retired Judge of this court as Chairperson with power to nominate two persons - one with the knowledge of Accounts and Second from field of education in consultation with Chief Secretary of NCT of Delhi to decide matters of fee and other charges leviable by individual schools in terms of this decision. We request the Committee to decide the claims of individual schools as expeditiously as possible after granting an opportunity to the Schools. Director of Education and a representative of the Parent Teachers Association and such other person as the Chairperson may deem fit. The terms and conditions including fees/honorarium payable and other facilities to be provided by the State Government to the Chairperson and other members of the Committee would be discussed by the Chief Secretary with the Chairperson and finalized within 10 days."

As can be seen from the said judgment, the High Court directed that an independent Committee deserves to be appointed for the period covered by the impugned Order dated 10.9.1997 issued by DoE to look into the cases of individual Schools and decide whether increase of tuition fees and other charges would be justified or not. Accordingly, a Committee comprising of Justice Santosh Duggal, a retired Judge of the Delhi High Court was appointed as a Chairperson to look into the fee structure levied by individual schools.

7. Being aggrieved by the decision of the High Court to appoint Duggal Committee, the Action Committee, came to this Court by way of Special Leave Petition No. 19157/98 (Civil Appeal No. 2700/01). In the civil appeal, the Action Committee challenged the power of the High Court to appoint a Committee, which, according to the appellant was beyond the scope and the provisions of Delhi School Education Act, 1973. It was further pleaded that Order dated 10.9.1997 issued by DoE had ignored the statutory provisions of the 1973 Act and the Rules framed thereunder. That, Order dated 10.9.1997 was purportedly issued by DoE under Section 24(3). That, from the scheme of Section 24, it was clear that the directions to be issued by DoE had to be specific to the school which had been inspected.

That, there was no power under Section 24(3) to regulate the fee structure of an Unaided Recognised School. According to the Action Committee, the impugned Order dated 10.9.1997 issued by DoE empowered him only to carry out School specific inspection and not to regulate the fee structure of an unaided recognized school under Section 24(3) of the 1973 Act. According to the Action Committee, the Delhi High Court had erred in upholding the said Order dated 10.9.1997. Insofar as the transfer of funds from the school to the society was concerned, the Action Committee submitted that under the 1973 Act, the school was not a specific juristic entity separate from the society; that under Rule 50, one of the conditions of recognition is that the school must be run by a society registered under the Societies Registration Act, 1860 and that the Managing Committee of the School is subject to the control and supervision of the trust or society running the school and, therefore, the school and the society running the school were one and the same entity. Therefore, according to the Action Committee, transfer of funds from school to the society or vice versa was the internal mechanism of the school which had no bearing with the question as to whether the funds were misused. According to the Action Committee, the High Court had erred in holding that funds cannot be transferred from the school to the society as there is no prohibition in the 1973 Act in relation to such transfers so long as the utilization of the funds

is for the benefit of the school(s) in accordance with Rule 177.

8. As stated above, the Action Committee filed its special leave petition in this Court on 28.11.1998.

9. On 31.7.1999, Duggal Committee submitted its Report. Some of the findings and conclusions mentioned in the said Report are quoted hereinbelow:

> "7.18 The Committee observed that in addition to the tuition fee, schools were also charging fees under various other heads as well. The Report of the J. Veeraraghvan Committee on 'Fee Structure of the Delhi Private Schools' (1997), has listed as many as 50 heads under which the fee was being collected in the schools in Delhi. Furthermore, there is also no uniformity, among schools in regard to the nomenclature used for different types of levies under 'other charges'. In addition to this, items charged under the same head also differ from school to school. This has resulted in avoidable ambiguities and distortions in the fee structure which could become a vehicle for exploitation where the schools were so inclined.
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> …
>
> 4. <u>There is a pronounced tendency since 1996-97, on the part of the schools, to generally under-state surplus/over-state the deficit</u>. This was often sought to be achieved by resorting to over-provisioning under certain heads of expenditure such as gratuity, property tax etc.; diverting (even prior to determining the surplus) a part of the school revenue receipts to various funds usually created with the specific intention of temporarily parking the money in them; charging of depreciation without

> simultaneously setting up a Depreciation Reserve Fund for replacing the assets; depreciating assets not owned by the school and simultaneously transferring equivalent amounts to the parent society; not including the income accrued from certain activities under the head 'fee' in the Income and Expenditure Account and simultaneously not crediting these receipts to the 'Recognised Unaided School Fund', but concurrently charging the expenditure incurred on the related activities, to the Income and Expenditure Account; non capitalization of expenditure of capital nature and instead charging it to the Income and Expenditure Account; incurring expenditure on items and for purposes not strictly falling within the scope of Delhi School Act and Rules, 1973 (Rule 177); transferring the money to the parent society under various pretexts such as payment of lease rent, contribution to Education Development Expenditure, incurring recurring expenditure on the maintenance of the office of the parent society and maintenance of cars for the use of the Society etc.
>
> There was also a visible spurt in expenditure more particularly in 1997-98 on certain items such as professional fees, maintenance and other overhead charges of the school. [Paras 6.2, 6.3 and 6.4]"

10. To complete the chronology of the relevant events, it may be stated that although the special leave petition came to be filed by the Action Committee inter alia challenging order of DoE dated 10.9.1997 and the judgment of the Delhi High Court appointing that Committee, by way of an affidavit filed on 21.2.2001 in the pending civil appeal in this Court, the Action Committee inter alia also challenged the Report of the Duggal Committee dated 31.7.1999 in following terms:

> "That as per the orders of the High Court, the terms of reference of the committee were specific, however, the committee has converted itself into a general committee to analyse the problem of un-aided public schools in Delhi and has given a vague unsubstantiated report without even hearing the schools, in the absence of any material against the schools. Right from the first para of the report, it looks that the committee has proceeded with the closed and biased mind against the culture of the un-aided private schools."

11. At this stage, it may be stated that in terms of the Report of the Duggal Committee, the DoE issued an order on 15.12.1999. This was also during the pendency of the civil appeal filed by the Action Committee. Clause 8 of the Directions dated 15.12.1999 reads as follows:

> "Fees/funds collected from the parents/students shall be utilized strictly in accordance with rules 176 and 177 of the Delhi School Education Rules, 1973. No amount whatsoever shall be transferred from the recognized unaided school fund of a school to the society or the trust or any other institution."

12. When the matter reached final hearing, three points were argued. The said three points are quoted hereinbelow:

> "(*a*) Whether the Director of Education has the authority to regulate the quantum of fees charged by unaided schools under Section 17(3) of the Delhi School Education Act, 1973?
>
> (*b*) Whether the direction issued on 15-12-1999 by the Director of Education under Section 24(3) of the Delhi School Education Act, 1973 stating *inter alia* that no fees/funds collected from

parents/students shall be transferred from the Recognised Unaided School Fund to the society or trust or any other institution, is in conflict with Rule 177 of the Delhi School Education Rules, 1973?

(*c*) Whether managements of recognised unaided schools are entitled to set up a Development Fund Account under the provisions of the Delhi School Education Act, 1973?"

13. In the review petitions, we are mainly concerned with the first two points. It may be noted that the judgment under review was delivered by this Court on 27.4.2004. At that time, the judgments of this Court in **T.M.A. Pai Foundation v. State of Karnataka** reported in (2002) 8 SCC 481 and **Islamic Academy of Education v. State of Karnataka** reported in (2003) 6 SCC 697 held the field. Therefore, this Court was required to decide the question of reasonable fee structure and the autonomy of the institution, transparency and accountability in the context of the judgments in **T.M.A. Pai Foundation** case (supra) and **Islamic Academy of Education** case (supra). The majority view in the present case finds place in paras 17, 18, 21 and 23.

14. Analyzing Rules 172, 175, 176 and 177, this Court held that application of income was not accrual of income. The majority view was that there was a difference between appropriation of income and transfer of funds. It was further held by the majority that under clause 8 of the Order of

DoE dated 15.12.1999 the management was restrained from transferring funds to the Society or the Trust(s) or any other institution, whereas rule 177(1) refers to appropriation of income from revenue account for meeting capital expenditure of the school and, therefore, there was no conflict between rule 177 and clause 8 of the Order issued by DoE on 15.12.1999. Vide para 27, this Court gave further directions to the Director of Education in following terms:

> "**27.** In addition to the directions given by the Director of Education vide Order No. DE.15/Act/Duggal.Com/203/99/23989-24938 dated 15-12-1999, we give further directions as mentioned hereinbelow:
>
> (*a*) Every recognised unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organisation/not-for-profit organisation.
>
> In this connection, we *inter alia* direct every such school to prepare their financial statement consisting of Balance Sheet, Profit & Loss Account, and Receipt & Payment Account.
>
> (*b*) Every school is required to file a statement of fees every year before the ensuing academic session under Section 17(3) of the said Act with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees in terms of Rule 177(1). Such estimate will also indicate provision for donation, gratuity, reserve fund and other items under Rule 177(2) and savings thereafter, if any, in terms of the proviso to Rule 177(1).
>
> (*c*) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with. We are shown a sample letter of allotment issued by the Delhi Development Authority issued to some of the

> schools which are recognised unaided schools. We reproduce herein clauses 16 and 17 of the sample letter of allotment:
>
> '16. The school shall not increase the rates of tuition fee without the prior sanction of the Directorate of Education, Delhi Administration and shall follow the provisions of the Delhi School Education Act/Rules, 1973 and other instructions issued from time to time.
>
> 17. The Delhi Public School Society shall ensure that percentage of freeship from the tuition fee, as laid down under the rules by the Delhi Administration, is from time to time strictly complied with. They will ensure admission to the student belonging to weaker sections to the extent of 25% and grant freeship to them'."

15. On 5.7.2004 the present review petitions came to be filed basically challenging the majority view holding the DoE has the power to regulate the fee structure of private unaided schools including utilization of fees under rule 177(1)(b) and (c). According to the review petitioners, in the matter of fee fixation since there are statutory rules governing the field, no directions could have been issued by this Court contrary thereto. According to the review petitioners, the directions issued by DoE dated 15.12.1999 were neither the subject matter of the writ petition before the Delhi High Court nor were the subject matter of the special leave petition. According to the review petitioners, the Order of DoE dated 15.12.1999 was not the subject matter of the civil appeal.

16. Notice was issued on the review petition vide Order dated 10.8.2004.

17. Before dealing with the arguments advanced on behalf of the review petitioners, it may be stated that entire law inter alia on the question of fee structure came to be decided once again by the Constitution Bench of this Court in the case of **P.A. Inamdar and Ors. v. State of Maharashtra and Ors.** Reported in (2005) 6 SCC 537.

18. S/Shri Soli J. Sorabjee and Salman Khurshid, learned senior counsel appearing on behalf of the Action Committee and other review petitioners, submitted that clause 8 of the Order issued by DoE dated 15.12.1999 is causing administrative difficulties which needs to be clarified. This Court vide majority judgment has held that clause 8 is in consonance with rule 177 of Delhi School Education Rules, 1973. Rule 177 has been quoted hereinabove. Under clause 8, DoE has stipulated that "no amount whatsoever shall be transferred from the recognized unaided school fund of a school to the society or the trust or any other institution." According to the learned senior counsel, a rider needs to be introduced in clause 8, namely, "except under the management of the same society or trust". Thus, according to the learned counsel, if the suggested rider is added in clause 8

then the Management would have no grievance with the majority view. Thus, according to the learned counsel, clause 8 should be read as follows:

> "No amount whatsoever shall be transferred from the recognized unaided school fund of a school to the society or the trust or any other institution except under the management of the same society or trust"

19. According to the learned counsel, if the suggested rider is added to clause 8 then it would subserve the object underlying the 1973 Act.

20. There is merit in the argument advanced on behalf of the Action Committee/Management. The 1973 Act and the Rules framed thereunder cannot come in the way of the Management to establish more schools. So long as there is a reasonable fee structure in existence and so long as there is transfer of funds from one institution to the other under the same management, there cannot be any objection from the Department of Education.

21. In the Review Petitions it is alleged that clause 8 of the Order of DoE dated 15.12.1999 was never challenged and yet the Court has gone into the validity thereof. There is no merit in this argument. It was argued on behalf of the Management before us that clause 8 of Order of DoE dated 15.12.1999 goes beyond Rule 177 and, therefore, this Court has discussed in

the Judgment under Review vide para 21 the difference between accrual and application of income.

22. In the Review Petitions it is further pleaded that where the 1973 Act and the Rules thereunder operates, regulation of education would be governed thereby and therefore the Court cannot impose any other or further restrictions by travelling beyond the scope, object and purport thereof. In this context it may be noted that in **T.M.A. Pai Foundation** case (supra) and in **Islamic Academy** (supra) the principles for fixing fee structure have been illustrated. However, they were not exhaustive. They did not deal with determination of surplus and appropriation of savings. In fact in the majority view of the present matter, this Court has found that the above topics are not dealt with by the 1973 Rules and therefore clause 8 was found not to be beyond Rule 177 or in conflict thereto as alleged. The Additional Directions given in the Judgment of the Majority vide para 27 do not go beyond Rule 177 but they are a part of gap-filling exercise and discipline to be followed by the management. For example: every school shall prepare balance sheet and profit and loss account. Such conditions do not supplant Rule 177. If reasonable fee structure is the test then transparency and accountability are equally important. In fact, as can be seen from Reports of Duggal Committee and the earlier Committee, excessive fees stood charged in some cases despite the 1973 Rules because proper Accounting Discipline

was not provided for in 1973 Rules. Therefore, the Further Directions given are merely gap-fillers. Ultimately, Rule 177 seeks transparency and accountability and the Further Directions (in para 27) merely brings about that transparency. Lastly, it may be noted that the matter has come up to the Apex Court from PIL. Hence there is no merit in the above plea.

23. Subject to the above clarification, review petitions stand dismissed with no order as to costs.

……………………………J.
(S.H. Kapadia)

New Delhi;
August 7, 2009.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) NO. 1368 OF 2004
IN
CIVIL APPEAL NO. 2700 OF 2001

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vs.

Director of Education, Delhi & Ors. ….Respondents

with RP(C) No. 1420 of 2004 in CA No. 2704 of 2001, RP(C) Nos. 1421-1422 of 2004 in CA Nos. 2705-2706 of 2001, RP(C) No. 1423 of 2004 in CA No. 2703 of 2001 and RP(C) No. 1774 of 2004 in CA No. 2701 of 2001

J U D G M E N T

CYRIAC JOSEPH, J.

I had the benefit of reading the separate judgments rendered by Hon'ble Mr. Justice S.B. Sinha and Hon'ble Mr. Justice S.H. Kapadia in the above Review Petitions.

Though I agree with the view of S.B. Sinha, J. that any direction issued by the High Court or by the rule making authority or any statutory authority must be in conformity with the decision of this Court in the case of ***T.M.A. Pai Foundation*** as clarified by the decision of this Court in the case of ***P.A. Inamdar***, in my view, the judgment of S.H. Kapadia, J. does not question or contradict such a legal proposition. On the contrary, it is in recognition of the above legal proposition that modification suggested by the learned counsel

for the review petitioners in respect of Clause 8 of the order dated 15.12.1999 issued by the Director of Education has been accepted by S.H. Kapadia, J.

Hence, having regard to the limited scope of a review petition and in view of the submissions made by learned counsel for the parties during arguments, I concur with the judgment rendered by S.H. Kapadia, J.

……………………………..J.
(Cyriac Joseph)

New Delhi;
August 7, 2009.