REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6015-6027/2011

State of Tamil Nadu & Ors. …..

Appellants

Versus

K. Shyam Sunder & Ors. …..Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. These appeals have been preferred against the judgment and order dated 18.7.2011 of the High Court of Judicature at Madras in Writ Petition Nos.12882, 12890, 13019, 13037, 13038, 13227, 13293, 13296, 13345, 13381, 13390, 13547 of 2011 and W.P.(M.D.) No.6143/2011 whereby the High Court has struck down Section 3 of The Tamil Nadu Uniform System of School Education (Amendment)

Act, 2011 (hereinafter called the Amendment Act 2011) and issued directions to the State Authorities to implement the provisions of The Tamil Nadu Uniform System of School Education Act, 2010 (hereinafter called the Act 2010), i.e. to implement the common syllabus, distribute the textbooks printed under the uniform system of education and commence the classes on or before 22.7.2011. The Contempt Petitions have been filed for non-implementing the directions given by this Court vide order dated 14.6.2011.

2. <u>FACTS:</u>

A. In the State of Tamil Nadu, there had been different Boards imparting basic education to students upto 10th standard, namely, State Board, Matriculation Board, Oriental Board and Anglo-Indian Board. Each Board had its own syllabus and prescribed different types of textbooks. In order to remove disparity in standard of education under different Boards, the State Government appointed a Committee for suggesting a uniform system of school education. The said Committee submitted its report on 4.7.2007. Then another Committee was appointed to implement suggestions/recommendations made by the said Committee.

B. During the intervening period, The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter called the Act 2009), enacted by the Parliament, came into force with effect from 1.4.2010 providing for free and compulsory education to every child of the age of 6 to 14 years in a neighbourhood school till completion of elementary education i.e. upto 8th standard. The Act 2009 provided that curriculum and the evaluation procedure would be laid down by an Academic Authority to be specified by the appropriate State Government, by issuing a notification. The said Academic Authority would lay down curriculum and the evaluation procedure taking into consideration various factors mentioned under Section 29 of the Act 2009. Section 34 of the Act 2009 also provided for the constitution of a State Advisory Council consisting of maximum 15 members. The members would be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development. The State Advisory Council would advise the State Government on implementation of the provisions of the Act 2009 in an effective manner.

C. The Cabinet of the State of Tamil Nadu took a decision on 29.8.2009 that it will implement the uniform system of school education in all schools in the State, form a Common Board by integrating the existing four Boards, and will introduce textbooks providing for the uniform syllabus in Standards I and VI in the academic year 2010-11 and in Standards II to V and VII to X in the academic year 2011-12. In order to give effect to the said Cabinet decision, steps were taken on administrative level and thus, the Tamil Nadu Uniform System of School Education Ordinance, 2009 was issued on 27.11.2009 which was published in the official Gazette on 30.11.2009. The Ordinance was subsequently converted into the Act 2010 on 1.2.2010. The Act 2010 provided for the State Common Board of School Education (hereinafter called the Board); imposition of penalties for wilful contravention of the provisions of the Act or the Rules made thereunder (Section 11); offences by companies in the same regard (Section 12); and it also enabled the State Government to issue directions on policy matters to the Board from time to time which would be binding on the Board (Section 14).

D. Section 3 of the Act 2010 provided that the Act would commence:

(a) in Standards I & VI from the academic year 2010-11; and

(b) in Standards II to V and VII to X from the academic year 2011-12.

Sub-section(2) thereof required every school in the State to follow the norms fixed by the Board for giving instruction in each subject and follow the norms for conducting examination as may be specified by the Board. The Board approved the curriculum and textbooks for Standards I and VI on 22.3.2010 and the books were printed in view of the consequential order dated 31.3.2010 by the Tamil Nadu Textbook Corporation.

E. As many as 14 writ petitions were filed in the High Court of Madras challenging the validity of various provisions of the Act 2010. A Division Bench of the High Court vide judgment and order dated 30.4.2010 held that the provisions of Sections 11, 12 and 14 were unconstitutional and struck down the same while the Court issued elaborate directions for implementation of the common syllabus and the textbooks for Standards I and VI by the academic year 2010-11; and for all other Standards by the academic year 2011-12 or until the State makes the norms

and the syllabus and prepares the textbooks in advance for the same. Further directions were issued by the Court to the State Government to bring the provisions of the Act 2010 in consonance with the Act 2009 and notify the Academic Authority and the State Advisory Council under the Act 2009. The State was also directed to indicate approved textbooks from which private unaided schools could choose suitable for their schools. The Court further directed the Government to amend the Act to say that the common/uniform syllabus was restricted to five curricular subjects, namely, English, Tamil, Mathematics, Science and Social Science which the schools were bound to follow, but not in respect of the co-curricular subjects. The aforesaid judgment was duly approved by this Court vide order dated 10.9.2010 while dismissing large number of SLPs filed against the same by a speaking order.

F. In order to implement the Act 2010 and the judgment of the High Court duly approved by this Court, the State Authorities referred the enumerated components of the curriculum in respect of Classes II to V and VII to X to an Expert Committee for its opinion. The curriculum and syllabus prepared for

uniform system of school education as well as the textbooks for Classes II to V and VII to X for uniform system of school education in Government schools and Government aided schools were approved by the Board.

G. However, there was a change of State Government following the general elections of the State Assembly, on 16.5.2011. After completing the formalities, the Government amended the Act 2010 by the Amendment Act 2011, by which it substituted Section 3 by a new Section providing that the schools would follow the common syllabus as may be specified by the Board for each subject in Standards I to X from such academic year as may be notified by the Government in the official Gazette. The Government may specify different academic years for different Standards. The amendment also omitted Sections 11, 12 and 14 from the Act 2010 since those Sections had been struck down by the High Court as unconstitutional.

H. New academic session was to commence on 1.6.2011 and the Amendment Act 2011 came into force on 7.6.2011. A large number of writ petitions were filed challenging the said amendment. A Division Bench of the High Court vide order

dated 10.6.2011 stayed the operation of the Amendment Act 2011, but gave liberty to the State Government to conduct a detailed study of the common syllabus and common textbooks and further clarified that the State Government would be entitled to add, modify, substitute or alter any chapter, paragraph or portion of the textbooks etc. and further permitting the managements of private schools to submit their list of books for approval to the Government.

I. The aforesaid interim order passed by the High Court on 10.6.2011 was challenged before this Court and all those matters stood disposed of vide judgment and order dated 14.6.2011 by which this Court modified the said interim order *inter-alia*, directing constitution of a committee of experts, which the State Government had already undertaken to appoint, to examine ways and means for implementing the uniform education system, common syllabus, and the textbooks which were to be provided for Standards II to V and VII to X under the Act 2010. It requested the High Court to determine if such textbooks and the amended syllabus would be applicable to

Standards II to V and VII to X keeping in view the provisions of the amended Act.

J. In pursuance of the said order, an Expert Committee was constituted and after having several meetings, a joint report was submitted to the High Court. The High Court after considering the said report, vide judgment and order dated 18.7.2011, found fault with the report of the Expert Committee and struck down Section 3 of Amendment Act 2011 with a direction that the State shall distribute the textbooks printed under the uniform system of education to enable the teachers to commence classes, and complete distribution of textbooks on or before 22.7.2011.

Hence, these appeals.

RIVAL SUBMISSSIONS:

3. Shri P.P. Rao, Shri C.A. Sundaram, Dr. Rajeev Dhavan, Dr. Abhishek M. Singhvi, Sr. Advocates, Shri A. Navaneetha Krishnan, learned Advocate General and Shri Guru Krishna Kumar, learned Additional Advocate General for the State of Tamil Nadu, appearing for the appellants, have submitted that the High Court vide its earlier

judgment dated 30.4.2010 had issued directions to the State Government to amend the Act 2010 as certain provisions thereof had to be brought in conformity with the Act 2009 and the State had to constitute the Board and designate the Academic Authority and the State Advisory Council. In view thereof, it was necessary to bring the Amendment Act 2011. Thus, basically it was in consonance and in conformity with the judgment dated 30.4.2010 which has duly been approved by this Court. The High Court in its earlier judgment itself gave liberty to the State to implement the common syllabus and distribute text books under the Act 2010 from academic year 2011-12 or with any future date after the norms were made known by the State Authorities so far as the students of Standards II to V and VII to X are concerned. Therefore, in view of the same, the High Court committed an error holding that the Amendment Act 2011 tantamounts to repealing the Act 2010. The High Court itself has accepted the settled legal proposition that the question of malafide or colourable exercise of power cannot be alleged against the legislature, but still it recorded the finding that the Amendment Act 2011 was a product of arbitrary exercise of power. The authorities had to ensure compliance with the National Curriculum Framework 2005 (hereinafter called NCF 2005)

prepared by the National Council of Educational Research and Training (hereinafter called NCERT), which had laid down a large number of guidelines for preparing the syllabus and curriculum for the children. The Government of India issued Notification dated 31.3.2010, published in the Official Gazette of India on 5.4.2010, recognizing the NCERT as the Academic Authority to lay down the curriculum and evaluation procedure for elementary education and to develop a framework on national curriculum. In consequence thereof, a Government Order dated 31.5.2010 was also issued by the Ministry of Human Resources Development to the effect that in view of the statutory provisions of the Act 2009, which provided that the Central Government shall develop a framework on national curriculum with the help of Academic Authority specified under Section 29 thereof, the NCF 2005 would be the NCF till such time as the Central Government requires to develop a new framework. After the order of this Court dated 14.6.2011, the Expert Committee appointed by the State had gone through the syllabus and the text books already printed and after having various meetings, came to the conclusion that the same required thorough revision and therefore, submitted a report that it was not possible to implement the Act 2010 in the academic year 2011-12.

The Advocate General of Tamil Nadu had given assurance to the High Court that under all circumstances the Act 2010 will be implemented in the next academic year, i.e. 2012-13. However, the Court did not consider the same at all. It falls within the exclusive domain of the legislature/ Government as to from which date it would enforce a Statute. The court cannot even issue a mandamus to the legislature to bring a particular Act into force. Therefore, the question of striking down the Amendment Act 2011 on the ground that implementation of the Act 2010 to be deferred indefinitely is not in accordance with the settled legal propositions. The State had to appoint various authorities and notify the same as required under various statutes. Once the provision stands amended and the amending provisions are struck down by the Court, the obliterated statutory provisions would not revive automatically unless the provisions of the amending statutes is held to be invalid for want of legislative competence. The appeals deserve to be allowed and the judgment and order of the High Court impugned are liable to be set aside.

4. Per contra, Shri T.R. Andhyarujina, Shri Basava Prabhu S. Patil, Shri R. Viduthalai, Shri Dhruv Mehta, Shri M.N. Krishnamani and Shri Ravi Verma Kumar, Sr. Advocates and Shri Prashant

Bhushan and Shri N.G.R. Prasad, Advocates appearing for the respondents have submitted that the Amendment Act is a political fall out due to change of Government. The new Government was sworn in on 16.5.2011. The Cabinet on 22.5.2011 decided not to implement the uniform education system which was purely a political decision as there was no material before the Cabinet on the basis of which it could be decided that implementation of the Act 2010 was not possible. The academic session which had to start on 1.6.2011 was postponed extending the summer vacation upto 15.6.2011 vide order dated 25.5.2011. The decision of the Cabinet was challenged before the High Court by filing writ petitions on 1.6.2011 and during the pendency of the said cases, the Amendment Act 2011 was passed hurriedly, that was a totally arbitrary and unwarranted exercise underlined by sheer political motives. The Amendment Act 2011 was promulgated on 7.6.2011 itself with retrospective effect i.e. with effect from 22.5.2011, the date of decision of the Cabinet, not to implement the Act 2010. The Amendment Act 2011 has taken away the effect of the judgments of the High Court dated 30.4.2010 and of this Court dated 10.9.2010, wherein it had been held that for Standards I & VI, the Act 2010 will be implemented from academic year 2010-11 and for others from the

academic year 2011-12. Under the said judgment, the implementation of Act 2010 for Standards I & VI as directed by Court had also been taken away by the Amendment Act 2011. The mandate of the statute that for Standards II to V and VII to X, the Act 2010 will be implemented from academic year 2011-12, stood completely wiped out. Not fixing any future date for implementation of the Act 2010 while bringing the Amendment Act 2011, the legislature has substantially repealed the Act 2010. The Statement of Objects and Reasons are a preface to the intention of the legislature and provide guidelines for interpreting the statutory provisions. The same provides that the authorities have taken a decision to scrap the uniform education system adopted under the Act 2010 and the State will search for a better alternative. The legislature is not competent to overrule a judicial decision of a competent court or take away its effect completely as it amounts to trenching upon the judicial powers of the Court. The Amendment Act 2011 is liable to be struck down solely on this ground.

The law does not permit change of policies merely because of another political party with a different political philosophy coming in power, as it is the decision of the Government, the State, an Authority

under Article 12 of the Constitution, and not of a particular person or a party, which is responsible for an enactment and implementation of all laws. The High Court rightly came to the conclusion that the Expert Committee was not unanimous on every issue regarding the curriculum, syllabus and quality of text books. Even if some corrections were required, it could have been done easily by issuing administrative orders. The authorities defined under the Act 2009 had already been appointed, and even for giving effect to the judgment of the High Court dated 30.4.2010, it was not necessary to bring about any fresh legislation. In case the amending statute is held to be invalid being violative of any of the fundamental rights or arbitrary, the repealed provisions would automatically revive. Conferring unfettered powers on the executive, without laying down any criterion or guidelines to enforce the Act 2010, tantamounts to abdication of its legislative powers. Non-availability of choice of multiple text books for a very few schools could not be a ground for scrapping the Act 2010. The appeals lack merit and are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. In post-Constitutional era, an attempt has been made to create an egalitarian society removing disparity amongst individuals, and in order to achieve that purpose, education is one of the most important and effective means. After independence, there has been an earnest effort to bring education out of commercialism/mercantilism. In the year 1951, the Secondary School Commission was constituted as per the recommendation of Central Advisory Board of Education and an idea was mooted by the Government to prepare textbooks and a common syllabus in education for all students. In 1964-1966, the report on National Education Policy was submitted by the Kothari Commission providing for common schools suggesting that public funded schools be opened for all children irrespective of caste, creed, community, religion, economic conditions or social status. Quality of education imparted to a child should not depend on wealth or class. Tuition fee should not be charged from any child, as it would meet the expectations of parents with average income and they would be able to send their children to such schools. The recommendations by the Kothari Commission were accepted and reiterated by the Yashpal Committee in the year 1991. It was in this backdrop that in Tamil

Nadu, there has been a demand from the public at large to bring about a common education system for all children.

In the year 2006, in view of the struggle and campaign and constant public pressure, the Committee under the Chairmanship of Dr. S. Muthukumaran, former Vice-Chancellor of Bharathidasan University was appointed which recommended to introduce a common education system after abolishing the four different Boards then in existence in the State. Subsequent thereto, the Committee constituted of Shri M.P. Vijayakumar, IAS was appointed to look into the recommendations of Dr. S. Muthukumaran Committee which also submitted its recommendations to the Government to implement a common education system upto Xth standard.

7. The right to education is a Fundamental Right under Article 21-A inserted by the 86th amendment of the Constitution. Even before the said amendment, this Court has treated the right to education as a fundamental right. (Vide: **Miss Mohini Jain v. State of Karnataka & Ors**., AIR 1992 SC 1858; **Unni Krishnan, J.P. & Ors. etc. etc. v. State of A.P & Ors. etc. etc. ,** AIR 1993 SC 2178; and **T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.,** (2002) 8 SCC 481).

There has been a campaign that right to education under Article 21-A of our Constitution be read in conformity with Articles 14 and 15 of the Constitution and there must be no discrimination in quality of education. Thus, a common syllabus and a common curriculum is required. The right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of their economic, social and cultural background.

Arguments of the propagators of this movement draw support from the judgment of U.S. Supreme Court in the case of **Brown v. Board of Education,** 347 U.S. 483 (1954) over-ruling its earlier judgment in **Plessy v. Ferguson,** 163 U.S. 537 (1896), where it has been held that "separate education facilities are inherently unequal" and thus, violate the doctrine of equality.

The propagators of this campaign canvassed that uniform education system would achieve the code of common culture, removal of disparity, depletion of discriminatory values in human relations. It would enhance the virtues and improve the quality of human life, elevate the thoughts which advance our constitutional philosophy of equal society. In future, it may prove to be a basic preparation for

uniform civil code as it may help in diminishing opportunities to those who foment fanatic and fissiparous tendencies.

In **Rohit Singhal & Ors. v. Principal, Jawahar N. Vidyalaya & Ors.**, AIR 2003 SC 2088, this Court expressed its great concern regarding education for children observing as under:-

> *"Children are not only the future citizens but also the future of the earth. Elders in general, and parents and teachers in particular, owe a responsibility for taking care of the well-being and welfare of the children. The world shall be a better or worse place to live according to how we treat the children today.* ***Education is an investment made by the nation in its children for harvesting a future crop of responsible adults productive of a well functioning Society.*** *However, children are vulnerable. They need to be valued, nurtured, caressed and protected."* (Emphasis added)

8. In **State of Orissa v. Mamta Mohanty**, (2011) 3 SCC 436, this Court emphasised on the importance of education observing that education connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The Court further relied upon the earlier judgment in **Osmania University Teachers' Assn. v. State of A.P. & Anr.**, AIR 1987 SC 2034, wherein it has been held as under:

"….Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs."

The case at hand is to be proceeded with keeping this ethical backdrop in mind.

9. While deciding the case earlier, the Division Bench of the Madras High Court on 30.4.2010 held that:

(i) The provisions of Sections 11, 12 and 14 of the Act were ultra vires and unconstitutional, and thus struck them down. However, considering the problems of the State authorities, the Division Bench concluded that the State was competent to bring in an education system common to all in the interest of social justice and quality education. The order further read as under:

> "Implementation of the syllabus and text books is postponed till the academic year 2011-12 **or until** the State makes known the norms and the syllabus and prepares the text books in advance."
>
> (Emphasis added)

(ii) In the meantime the State would bring the provision of the Act 2010 in line with the Central Act, e.g. the State shall specify by Notification the Academic Authority and the State Advisory Council. The Board shall also indicate what the approved books are. **The State shall by amending the**

section or by introducing a schedule to the Act, indicate that the syllabus is restricted to curricular subjects and all schools are bound to follow the common syllabus only for the curricular subjects and not for the co-curricular subjects. **The schools may choose from multiple text books** vis. Government produced text books which are prescribed text books and the Government approved text books in all subjects both curricular and co-curricular.

(iii) The schools shall follow the norms as far as they are practicable. There can be no Board examination upto the level of elementary education but the assessment norms may be specified. Norms shall be fixed by the Board. The State may make it clear whether this Board will also be the Academic Authority under the Central Act. However, considering the request of the learned Additional Advocate General just after pronouncing the judgment the Court accepted that Section 3 as modified by the Court would be implemented for Standards I and VI from academic year 2010-11, provided the Board fixed the norms before 15.5.2010.

The said judgment has duly been approved by this Court by a speaking order dated 10.9.2010.

10. Decision of the Cabinet dated 22.5.2011, to postpone the enforcement of the Act 2010 was challenged through various writ petitions. Meanwhile, the government issued an Ordinance which was

converted to Act 2011 passed on 7.6.2011 with retrospective effect i.e. 22.5.2011, the date on which the decision was taken by the Cabinet of the State in this regard. Accordingly, writ petitions were amended challenging the validity of the Amendment Act 2011. Interim orders passed by the High Court therein were challenged before this Court.

11. This Court in its judgment and order dated 14.6.2011 *inter-alia*, directed as under:

(i) The academic Scheme in force for the Academic year 2010-11 for Standards I and VI shall continue to be in force in all respects for the Academic year 2011-12 as well;

(ii) Each text book and to what extent the amended syllabus will be applicable to every course shall be finally determined by the High Court keeping in view the amended provisions of the Act and its impact; and

(iii) We hereby direct the State to appoint a Committee, which it had already undertaken to appoint primarily to examine ways and means of implementing the uniform education system to the classes (II to V and VII to X) in question; common syllabus and the text books which are to be provided for the purpose.

12. The aforesaid directions make it clear that the issues with regard to syllabus and text books were to be determined after considering the report of the Expert Committee appointed by the State **to examine ways and means of implementing the uniform education system** in Standards (II to V and VII to X) in question,

common syllabus and the text books which are to be provided for the purpose. Thus, it was the Expert Committee which had been assigned the role to find out ways and means to implement the common education policy etc.

13. The High Court in the impugned judgment while examining the validity of the amended provisions took note of settled legal propositions as under:

> "**As there is no challenge to the Amending Act on the ground of legislative incompetence, we are not required to examine the effect of the Amending Act, on such grounds or to examine whether the Amending Act is a colourable legislation on such aspects.** Therefore, we have to examine the matters solely based on the directions issued by the Hon'ble Supreme Court in its order dated 14.6.2011. The Amending Act which has the effect of repeal of the Parent Act under the guise of postponement of its implementation, when in fact Parent Act has already been implemented, though partially, the Amending Act has to be held to be arbitrary piece of legislation which does not satisfy the touchstone of Article 14 of the Constitution of India." (Emphasis added)

14. The High Court after examining the validity of the Amended Act held:

(I) The Committee so constituted may not be justified in submitting the report stating that the entire uniform system of education be

scrapped and the text books already provided for be discarded.

(II) The Expert Committee has mis-directed itself as it ought to have proceeded primarily to examine the ways and means of implementing the uniform system of education, curiously the Committee, in its final report concluded that no text book can be used for the academic year 2011-12.

(III) The Committee members were not of the unanimous opinion that the uniform syllabus and common text books have to be discarded from the current year. Each member has pointed out certain defects and recommended for certain changes and additions.

(IV) In the order dated 10.6.2011, the High Court directed the Government to notify the approved text books after conducting the study with a view to comply with the direction issued earlier on 30.4.2010. This direction was issued to enable the schools to choose from the multiple text books. However, these orders and directions have been discarded by the State.

(V) The State has exceeded its power in bringing the Amending Act to postpone an enactment which has already come into force. As there is

a sudden change in the policy of the Government from its predecessor immediately after coming into power that the Court had to see the impact of the amendment, notwithstanding the competence of the legislature to pass an Amendment Act.

(VI) If the law was passed only ostensibly but was in truth and substance, one for accomplishing an unauthorized object, the court would be entitled to lift the veil and judicially review the case.

(VII) The State has sought to achieve indirectly what could not be achieved directly as it was prevented from doing so in view of the judgment of the Division Bench which upheld the validity of the Parent Act 2010.

(VIII) The Amendment Act 2011 is an arbitrary piece of legislation and violative of Article 14 of the Constitution and the Amendment Act 2011 was merely a pretence to do away with the uniform system of education under the guise of putting on hold the implementation of the Parent Act, which the State was not empowered to do so.

(IX) If the impugned Amending Act has to be given effect to, it would result in **unsettling** various issues and the larger interest of children would be jeopardized.

15. There are claims and counter claims on each factual aspect and the High Court has dealt with each issue elaborately, in our opinion, to an unwarranted extent. However, before we proceed further, it may be necessary to examine the legal issues:-

I. CHANGE OF POLICY WITH THE CHANGE OF GOVERNMENT:

16. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. "The principles of governance have to be tested on the touchstone of justice, equity, fair play and if a decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate". (Vide: **Onkar Lal Bajaj etc. etc. v. Union of India & Anr. etc. etc.**, AIR 2003 SC 2562).

17. In **State of Karnataka & Anr. v. All India Manufacturers Organisation & Ors.,** AIR 2006 SC 1846, this Court examined under what circumstances the government should revoke a decision taken by an earlier Government. The Court held that an instrumentality of the State cannot have a case to plead contrary from that of the State and the policy in respect of a particular project adopted by the State

Government should not be changed with the change of the government. The Court further held as under:-

> "It is trite law that when one of the contracting parties is State within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. **When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the Constitutional Courts."** (Emphasis added)

18. While deciding the said case, reliance had been placed by the Court on its earlier judgments in **State of U.P. & Anr. v. Johri Mal,** AIR 2004 SC 3800; and **State of Haryana v. State of Punjab & Anr.**, AIR 2002 SC 685. In the former, this Court held that the panel of District Government Counsel should not be changed only on the ground that the panel had been prepared by the earlier Government. In the latter case, while dealing with the river water-sharing dispute between two States, the Court observed thus:

> " ……in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same."

19. In **M.I. Builders Pvt. Ltd. v. V. Radhey Shyam Sahu & Ors.,** AIR 1999 SC 2468, while dealing with a similar issue, this Court held that Mahapalika being a continuing body can be estopped from changing its stand in a given case, but where, after holding enquiry, it came to the conclusion that action was not in conformity with law, there cannot be estoppel against the Mahapalika.

20. Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.

II. <u>COLOURABLE LEGISLATIONS:</u>

21. In **The State of Punjab & Anr. v. Gurdial Singh & Ors.,** AIR 1980 SC 319, this Court held that when power is exercised in bad faith to attain ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal, it is called colourable exercise of power. The action becomes bad where the true object is to reach an end different from the one for which the power is entrusted, guided by an extraneous consideration, whether good or bad

but irrelevant to the entrustment. When the custodian of power is influenced in exercise of its power by considerations outside those for promotion of which the power is vested, the action becomes bad for the reason that power has not been exercised bonafide for the end design.

22. It has consistently been held by this Court that the doctrine of malafide does not involve any question of bonafide or malafide on the part of legislature as in such a case, the Court is concerned to a limited issue of competence of the particular legislature to enact a particular law. If the legislature is competent to pass a particular enactment, the motives which impelled it to an act are really irrelevant. On the other hand, if the legislature lacks competence, the question of motive does not arrive at all. Therefore, whether a statute is constitutional or not is, thus, always a question of power of the legislature to enact that Statute.

Motive of the legislature while enacting a Statute is inconsequential: "*Malice or motive is beside the point, and it is not permissible to suggest parliamentary incompetence on the score of mala fides.*"

The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. This kind of "transferred malice" is unknown in the field of legislation.

[See: **K.C. Gajapati Narayan Deo & Ors. v. State of Orissa,** AIR 1953 SC 375; **R.S. Joshi, Sales Tax Officer, Gujarat & Ors. v. Ajit Mills Limited & Anr.,** AIR 1977 SC 2279; **K. Nagaraj & Ors. v. State of Andhra Pradesh & Anr.,** AIR 1985 SC 551; **Welfare Assocn. A.R.P., Maharashtra & Anr. v. Ranjit P. Gohil & Ors.,** AIR 2003 SC 1266; and **State of Kerala & Anr. v. Peoples Union for Civil Liberties, Kerala State Unit & Ors.,** (2009) 8 SCC 46].

III. LAWS CONTRAVENING ARTICLE 13(2):

23. The legislative competence can be adjudged with reference to Articles 245 and 246 of the Constitution read with the three lists given in the Seventh Schedule as well as with reference to Article 13(2) of the Constitution which prohibits the State from making any law which takes away or abridges the rights conferred by Part-III of the Constitution and provides that any law made in contravention of this Clause shall, to the extent of contravention be void.

24. In **Deep Chand & Ors. v. State of U.P. & Ors.,** AIR 1959 SC 648, this Court held:

> *"There is a clear distinction between the two clauses of Article 13. Under cl. (1) of Article 13, a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III; whereas, no post-Constitution law can be made*

contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception of this clear distinction is borne in mind much of the cloud raised is dispelled.

When cl. (2) of Art. 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions; nor can we appreciate the argument that the words "any law" in the second line of Art. 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound. The words 'any law" in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. ***A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law ; the law made in spite of the prohibition is a still born law."***

(Emphasis added)

(See also: **Mohd. Shaukat Hussain Khan v. State of A.P.** AIR 1974 SC 1480).

25. In **Behram Khurshid Pesikaka v. State of Bombay** AIR 1955 SC 123; and **Mahendra Lal Jaini v. State of Uttar Pradesh & Ors.** AIR 1963 SC 1019, this Court held that in case a statute violates any of the fundamental rights enshrined in Part III of the Constitution of India, such statute remains still-born; void; ineffectual and nugatory, without having legal force and effect in view of the provisions of Article 13(2) of the Constitution. The effect of the declaration of a statute as unconstitutional amounts to as if it has never been in existence. Rights cannot be built up under it; contracts which depend upon it for their consideration are void. The unconstitutional act is not the law. It confers no right and imposes no duties. More so, it does not uphold any protection nor create any office. In legal contemplation it remains not operative as it has never been passed. In case the statute had been declared unconstitutional, the effect being just to ignore or disregard.

IV. DOCTRINE OF LIFTING THE VEIL:

26. However, in order to test the constitutional validity of the Act, where it is alleged that the statute violates the fundamental rights, it is necessary to ascertain its true nature and character and the impact of the Act. Thus, courts may examine with some strictness the substance

of the legislation and for that purpose, the court has to look behind the form and appearance thereof to discover the true character and nature of the legislation. Its purport and intent have to be determined. In order to do so it is permissible in law to take into consideration all factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy. (Vide: **Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. & Ors.,** AIR 1954 SC 119; **Mahant Moti Das v. S.P. Sahi, The Special Officer in charge of Hindu Religious Trust & Ors.,** AIR 1959 SC 942; and **Hamdard Dawakhana & Anr. v. Union of India & Ors.,** AIR 1960 SC 554).

V. INTERFERENCE BY COURT WITH EXPERT BODY'S OPINION:

27. Undoubtedly, the Court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the Expert Body. The Constitution Bench of this Court in **The University of Mysore & Anr. v. C.D. Govinda Rao & Anr.**, AIR 1965 SC 491 held that "normally the courts should be slow to interfere with the opinions expressed by the

experts". It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court in **Km. Neelima Misra v. Dr. Harinder Kaur Paintal & Ors.,** AIR 1990 SC 1402; **The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors.,** AIR 2010 SC 1285; **Dr. Basavaiah v. Dr. H.L. Ramesh & Ors.**, (2010) 8 SCC 372; and **State of H.P. & Ors. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh,** (2011) 6 SCC 597.

VI. WHAT CANNOT BE DONE DIRECTLY-CANNOT BE DONE INDIRECTLY:

28. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "*quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud.*" An authority cannot be permitted to evade a law by "shift or contrivance". (See: **Jagir Singh v. Ranbir Singh**, AIR 1979 SC 381; **M.C. Mehta v. Kamal Nath & Ors**., AIR 2000 SC 1997; and **Sant**

Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors., JT 2010 (11) SC 273).

VII. CONDITIONAL LEGISLATION:

29. As the legislature cannot carry out each and every function by itself, it may be necessary to delegate its power for certain limited purposes in favour of the executive. Delegating such powers itself is a legislative function. **Such delegation of power, however, cannot be wide, uncanalised or unguided.** The legislature while delegating such **power is required to lay down the criteria or standard so as to enable the delegatee to act within the framework of the statute.** The principle on which the power of the legislature is to be exercised is required to be disclosed. It is also trite that essential legislative functions cannot be delegated.

Delegation cannot be extended to "repealing or altering in essential particulars of laws which are already in force in the area in question". (Vide: **re: Article 143, Constitution of India and Delhi Laws Act (1912) etc.,** AIR 1951 SC 332).

30. The legislature while delegating such powers has to specify that on certain data or facts being found and ascertained by an

executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination which is described as conditional legislation. While doing so, the legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purpose and object of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on consideration of the provisions of the particular Act with which the Court has to deal including its preamble. (See: In **re: Delhi Laws Act** (supra); **The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi & Anr.,** AIR 1968 SC 1232).

31. In **Rajnarain Singh v. Chairman, Patna Administration Committee, Patna & Anr.,** AIR 1954 SC 569, a Constitution Bench of this Court explained the ratio of the judgment in **re: Delhi Laws Act** (supra) observing as under:

> *"In our opinion, the majority view was that an* ***executive authority can be authorised to modify either***

> ***existing or future laws but not any essential feature***. *Exactly, what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy."* (Emphasis added)

32. In **Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore v. Corporation of the City of Bangalore by its Commissioner, Bangalore City**, AIR 1962 SC 1263, this Court dealt with a similar issue in a case where the legislature had conferred power upon the Municipal Corporation to determine on what other goods and under what conditions the tax should be levied. In that case the legislature had prepared a list of goods which could be subjected to tax and the rate had also been fixed in addition thereto. The powers had been conferred on the Municipal Corporation. This Court therefore came to the conclusion that it was not a case of excessive delegation which may be held to be bad in view of the judgment in **Hamdard Dawakhana v. Union of India**, AIR 1960 SC 554, rather it was a case of conditional legislation.

33. In **Basant Kumar Sarkar & Ors. v. The Eagle Rolling Mills Ltd. & Ors.**, AIR 1964 SC 1260, this Court examined the issue

of extension of Employees State Insurance Act, i.e. temporal application of employees insurance legislation and held that it was a case of conditional legislation and not of excessive delegation because there was no element of delegation therein at all. The Court held as under:

> *"Thus, it is clear that when extending the Act to different establishments, the relevant Government is given the power to constitute a Corporation for the administration of the scheme of Employees State Insurance. The course adopted by modern legislatures in dealing with welfare scheme has uniformly conformed to the same pattern. The legislature evolves a scheme of socio-economic welfare, makes elaborate provisions in respect of it and leaves it to the Government concerned to decide when, how and in what manner the scheme should be introduced. That, in our opinion, cannot amount to excessive delegation."*

34. In view of the above, the law stands crystallised to the effect that in case the legislature wants to delegate its power in respect of the implementation of the law enacted by it, it must provide sufficient guidelines, conditions, on fulfillment of which, the Act would be enforced by the delegatee. Conferring unfettered, uncanalised powers without laying down certain norms for enforcement of the Act tantamounts to abdication of legislative power by the legislature which is not permissible in law. More so, where the Act has already come into

force, such a power cannot be exercised just to nullify its commencement thereof.

VIII. LEGISLATIVE ARBITRARINESS:

35. In **Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors.,** AIR 1981 SC 487, this Court held that Article 14 strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. Whenever therefore, there is arbitrariness in State action, whether it be of the **legislature** or of the executive, Article 14 immediately springs into action and strikes down such State action. (See also : **E.P. Royappa v. State of Tamil Nadu & Anr.,** AIR 1974 SC 555; and **Smt. Meneka Gandhi v. Union of India & Anr.** AIR 1978 SC 597).

36. In **M/s. Sharma Transport rep. by D.P. Sharma v. Government of A.P. & Ors.** AIR 2002 SC 322, this Court defined arbitrariness observing that party has to satisfy that the action was not reasonable and was manifestly arbitrary. The expression 'arbitrarily' means; act done in an unreasonable manner, as fixed or done capriciously or at pleasure without adequate determining principle, not

founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.

37. In **Bombay Dyeing & Manufacturing Co. Ltd. (3) v. Bombay Environmental Action Group & Ors.** AIR 2006 SC 1489, this Court held that arbitrariness on the part of the legislature so as to make the legislation violative of Article 14 of the Constitution should ordinarily be manifest arbitrariness.

38. In cases of **Bidhannagar (Salt Lake) Welfare Assn. v. Central Valuation Board & Ors.** AIR 2007 SC 2276; and **Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Limited & Ors.** AIR 2009 SC 2337, this Court held that a law cannot be declared ultra vires on the ground of hardship but can be done so on the ground of total unreasonableness. The legislation can be questioned as arbitrary and ultra vires under Article 14. However, to declare an Act ultra vires under Article14, the Court must be satisfied in respect of substantive unreasonableness in the statute itself.

IX. AMENDING ACT-IF STRUCK DOWN-WHETHER OLD LAW WILL REVIVE:

39. This Court in **Bhagat Ram Sharma v. Union of India & Ors.,** AIR 1988 SC 740 explained the distinction between repeal and amendment observing that amendment includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act prefaces to amend; if it is extensive, it repeals and re-enacts it.

40. In **State of Rajasthan v. Mangilal Pindwal** AIR 1996 SC 2181, this Court held that when the statute is amended, the process of substitution of statutory provisions consists of two parts:-

(i) the old rule is made to cease to exist;

(ii) the new rule is brought into existence in its place.

In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. (See also: **Koteswar Vittal Kamath v. K.Rangappa Baliga & Co.** AIR 1969 SC 504).

41. In **Firm A.T.B. Mehtab Majid and Co.** v. **State of Madras & Anr.**, AIR 1963 SC 928, this Court held:

> ***"22.*** *It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except*

for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal"

42. Thus, undoubtedly, submission made by learned senior counsel on behalf of the respondents that once the Act stands repealed and the amending Act is struck down by the Court being invalid and ultra vires/unconstitutional on the ground of legislative incompetence, the repealed Act will automatically revive is preponderous and needs no further consideration.

This very Bench in **State of Uttar Pradesh & Ors. v. Hirendra Pal Singh & Ors.,** (2011) 5 SCC 305, after placing reliance upon a large number of earlier judgments particularly in **Ameer-un-Nissa Begum v. Mahboob Begum & Ors.,** AIR 1955 SC 352; **B.N. Tewari v. Union of India & Ors.,** AIR 1965 SC 1430; **India Tobacco Co. Ltd. v. CTO, Bhavanipore & Ors.,** AIR 1975 SC 155; **Indian Express Newspapers (Bombay) Private Ltd. & Ors. v. Union of India & Ors.,** AIR 1986 SC 515; **West U.P. Sugar Mills Assn. v. State of U.P.,** AIR 2002 SC 948; **Zile Singh v. State of Haryana & Ors.,** (2004) 8 SCC 1; **State of Kerala v. Peoples Union for Civil**

Liberties, Kerala State Unit & Ors., (2009) 8 SCC 46; and **Firm A.T.B. Mehtab Majid and Co.** (supra) reached the same conclusion.

43. There is another limb of this legal proposition, that is, where the Act is struck down by the Court being invalid, on the ground of arbitrariness in view of the provisions of Article 14 of the Constitution or being violative of fundamental rights enshrined in Part-III of the Constitution, such Act can be described as *void ab-initio* meaning thereby unconstitutional, still born or having no existence at all. In such a situation, the Act which stood repealed, stands revived automatically. (See: **Behram Khurshid Pesikaka** (Supra); and **Mahendra Lal Jaini** (Supra)

44. In **Harbilas Rai Bansal v. State of Punjab & Anr.** AIR 1996 SC 857, while dealing with the similar situation, this Court struck down the Amending Act being violative of Article 14 of the Constitution. The Court further directed as under:

> *"We declare the abovesaid provision of the amendment as constitutionally invalid and as a consequence* ***restore the original provisions of the Act*** *which were operating before coming into force of the Amendment Act."* (Emphasis added)

45. Thus, the law on the issues stands crystallised that in case the Amending Act is struck down by the court for want of legislative competence or is violative of any of the fundamental rights enshrined in Part III of the Constitution, it would be un-enforceable in view of the provision under Article 13(2) of the Constitution and in such circumstances the old Act would revive, but not otherwise. This proposition of law is, however, not applicable so far as subordinate legislation is concerned.

X. WHETHER LEGISLATURE CAN OVERRULE THE JUDGMENT OF THE COURT:

46. A Constitution Bench of this Court in **Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors.,** AIR 1970 SC 192, examined the issue and held as under:

> *".....When a legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that*

the decision of the Court shall not bind for that it tantamounts to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances….."

47. In **S.R. Bhagwat & Ors. v. State of Mysore,** AIR 1996 SC 188, a similar issue was considered by this Court while considering the provisions of Karnataka State Civil Services (Regulation of Promotion, Pay & Pension) Act, 1973. In that case, the provisions of that Act disentitled deemed promotees to arrears for the period prior to actual promotion. These provisions were held to be not applicable where directions of the competent court against the State had become final. The Court observed that any action to take away the power of judicial decision shall be ultra vires the powers of the State legislature as it encroached upon judicial review and tried to overrule the judicial decision binding between the parties. The binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such a judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with

the entire subject sought to be covered by such an enactment having retrospective effect.

48. While deciding the said case, this Court placed reliance on its earlier judgments in Re, **Cauvery Water Disputes Tribunal,** AIR 1992 SC 522; and **G.C. Kanungo v. State of Orissa**, AIR 1995 SC 1655. In the former case, the Constitution Bench of this Court held that the legislature could change the basis on which a decision was given by the Court and, thus, change the law in general, which would affect a class of persons and events at large. However, it cannot set aside an individual decision inter-parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and functioning as an appellate court or tribunal. In the latter case, a similar view had been reiterated observing that the award of the tribunal could not be nullified by an Amendment Act having recourse to the legislative power as it tantamounts to nothing else, but "the abuse of this power of legislature."

49. In **Madan Mohan Pathak & Anr. v. Union of India & Ors.,** AIR 1978 SC 803, a seven-Judge Bench of this Court considered a

similar issue and held that the act of legislature cannot annul a final judgment giving effect to rights of any party. A declarative judgment holding an imposition of tax invalid can be superseded by a re-validation statute. But where the factual or legal situation is retrospectively altered by an act of legislature, the judgment stands, unless reversed by an appeal or review. Bringing a legislation in order to nullify the judgment of a competent court would amount to trenching upon the judicial power and no legislation is permissible which is meant to set aside the result of the mandamus issued by a court even though, the amending statute may not mention such an objection. The rights embodied in a judgment could not be taken away by the legislature indirectly.

A similar view has been reiterated in **K. Sankaran Nair (Dead) through LRs. v. Devaki Amma Malathy Amma & Ors.,** (1996) 11 SCC 428.

50. The legislature cannot by bare declaration, without anything more, directly overrule, reverse or override a judicial decision. However it can, in exercise of the plenary powers conferred upon it by Articles 245 and 246 of the Constitution, render a judicial decision

ineffective by enacting a valid law fundamentally altering or changing the conditions on which such a decision is based.

(Vide: **A. Manjula Bhashini & Ors. v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Ltd. & Anr.,** (2009) 8 SCC 431).

51. In view of the above, the law on the issue can be summarised to the effect that a judicial pronouncement of a competent court cannot be annulled by the legislature in exercise of its legislative powers for any reason whatsoever. The legislature, in order to revalidate the law, can re-frame the conditions existing prior to the judgment on the basis of which certain statutory provisions had been declared ultra vires and unconstitutional.

XI. READING OF THE STATEMENT OF OBJECTS AND REASONS: WHILE INTERPRETING THE STATUTORY PROVISIONS:

52. The Statement of Objects and Reasons appended to the Bill is not admissible as an aid to the construction of the Act to be passed, but it can be used for limited purpose for ascertaining the conditions which prevailed at that time which necessitated the making of the law, and the extent and urgency of the evil, which it sought to remedy. The Statement of Objects and Reasons may be relevant to find out what is the **objective** of any given statute passed by the legislature. It may

provide for the reasons which induced the legislature to enact the statute. "For the purpose of **deciphering the objects and purport** of the Act, the court can look to the Statement of Objects and Reasons thereof". (Vide: **Kavalappara Kottarathil Kochuni @ Moopil Nayar v. The States of Madras and Kerala & Ors.**, AIR 1960 SC 1080; and **Tata Power Company Ltd. v. Reliance Energy Ltd. & Ors.**, (2009) 16 SCC 659).

53. In **A. Manjula Bhashini & Ors.** (Supra), this Court held as under:

> *"The proposition which can be culled out from the aforementioned judgments is that although the Statement of Objects and Reasons contained in the Bill leading to enactment of the particular Act cannot be made the sole basis for construing the provisions contained therein, the same can be referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. The Statement of Objects and Reasons can also be looked into as an external aid* ***for appreciating the true intent of the legislature*** *and/or the* ***object sought to be achieved*** *by enactment of the particular Act or for judging reasonableness of the classification made by such Act."* (Emphasis added)

54. Thus, in view of the above, the Statement of Objects and Reasons of any enactment spells out the core reason for which the enactment is brought and it can be looked into for appreciating the true intent of the legislature or to find out the object sought to be achieved

by enactment of the particular Act or even for judging the reasonableness of the classifications made by such Act.

CASE ON MERITS:

55. The instant case requires to be examined in the light of the aforesaid settled legal propositions, though it may not be necessary to deal with all these issues in great detail as the High Court has already dealt with the same elaborately.

56. In the instant case, as the Expert Committee had submitted a report and most of the members had given their opinion on different issues and as we have also examined the reports, it is evident from the same that each member had pointed out certain defects in the curriculum as well as in the text books etc. There was no unanimity on any particular issue, as each member has expressed a different opinion on different issues/subjects.

57. The counter affidavit dated 7.6.2011 was filed before the High Court by Ms. D. Sabitha, the Secretary to the Government Education Department on behalf of all the respondents therein. In reply to the Writ Petition she stated as under:

"I. Further the prayer for an issuance of writ of declaration ***declaring that the decision of the Cabinet dated 22.5.2011 by the Government of Tamil Nadu to withhold the implementation of the Tamil Nadu Uniform System of School Education Act, 2010*** *for the academic year 2011-12 as published vide News Release No. 289 dt. 22.5.2011 as* ***null and void is not*** *sustainable in law for the sole reason that the policy decision taken by the Cabinet would not be generally subject to judicial review. It is further submitted that the decision taken by the Cabinet to review the implementation of the Uniform System of School Education for Standards I to X is purely in the interest of students, parents and public which is within the domain of the popular Government..*

II. Further the averment that text books printed would be wasted and there would be a loss caused to the tune of 200 crore rupees seems to have been made without understanding the implications that could be created due to the implementation of the ***illegal policy formulated by the erstwhile Government****. The Government has a mandate to ensure the quality of education and welfare of the students. It is with this intent the present policy is being formulated……*

III. The State, therefore, proposes to appoint a high powered committee consisting of experts in the field to undertake a detailed study ***of the more appropriate system to be adopted for ensuring the improvement of quality of education*** *and social justice by providing a level playing field to all sections of society.*

IV. At this juncture, it is pointed out that the books that have been printed already are ***substandard and wanting in quality*** *and if followed, would lead to deterioration of*

> ***academic Standards of school students and therefore the*** *Cabinet has rightly taken a policy decision after thorough deliberation* ***to stall the implementation of the Uniform System of School Education Act, 2010 as it suffers from illegality, irrationality and unconstitutionality****....*
> *"* (Emphasis added)

On amendment of the writ petitions, another counter affidavit was filed by Ms. D. Sabitha, the same officer, wherein she stated on oath, *inter-alia*, as under:

> *"I. This being so, the Government has taken a* ***decision to stall the implementation of the policy of the previous government that is devoid of any legal sanction*** *and has constituted a committee to formulate an appropriate solution in order to redress the complications created due to the* ***implementation of the illegal policy****.*
>
> *II…….In the Cabinet meeting held on 22.5.2011, it was initially decided to do away* ***with the uniform Education system****. Since the schools were reopening on 1st June, 2011, orders had to be issued for printing of textbooks. It is submitted that the advertisement for inviting tenders for printing textbooks was issued on 23.5.2011."*
>
> (Emphasis added)

58. The High Court, after taking note of the counter affidavit filed by the present appellants labeling the Act 2010 as **illegal**, **irrational** and **unconstitutional,** after it had already undergone an intense judicial scrutiny and held to be Constitutionally valid by the High

Court vide judgment and order dated 30.4.2010 and by this Court vide judgment and order dated 10.9.2010, the question that arises for consideration is as to whether it was permissible for the Secretary of the Education Department to label the Act as illegal and unconstitutional. Does such a conduct amount to sitting in appeal against the judgments of the High Court as well as of this Court or does it not amount to an attempt to take away the effect of the judgments of the High Court as well of this Court ?

59. The High Court has taken note of these pleadings taken by the State authorities :

> *"From a perusal of the counter affidavit filed by the Secretary, School Education Department, it is manifestly clear that the Government has taken the consistent stand that the policy formulated by the previous Government by implementing the Uniform Syllabus System* ***was illegal*** *and that the amount of Rs. 200 crores spent for printing the textbooks under the new syllabus was because of the* ***wrong policy****....."* (Emphasis added)

The report submitted by the Expert Committee, in fact, did not contain any collective opinion. All the members have expressed their different views and most of the members had approved the contents of the text books, in general, pointing out certain defects which could be cured by issuing corrigendums or replacements etc.

60. Section 18 of the Act 2010 enables the State Government to remove difficulties, if any, in implementation of the said Act. The provisions thereof read as under:

> *"If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Tamil Nadu Government Gazette, make such provisions, not inconsistent with the provisions of this Act as appears to them to be necessary or expedient for removing the difficulty;…"*

Therefore, the amendment itself is totally unwarranted. If the State Government was facing any difficulty, the same could have been removed by issuing a Government order under Section 18 of the Act which conferred all residuary powers on it.

The nature of the defect as canvassed by the State counsel is reflected in the pleadings that indicates an undesirable inclusion of certain chapters that do not subserve the purpose of a uniform standard and multicultural educational pattern. The contention appears to be that such material may damagingly divert the mind of the young students towards a motivated attempt of individualistic glorification. In the opinion of the court, if such material does create any adverse impact or is otherwise targeted towards unwanted propaganda without any contribution towards the educational standard sought to be

achieved, then such material upon a thorough investigation and deliberation by the Expert Committee could be deleted with the aid of Section 18 of the Act 2010. It appears that the State Government while introducing the Amendment Act 2011 did not appropriately focus attention on the provision of Section 18 quoted hereinabove that are inclusive of all powers that may be required to remove such difficulties. Had the said provision been carefully noted, there would have been no occasion to suspend the implementation of the Act 2010. What could have been done with the help of a needle was unnecessarily attempted by wielding a sword from the blunt side. Not only this the said provision was not even pointed out by the State machinery before the High Court nor did its legal infantry choose to examine the same. Even before us the learned counsel were unable to successfully counter the availability of such powers with the State Government.

In addition to that, needless to re-emphasize, the High Court while dealing with the validity of the provisions of the Act 2010, had already conceded liberty to the State Government to remove defects and had on the other hand struck down the offending provisions in Section 14 thereof empowering the State Government to compel the Education Board to be bound on questions of policy. Thus, the State

Government was left with sufficient powers to deal with the nature of defects appropriately under the said judgment with a statutory power available for that purpose under Section 18 of the Act 2010.

61. It may be relevant to point out here that Statement of Objects and Reasons given to the Amendment Act 2011 reveal a very sorry state of affairs and point out towards the intention of the legislature not to enforce the Act 2010 at all. Relevant part of clause 9 of the Statement of Objects and Reasons of the Amendment Act 2011 reads as under:

> *"...the State proposes to appoint a high powered committee consisting of experts in the field to undertake a detailed study of the* ***more appropriate system to be adopted for ensuring the improvement of quality and education*** *and social justice by providing a level playing field to all sections of society. .."* (Emphasis added)

The aforesaid quoted part of the same makes it clear that the Government intended to introduce a more appropriate system to ensure the improvement of quality education, meaning thereby, that the State has no intention to enforce the uniform education system as provided under the Act 2010.

62. The relevant part of Section 3 of the Act 2010 reads as under:

3(1) Every school in the State shall follow the common syllabus and text books as may be specified by the Board for each subject –

(a) in Standards I and VI, commencing from the academic year 2010-2011;

(b) in Standards II to V and Standards VII to X from the academic year 2011-2012.

(2) Subject to the provisions of sub-section (1), every school in the State shall –

(a) follow the norms fixed by the Board for giving instruction in each subject;

(b) follow the norms for conducting examination as may be specified by the Board.

63. After the Amendment Act 2011, Section 3 reads as under:

"3. Schools to follow common syllabus –

(1) Every school in the State shall follow the common syllabus as may be specified by the Board for each subject in **Standards 1 to X from such academic year as may be notified by the Government** in the Tamil Nadu Government Gazette. The Government may specify different academic years for different Standards.

(2) Until notification under sub-section (1) is issued, the syllabus and text books for every school in the State shall be as follows:

(a) in Standards I and VI, the system as **prevailing prior to academic year 2010-11 shall continue**; and

(b) in Standards II to V and VII to X, the existing system shall continue," (Emphasis added)

64. The legislature in its wisdom had enforced the Act 2010 providing for common syllabus and text books for Standards I and VI from the academic year 2010-2011 and for Standards II to V and VII to X from the academic year 2011-2012, the validity of this law has been upheld by the High Court vide judgment and order dated 30.4.2010 and by this Court vide order dated 10.9.2010. Certain directions had been issued by the High Court which could be carried out easily by the State exercising its administrative powers without resorting to any legislative function. By the Amendment Act, even the application of Act 2010, so far as Standards I and VI are concerned, has also been withdrawn without realising that students who have studied in academic year 2010-11 would have difficulty in the next higher class if they are given a different syllabus and different kind of text books. The Amendment Act 2011 provided that the students in Standards I and VI would also revert back to the old system which had already elapsed.

65. The Amendment Act 2011, in fact, nullified the earlier judgment of the High Court dated 30.4.2010, duly approved by the order of this Court dated 10.9.2010, and tantamounts to repealing of the Act 2010 as unfettered and uncanalised power has been bestowed upon the Government to notify the commencement of the uniform education

system. State Government may submit only to the extent that the High Court itself had given option to the State to implement the Common Education System after ensuring compliance of directions issued by the High Court itself. However, no such liberty was available to the State so far as Standards I and VI are concerned.

66. It is also evident from the record that after the new Government was sworn in on 16.5.2011, tenders were invited to publish books being taught under the old system on 21.5.2011 and subsequent thereto, it was decided in the Cabinet meeting on 22.5.2011 not to implement the uniform education system. Whole exercise of amending the Act 2010 was carried out most hurriedly. However, proceeding in haste itself cannot be a ground of challenge to the validity of a Statute though proceeding in haste amounts to arbitrariness and in such a fact-situation the administrative order becomes liable to be quashed. The facts mentioned hereinabove reveal that tenders had been invited on 21.5.2011 for publishing the text books, taught under the old system even prior to Cabinet meeting dated 22.5.2011. Thus, a decision had already been taken not to implement the Common Education System.

67. If one crore twenty lacs students are now to revert back to the multiple syllabus with the syllabus and textbooks applicable prior to

2010 after the academic term of 2011-12 has begun, they would be utterly confused and would be put to enormous stress. Students can not be put to so much strain and stress unnecessarily. The entire exercise by the Government is therefore arbitrary, discriminatory and oppressive to students, teachers and parents.

The State Government should have acted bearing in mind that "destiny of a nation rests with its youths". Personality of a child is developed at the time of basic education during his formative years of life. Their career should not be left in dolorific conditions with uncertainty to such a great extent. The younger generation has to compete in global market. Education is not a consumer service nor the educational institution can be equated with shops, therefore, "there are statutory prohibitions for establishing and administering educational institution without prior permission or approval by the authority concerned."

Thus, the State Government could by no means be justified in amending the provisions of Section 3 of the Act 2010, particularly in such uncertain terms. Undertaking given by the learned Advocate General to the High Court that the Act 2010 would be implemented in

the academic year 2012-13, cannot be a good reason to hold the Act 2011 valid.

68 Submissions advanced on behalf of the appellants that it is within the exclusive domain of the legislature to fix the date of commencement of an Act, and court has no competence to interfere in such a matter, is totally misconceived for the reason that the legislature in its wisdom had fixed the dates of commencement of the Act though in a phased manner. The Act commenced into force accordingly. The courts intervened in the matter in peculiar circumstances and passed certain orders in this regard also. The legislature could not wash off the effect of those judgments at all. The judgments cited to buttress the arguments, particularly in **A.K. Roy v. Union of India & Anr.,** AIR 1982 SC 710; **Aeltemesh Rein v. Union of India & Ors.,** AIR 1988 SC 1768; **Union of India v. Shree Gajanan Maharaj Sansthan,** (2002) 5 SCC 44; and **Common Cause v. Union of India & Ors.,** AIR 2003 SC 4493, wherein it has been held that a writ in the nature of mandamus directing the Central Government to bring a statute or a provision in a statute into force in exercise of powers conferred by Parliament in that statute cannot be issued, stand distinguished.

69. As explained hereinabove, the Amendment Act 2011, to the extent it applies to enforcement of Act 2010, nullified the judgment of the High Court dated 30.4.2010 duly approved by this Court vide order dated 10.9.2010. Thus, we concur with the conclusion reached by the High Court in this regard.

70. To summarise our **conclusions:**

(i) The Act 2010 was enacted to enforce the uniform education system in the State of Tamil Nadu in order to impart quality education to all children, without any discrimination on the ground of their economic, social or cultural background.

(ii) The Act itself provided for its commencement giving the academic years though, in phased programme i.e. for Standards I to VI from the academic year 2010-2011; and for other Standards from academic year 2011-2012, thus, enforcement was not dependent on any further notification.

(iii) The validity of the Act was challenged by various persons/ institutions and societies, parents of the students, but mainly by private schools organisations, opposing the common education system in the entire State. The writ petitions were dismissed upholding the validity of the Act. However, few provisions, particularly, the provisions of Sections 11, 12 and 14 were struck down by the High Court vide judgment and order dated 30.4.2010. The said judgment of the High Court was duly approved by a speaking order of this Court dated 10.9.2010. Certain directions had been given in the said judgment by the

High Court which could have been complied with by issuing executive directions. Moreover, directions issued by the High Court could be complied with even by changing the Schedule as provided in the judgment dated 30.4.2010 itself.

(iv) Section 18 of the Act 2010 itself enabled the Government to issue any executive direction to remove any difficulty to enforce the statutory provisions of the Act 2010. The Act 2010 itself provided for an adequate residuary power with the government to remove any difficulty in enforcement of the Act 2010, by issuing an administrative order.

(v) Justification pleaded by the State that Amendment Act 2011 was brought to avoid contempt proceedings as the directions issued by the High Court could not be complied with, is totally a misconceived idea and not worth acceptance.

(vi) The new government took over on 16.5.2011 and immediately thereafter, the Government received representations from various private schools/organizations on 17th/18th May, 2011 to scrap the uniform education system. As most of these representations were made by the societies/organisations who had earlier challenged the validity of the Act 2010 and met their waterloo in the hierarchy of the courts, such representations were, in fact, not even maintainable and, thus could not have been entertained by the Government.

(vii) Before the first Cabinet meeting of the new Government on 22.5.2011, i.e. on 21.5.2011, tenders were invited to publish the books under the old education system. It shows that there had been a pre-determined political decision to scrap the Act 2010. The Cabinet on

22.5.2011 had taken a decision to do away with the Act 2010 and brought the Ordinance for that purpose.

(viii) There was no material before the Government on the basis of which, the decision not to implement the Act 2010 could be taken as admittedly the Expert Committee had not done any exercise of reviewing the syllabus and textbooks till then.

(ix) The validity of the said decision was challenged by parents and teachers and various other organisations before the High Court and interim orders were passed. It was at that stage that the Bill was introduced in the House on 7.6.2011 and the Amendment Act was passed and enforced with retrospective effect i.e. from 22.5.2011, the date of the decision of the Cabinet in this regard.

(x) The interim orders passed by the High Court were challenged before this Court and the appeals were disposed of by this court vide judgment and order dated 14.6.2011, issuing large number of directions including constitution of the Expert Committee which would find out ways and means to enforce the common education system.

(xi) The Secretary of School Education Department had filed affidavits before the High Court as well as before this Court pointing out that the Amendment Act 2011 was necessary in view of the fact that the Act 2010 was illegal and unconstitutional. However, the Secretary of School Education Department was inadvertently made a member of the Expert Committee by this Court. Though her inclusion in the Committee was totally unwarranted particularly in view of her stand taken before the High Court that the Act 2010 was unconstitutional and illegal.

(xii) The Secretary, to the Govt. of Tamil Nadu School Education Department, who had been entrusted the responsibility to plead on behalf of the State, herself had approved the textbooks and fixed the prices for those books of Standards VIIIth, IXth and Xth vide G.O. dated 9.5.2011.

(xiii) The members of the Expert Committee did not reject the text books and syllabus in toto, however, pointed out certain discrepancies therein and asked for rectification/improvements of the same.

(xiv) The High Court as well as this Court upheld the validity of the Act 2010. Thus, it was not permissible for the legislature to annul the effect of the said judgments by the Amendment Act 2011, particularly so far as the Ist and VIth Standards are concerned. The list of approved textbooks had been published and made known to all concerned. Thus, the Act 2010 stood completely implemented so far these Standards were concerned.

(xv) The Statement of Objects and Reasons of the Act 2011 clearly stipulated that legislature intended to find out a better system of school education. Thus, the object has been to repeal the Act 2010.

(xvi) The legislature is competent to enact the revalidation Act under certain circumstances, where the statutory provisions are struck down by the court, fundamentally altering the conditions on which such a decision is based, but the legislature cannot enact, as has been enacted herein, an invalidation Act, rendering a statute nugatory.

(xvii) The School Education Department of Tamil Nadu on 24.2.2011 called for private publishers to come out with the textbooks based on common education system, and submit for clearance by the

Department by 5.4.2011, as taken note of by the High Court in its order dated 10.6.2011. Thus, in such a fact-situation, it was not permissible for the State to revert back to the old system at this advanced stage.

(xviii) Most of the other directions given by the High Court on 30.4.2010, stood complied with. The DTERT had been appointed as Academic Authority as required under Section 29 of the Act 2009, vide G.O. dated 27.7.2010.

(xix) The material produced by the respondents before this Court reveal that norms had been made known and the NCF 2005 was also implemented by issuing Tamil Nadu Curriculum 2009.

(xx) The issue of repugnancy of the Act 2010 with the Act 2009 merely remains an academic issue as most of the discrepancies stood removed. Even if something remains to be done, it can be cured even now, however, such a minor issue could not be a good ground for putting the Act 2010 under suspended animation for an indefinite period on uncertain terms.

(xxi) Undoubtedly, there had been a few instances of portraying the personality by the leader of political party earlier in power, i.e. personal glorification, self publicity and promotion of his own cult and philosophy, which could build his political image and influence the young students, particularly, in the books of primary classes. Such objectionable material, if any, could be deleted, rather than putting the operation of the Act 2010 in abeyance for indefinite period.

(xxii) As early as in April 2011, textbooks for Xth Standard were posted in the official website of School Education Department and many students downloaded the same and started study of the same as the students, parents and teachers had been under the impression that

for Standards II to V and VII to X, common education system would definitely be implemented from academic year 2011-12. Such pious hope of so many stakeholders could not be betrayed. Rolling back the Act 2010 at this belated stage and withdrawal thereof even for Standard I and VI would be unjust, iniquitous and unfair to all concerned.

(xxiii) The Amendment Act 2011, in fact, has the effect of bringing back the effect of Section 14 of the Act 2010 which had been declared ultra vires by the High Court for the reason that the Board could not be given binding directions by the State Government.

(xxiv) Even if a very few schools could not exercise their choice of multiple text books, it could not be a ground of scrapping the Act 2010. Steps should have been taken to remove the discrepancy.

(xxv) Passing the Act 2011, amounts to nullify the effect of the High Court and this Court's judgments and such an act simply tantamounts to subversive of law.

71. In view of the above, the appeals are devoid of any merit. Facts and circumstances of the case do not present special features warranting any interference by this Court.

The appeals are accordingly dismissed. The appellants are directed to enforce the High Court judgment impugned herein within a period of 10 days from today.

……..……

(J.M. PANCHAL)

…….J.

……

(DEEPAK VERMA)

……..J.

……

(Dr. B.S. CHAUHAN)

……..J.

New Delhi,

August 9, 2011