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MODERN SCHOOL

v.

UNION OF INDIA AND ORS.

APRIL 27, 2004

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[V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

Constitution of India, 1950—Article 19(1)(g)—Unaided educational institutions—Determination of fee structure—Autonomy—Exercise of—Held: Such institutions exercise a great autonomy since they are entitled to a reasonable surplus for development of education and expansion of institution—However, commercialization of education is prohibited.

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Delhi School Education Act, 1973:

Section 17(3) and Section 18(3) and (4)—Unaided Schools—Regulation of quantum of fees charged—Held: Reading Sections 18(3) and (4) with rules 172, 173, 174, 175 and 177 on one hand and Section 17(3) on the other hand, Director is authorized to regulate fee and other charges under Section 17(3) of the Act to prevent commercialization of education—Delhi School Education Rules, 1973—Rules 172, 173, 174, 175 and 177.

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Section 24(3)—Transfer of fees/funds collected by unaided schools to society/ trust—Order of Director prohibiting the transfer—Held: On reading Rules 172, 175 and 177 it is clear that appropriation of savings (income) is different from transfer of fund—By Order of Director, management restrained from transferring any amount from the fund to society/trust—Rule 177(1) refers to appropriation of savings (income) from revenue account for meeting capital expenditure of the school—Hence, there is no conflict between Rule 177 and the Order of Director—Delhi School Education Rules, 1973— Rules 172, 175 and 177.

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Section 24(3)—Recognized unaided schools—Setting up of Development Fund Account—Entitlement of—Held: On account of increased cost due to inflation, Management entitled to create Development Fund Account—For creation of such fund, management permitted to charge development fee not exceeding 15% of the total tuition fee.

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There was a fee hike in various schools in Delhi. Delhi Abibhavak

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Mahasangh — a federation of parents filed public interest litigation before the High Court impleading thirty unaided recognized public schools in Delhi on the ground that these schools are indulging in large scale commercialization of education since there was excess of income over expenditure under head tuition fee, the huge amount collected remained unspent and there is transfer of funds by the said schools to society/trust or any other institution. Government appointed an inspection team which submitted a report.

High Court found irregularities in the management of accounts and directed that the tuition fees be utilized for payment of salaries of teachers and employees and also utilization of surplus under specific head of tuition fees. It held that the Delhi School Education Act, 1973, and Delhi School Education Rules, 1973, framed thereunder prohibited transfer of funds from school to society/trust or to other schools run by same society/trust and appointed a Committee to examine economics of each of the recognized unaided schools in Delhi.

Aggrieved unaided recognized schools and action committee of unaided private schools filed appeals in this Court. During pendency of the appeals, the Committee submitted its report. Director of Education accepted the same and issued directions under Section 23(4) read with Sections 18(4) and (5) of the Act to the effect that the Director of Education has authority to regulate quantum of fees charges by unaided schools; that fees/funds collected from parents/students would not be transferred from the recognized unaided school fund to society or trust; and that the management is entitled to create Development Fund Account for which it is required to collect development fee not exceeding 10% of the total tuition fee. These directions are subject matter of the present appeals.

Appellants-schools contended that the Government has no authority to regulate the fees payable by the students of unaided schools as indicated by Section 17(3) of the Act; that under Rule 177(1) income derived by unaided schools from fees shall be utilized firstly to meet salaries of employees and the balance could be utilized to establish any other school or to assist any other school or institution under the same management and as such the same being permitted by the legislature, the Director had no authority under clause (8) of the Order to restrain the school from transferring the funds from the Recognized Unaided School Fund to society/trust or any other institution and, therefore, clause (8) was in conflict with Rule 177; and that the Director has no authority to limit the development fees charged by the society/trust.

A Disposing of the appeals, the Court

HELD: *Per Kapadia J (For himself and V.N. Khare, CJI):*

1.1. The unaided educational institutions exercise a great autonomy in the matter of determination of the fee structure since like any other citizen B carrying on an occupation, they are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions have to plan their investment and expenditure so as to generate profit. However, commercialization of education is prohibited. Hence, balance has to be struck between autonomy of such institutions and measures have to be taken to prevent commercialization of education. [684-F-G]

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1.2. In the case of *TMA Pai Foundation** this Court subject to the two prohibitory parameters that capitation fee and profiteering, was forbidden, held that fees to be charged by the unaided educational institutions cannot be regulated but there was no issue as to what constitutes reasonable surplus in D the context of the provisions of the Delhi School Education Act, 1973 before the Court. Thereafter, as Union of India, State Governments and educational institutions understood the majority judgment in that case in different perspectives, five-judge bench was constituted in the case of *Islamic Academy of Education*** for clarification. With regard to the determination of the fee structure in private unaided professional educational institutions it was held E that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students and not for any other use or for personal gains.

[685-G-H; 686-A-B; E-F; H; 687-A]

F 1.3. In the light of the judgment of this Court in the case of *Islamic Academy of Education* the provisions of 1973 Act and the Rules framed thereunder may be seen. The object of the Act is to provide better organization and development of school education in Delhi and for matters connected thereto. Section 18(3) states that in every recognized unaided school, there G shall be a fund consisting of income accruing to the school by way of fees, charges and contributions and under Section 18(4)(a) the income derived shall be utilized only for the educational purposes as may be prescribed by the rules. Rule 172(1) states that no fee shall be collected from any student by the trust/ society running any recognized school, whether aided or unaided; under sub-rule (2) fee shall be collected in the name of the school and under sub-rule H 173(4) every Recognized Unaided School Fund shall be deposited in a

nationalized bank. Under Rule 175, the accounts of Recognized Unaided School Fund shall clearly indicate the income accruing to the school by way of fees, fine and income from rent, interest, development fees etc., which is accrual of income and Rule 177 refers to utilization of fees realized by unaided recognized school. Under Section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Therefore, reading Sections 18(4) and (4) with Rules 172, 173, 174, 175 and 177 on one hand and section 17(3) on the other hand, it is clear that Director has the authority to regulate the fees under Section 17(3) of the Act and other charges to prevent commercialization of education. [687-B-F]

***TMA Pai Foundation* v. *State of Karnataka,* [2002] 8 SCC 481; ***Islamic Academy of Education* v. *State of Karnataka.* [2003] 6 SCC 697 *State of Bombay* v. *R.M.D. Chamarbangwala,* AIR (1957) SC 699 [199] 1 SCC 645 and *Unni Krishnan, J.P.* v. *State of A.P.* [1993] 1 SCC 645, referred to.**

Higher Education Law by David Palfreyman and David Warner Second Edition, **referred to.**

2.1. In every non-business organization, like schools and hospitals, accounts are to be maintained on the basis of 'Fund Based System of Accounting'. Such system brings about transparency. Rules 172, 175, 176 and 177 of 1973 rules indicate the manner in which accounts are required to be maintained by the schools. Under Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting which shall consist of income by way of fees, fine, rent, interest etc. and shall form part of Recognized Unaided School Fund under Rule 175. Reading Section 18(3) with Rule 175, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognised Unaided School Fund. Further, Rule 175 indicates accrual of income unlike Rule 177 which deals with utilization of income. Rule 177 does not cover all the items of income mentioned in Rule 175. Rule 177 only deals with one item of income for the school, namely, fees. Rule 177(1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in Rule 177(2) and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or to set up another school under the same management. Therefore, rule 177 deals with application of income and not with accrual of income. Rule 177 shows that salaries and allowances shall come out from the fees whereas capital

A expenditure will be a charge on the savings. [688-F-H; 689-A-C]

2.2. Capital expenditure cannot constitute a component of the financial fees structure. It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure/capital investments have B to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuing academic year with the Director. Having gone through the balance-sheets and profit and loss accounts of two schools and *prima facie,* it is found that schools C are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Therefore, it is directed that every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organizations/not for profit organisations and file a statement of fees every year before the ensuing academic session under Section 17(3) of the said Act with the Director who D would analyse the statement under Section 17(3) of the Act applying the above stated principles. [689-A-D]

2.3. Under accounting principles, there is a difference between appropriation of surplus (income) on one hand and transfer of funds on the other hand. In the instant case, Rule 177(1) refers to appropriation of savings E (income) and clause 8 of the Order of Director prohibits transfer of funds to any other institution or society. Further Rule 172 states that fee shall not be collected from the student by any trust or society but only for the school also supports the view. Therefore, reading Rules 172, 175 and 177, it is clear that appropriation of savings (income) is different from transfer of fund. Under F clause 8, the management is restrained from transferring any amount from Recognized Unaided School Fund to the society or the trust or any other institution, whereas Rule 177(1) refers to appropriation of savings (income) from revenue account for meeting capital expenditure of the school. Therefore, there is no conflict between Rule 177 and clause 8. [689-H; 690-A-C]

G 3. On account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the instant case, pursuant to the recommendation of the Committee, the Director issued direction that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase, H upgradation and replacement of furniture, fixtures and equipments and the

same shall be treated as Capital Receipt and be collected only if the school maintains a depreciation reserve fund, which is appropriate. On going through the report of the Committee, one finds absence of non-creation of specified earmarked fund and further that depreciation has been charged without creating a corresponding fund. Therefore, the direction seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 the management of recognized unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee. [690-E-H; 691-A]

4. The interpretation placed on the provisions of the said 1973 Act is only to bring in transparency, accountability, expenditure management and utilization of savings for capital expenditure/investment without infringement of the autonomy of the institute in the matter of fee fixation. It is also to prevent commercialization of education to the extent possible. [691-A-B]

5. The Director of Education would also ascertain whether terms of allotment of land by the Government to the schools have been complied with and in case of non-compliance, the Director would take appropriate steps. [692-B-C]

Per Sinha, J: (Dissenting):

1.1. In *T.M.A. Pai Foundation's** case this Court gave a new look to the concept of 'education' viz opening up of economy and concept of globalisation and held that establishment of a private educational institution is a fundamental right. *T.M.A. Pai Foundation's* case and *Islamic Academy of Education's*** case have merely forbidden profiteering. It would not be proper to impose any further restrictions in this behalf and interpret *T.M.A. Pai Foundation's* case in a different way so as to take away some of the rights of the appellants which are recognized therein. [704-E; 705-F]

1.2. The principles of fixing fee structure of particular institutions have been illustrated in *T.M.A. Pai Foundation's* case and *Islamic Academy of Education's* case but it must be borne in mind that those principles were laid down in absence of any statute operating in the field. Where, however, a statute operates in the field, regulation of education would be governed thereby. In

A **the instant case, as the regulation of education is governed by a Legislative Act, the court cannot impose any other or further restrictions by travelling beyond the scope, object and purport thereof. [700-D-E]**

T.M.A. Pai Foundation and Ors. **v.** *State of Karnataka and Ors.,* **[2002] 8 SCC 481 and** *Islamic Academy of Education and Anr.* **v.** *State of Karnataka* B *and Ors.,* **[2003] 6 SCC 697, followed.**

Unni Krishnan, J.P. **v.** *State of A.P.,* **[1993] 1 SCC 645, referred to.**

Black's Law Dictionary Fifth Edition; G.P. Singh Principles of Statutory Interpretation, Ninth Edition, **2004 pp. 120 - 122, referred to.**

C

2. The need of the day is strict implementation and enforcement of the statute. Once the legislature has laid down an educational scheme, the jurisdiction of the court is merely to interpret the same. By reason of judicial direction this Court cannot override a statute or statutory rules governing the field and, thus, no direction can be issued contrary thereto or inconsistent D **therewith except in some exceptional cases. This Court normally does not pass an order even in exercise of its jurisdiction under Article 142 of the Constitution which would be contrary to the law. [706-B-E]**

Government of West Bengal **v.** *Tarun K. Roy and Ors.,* **(2003) 9 SCALE** E **671 and** *Jamshed Hormusji Wadia* **v.** *Board of Trustees, Port of Mumbai and Anr.,* **[2004] 3 SCC 214, relied on.**

3.1. Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973, framed thereunder, provide for a complete code not only as regards regulation of education but also organisation and development thereof. F **By reason of the provisions of the Act, school education, whether imparted in a government institution, a minority institution or an aided or unaided private institution, is sought to be regulated. The Act seeks to regulate education - necessary corollary whereof would be that education imparted in an individual institution may also be subjected to regulation. But any control or regulation over education or educational institution must be imposed only by a legislative** G **act and not by any executive instruction. [696-E, F]**

Union of India **v.** *Naveen Jindal and Anr.,* **[2004] 2 SCC 510, relied on.**

3.2. In the instant case, pursuant to the directions issued by High Court as regards administration of a private institution as also fixation of fee, a H **Committee was constituted. On the basis of the recommendations made by**

the Committee, directions were issued purported to be in terms of sub-sections (3) and (4) of Section 24 of the Act which is apparently beyond the scope and purport of the Act and the Rules as the directions thereunder can be issued only for the purpose of rectifying the defect and deficiencies found at the time of inspection or otherwise in the working of the school and not pursuant to the recommendations made by a Committee constituted in terms of the judgment of the High Court. 'Defects and deficiencies' within the meaning of the said provisions would mean defects and deficiencies while applying the provisions of the Act and the Rules framed thereunder only and not the recommendations of a committee de'hors 'the Act' and 'the Rules'. Therefore, the said directions do not have the force of law within the meaning of Clause (6) of Article 19 of the Constitution. State indisputably can issue directions which would only meet the criteria of a 'law' within the meaning of Article 13 of the Constitution. [700-F-H; 701-A-B]

Union of India v. *Naveen Jindal,* [2004] 2 SCC 510, relied on.

3.3. The provisions of the Act and the rules framed thereunder are absolutely clear and unambiguous. This Court has to interpret the provisions of the Act and the Rules framed thereunder in the light of the fundamental rights of the appellants. Any direction, therefore, which would further curtail their fundamental rights, would be wholly unwarranted. [704-B]

4. Section 17 regulates fees to be charged by aided schools. No such provision has been made in relation to the recognized unaided schools. Sub-section (3) of Section 17 merely requires the manager of every recognized school whether aided or unaided, to file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and, furthermore, except with the prior approval of the Director, no school shall charge during that academic session any fee in excess thereof. Therefore, the Act does not provide for any regulation as regards charging of any fee or any other amount by the unaided recognized schools. Futhermore, the standard of education, the curricular and co-curricular activities available to the students and plans and programmes for the future expansion and several other factors are relevant for determining fee structure. The courts of law having no expertise in the manner and/or having regard to its own limitations keeping in view the principles of judicial review always refrain from laying down precise formulae in such matter. [693-C-E]

T.M.A. Pài Foundation and Ors. v. *State of Karnataka and Ors.*, [2002] 8 SCC 481 and *Islamic Academy of Education and Anr.* v. *State of Karnataka*

A *and Ors.,* **[2003] 6 SCC 697, relied on.**

Chairman and M.D., BPL Ltd. **v.** *S.P. Gururaja and Ors.* **[2003] 8 SCC 567, referred to.**

B *Constitutional Reforms in the UK by Dawn Oliver p 105,* referred to.

5.1. Section 18 of the Act provides for a school fund. Sub-sections (1) and (2) of Section 18 relate to aided schools whereas sub-section (3) thereof provides for recognized unaided school fund and such fund may be credited with income accrued to the school by way of fees, any charges or payments C which may be realized by the school for other specific purposes or any other contribution, endowment, gift and the like. Section 18(4) specifies that the income derived by unaided schools by way of fees shall be utilized only for such educational purposes as may be prescribed whereas in terms of sub-clause (b) thereof, charges and contributions received by the school are required to be utilized for the specific purpose wherefor they were received. D Therefore, any endowment or gift to a society/trust for establishment of a new school or establishing any branch thereof, is not prohibited. [693-E-G]

5.2. In view of the fact that plain language has been employed in Rule 177of the Rules, a strict construction thereof may not be justified. The proviso E appended to Rule 177 is not exhaustive. There is no reason as to why the expression "capital or contingent expenditure" of the school should be given a narrow meaning, particularly having regard to the fact that clause (b) thereof permits the managing committee to establish any other recognized school out of the saving from the fees collected by such school and clause (c) thereof permits rendition of assistance to any other school or educational institution F under the management of the same society or trust by which the first mentioned school is run. It may not be appropriate to read down the provisions thereof and issue any direction in derogation thereto. There is no conflict in Rules 176 and 177 of the Rules. [703-G-H; 704-A]

5.3. States have a duty to impart education and particularly primary G education having regard to the fact that the same is a fundamental right within the meaning of Article 21 of the Constitution, but as the Government had neither resources nor the ability to provide for the same, it appears the legislature permitted the societies/trusts to establish educational institutions from the savings made by them from the unaided institutions. Courts should H not come in their way from doing so. Furthermore, the expression

'development of education' is a broad term and there is no reason as to why the said right would be limited, regulated or curtailed in absence of any provisions contained in the Act or Rules framed thereunder. [703-D-F] A

5.4. The statutory scheme of the Act must be considered keeping in view the fact that a Society running several educational institutions may have to impart education in different areas — slum, semi urban or urban. Therefore, it may not be improper for institution to generate some surplus fund from an institution which is situated within a metropolitan area for the purpose of starting a school in a slum or a semi urban area as it is permissible in law. [706-E-F] B

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6. In the absence of any statutory provision governing the field with regard to the manner the institutions should maintain their accounts, it is for the administration of the educational institution to determine the same having regard to the prevailing law like Income Tax Act, 1961. [706-D]

7. If the administration comes to the conclusion that the rules are required to be amended, they are free to do so; but only because there are few cases of mismanagement, the same by itself should not be considered to be an indicia that all institutions are being run in an unprofessional or unethical manner. [706-G] D

8. The allotment of land by Delhi Development Authority has no bearing with the enforcement of the provisions of the Act and the rules framed thereunder but indisputably the institutions are bound by the terms and conditions of allotment. [707-A-B] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2699 of 2001.

F

From the Judgment and Order dated 30.10.98 of the Delhi High Court in C.W.P. No. 3723 of 1997.

WITH

C.A. Nos. 2700, 2701, 2702, 2703, 2704, 2705-2706, 2707, 2708, 2709 and 2710 of 2001. G

Mukul Rohtagi, Additional Solicitor General, P.P. Mahotra, K.K.Venugopal, T.R. Andhyarnjina, Parag P. Tripathi, R.K. Jain, Vinay Sabharwal, Ms. Rekha Pandey, K.K. Rai, Ms. Indra Sawhney, Ms. Smitha Inna, S.W.A. Qadri, Ms. Anil Katiyar, D.S. Mahra, Ashok Agarwal, Ms. Savita H

A Agarwal, R.P. Saxena, Vineet Sinha, T.C. Sharma, Ms. Neelam Sharma, Tarun Sharma, R.C.Verma, Mukesh Verma, Manish Shanker, Sushil Datt Salwan, Pramod Dayal, J.R. Midha, Pranab Kumar Mullick, Ms. Binu Tamta, S.P. Sharma, S.U.K. Sagar, Varinder Kumar Sharma, Gopal Jain, Ms. Nandini Gore, Ms. Pragya Baghel, R.N. Karanjawala, for Ms. M. Karanjawala, Rakesh K. Khanna, B Ms. Rashmi Khanna, Shashank Shekhar, Surya Kant, Pramod Gupta, Ms. Monica Verma, Jayant Mehta, Ashok K. Mahajan, A. Mariarputham, Maninder Singh, Ms. Pratibha M. Singh, Ms. Aruna Mathur, Ankur Talwar, Kirtiman Singh, Angad Mirdha, Rajindra Dhawan, Ms. Safali Dhawan, Ms. Minakshi Vij and P.N. Jha for the appearing parties.

C The following Judgments/Order of the Court were delivered by

KAPADIA, J. In this batch of civil appeals, following three points arise for determination : -

(a) Whether the Director of Education has the authority to regulate the quantum of fees charged by unaided schools under Section D 17(3) of Delhi School Education Act, 1973?

(b) Whether the direction issued on 15th December, 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 E from parents/students shall be transferred from the recognised unaided schools fund to the society or trust or any other institution, is in conflict with Rule 177 of Delhi School Education Rules, 1973?

(c) Whether managements of recognised unaided schools are entitled F to set up a development fund account under the provisions of the Delhi School Education Act, 1973?

Since the aforestated three points arise in all the civil appeals, the same are taken up together and disposed of by this common judgment.

INTRODUCTION:

G In modern times, all over the world, education is big business. On 18th June, 1996, Professor G. Roberts, Chairman of the Committe of Vice Chancellors and Principals, commented :

"The annual turnover of the higher education sector has now passed H the $10 billions mark. The massive increase in participation that has

led to this figure, and the need to prepare for further increases, now demands that we make revolutionary advances, in the way we structure, manage and fund higher education."

In the book titled *'Higher Education La'* (Second Edition) by *David Palfreyman and David Warner*, it is stated that in modern times, all over the world, education is big business. On account of consumerism, the students all over the world are restless. That schools in private sector which charge fees, may be charitable provided they are not run as profit-making ventures. That educational charity must be established for the benefit of the public rather than for the benefit of the individuals. That while individuals may derive benefits from an educational charity, the main purpose of the charity must be for the benefit of the public.

At the outset, we hasten to clarify that although we are in agreement with the authors, quoted above, we do not wish to generalize and in the Indian context we may state that there are good schools which even today run keeping in mind laudable charitable objects.

The basic question before us has been succinctly put earlier by this Court in *Unni Krishnan, J.P. and Ors.* v. *State of A.P. and Ors.*, [1993] 1 SCC 645 in following terms : -

"196. Even so, some questions do arise—whether cost-based education only means running charges or can it take in capital outlay? Who pays or who can be made to pay for establishment, expansion and improvement / diversification of private educational institutions? Can an individual or body of persons first collect amounts (by whatever name called) from the intending students and with those monies establish an institution—an activity similar to builders of apartments in the cities? How much should the students coming in later years pay? Who should work out the economics of each institution? Any solution evolved has to take into account all these variable factors. But one thing is clear: *commercialization of education cannot and should not be permitted.* The Parliament as well as State Legislatures have expressed this intention in unmistakable terms. Both in the light of our tradition and from the standpoint of interest of general public, commercialization is positively harmful; it is opposed to public policy. As we shall presently point out, this is one of the reasons for holding that imparting education cannot be trade, business or profession. *The question is how to encourage private educational institutions without allowing them to commercialize the education*? This is the toublesome

A question facing the society, the Government and the courts today."

FACTS:

Delhi Abibhavak Mahasangh, a federation or parents association moved the Delhi High Court by writ petition No. 3723 of 1997, challenging the fee hike in various schools in Delhi. It was the public interest writ petition filed B on 8th September, 1997 impleading thirty unaided recognised public schools. The grievance of the Mahasangh was that recognized private unaided schools in Delhi are indulging in large scale commercialization of education which was against public interest. That commercialization has reached an alarming situation on account of failure of the Government to perform its statutory functions C under Delhi School Education Act, 1973 (hereinafter for the sake of brevity referred to as "the Act"). One of the serious charges in the writ petition against the said unaided recognized schools was transfer of funds by the said school to the society/trust and/or to other schools run by the same society/ trust. In this connection, it was alleged that there was excess of income over expenditure under the head 'tuition fee' and further interest free loans of huge D amount have been taken from parents for giving admissions to the children. It was also alleged that huge amounts collected remained unspent under the head 'building fund'. On the other hand, before the High Court, it was submitted on behalf of the schools that the above increase in fees, annual charges, admission fee and security deposit was justified on account of increase in the expenses and in particular salaries of teachers in compliance E of recommendations of 5th Pay Commission.

The key issue before the High Court, therefore, was—whether unaided recognized schools were indulging in commercialization of education? The High Court found from the reports submitted by the inspection teams appointed by the Government that there were irregularities in the management of the accounts. Therefore, by the impugned judgment, directions were given F regarding utilization of tuition fees for payment of salaries of teachers and employees and also for utilization of the surplus under the specific head of tuition fees. By the impugned judgment, the High Court declared that the said Act and the Rules framed thereunder prohibited transfer of funds from the schools to the society/trust or to other schools run by the same society/trust. By the impugned judgment, the High Court appointed a committee headed by G Ms. Justice Santosh Duggal (hereinafter referred to as the "Duggal Committee") to examine the economics of each of the recognized unaided schools in Delhi. Being aggrieved, the unaided recognized schools and the action committee of unaided private schools have come by way of appeal to this Court. During the pendency of the civil appeals, the Duggal Committee submitted its report which has been accepted by the Government of National Capital Territory of H Delhi (Directorate of Education), consequent upon which the Director of

Education has issued directions to the managing committees of all recognized unaided schools in Delhi under Section 24(3) read with Sections 18(4) and (5) of the Act, which directions are the subject matter of the civil appeals herein. A

ANALYSIS OF DELHI SCHOOL EDUCATION ACT, 1973:

The Act is enacted to provide for development of school education in Delhi and for matters connected thereto. Section 2(v) defines "school property" to mean all movable and immovable property belonging to, or in possession of, the school including land, building, playground, hostel, cash, reserve funds, investments and bank balance. Section 2(x) defines "unaided minority school" to mean a recognised minority school which does not receive any aid. Section 4 *inter alia* states that no school shall be recognised unless it has adequate funds to ensure regular payment of salary and allowances to its employees. Section 17(3) *inter alia* states that evey recognised school shall file before the commencement of each academic session with the Director a full statement of fees to be levied during the following academic session and no school shall charge during that academic session any fees in excess *of the* fees specified in such statement. Section 18(4)(a) *inter alia* states that income derived by unaided schools by way of fees shall be utilized only for prescribed educational purposes. Similarly, under Section 18(4)(b), charges and contributions received by the school shall be utilized only for the specific purpose for which they were received. Under Section 24(3), the Director is empowered to give directions to the management to rectify defects in the working of the school. B C D E

At this stage, we quote hereinbelow Rules 172, 175,176 and 177 of Delhi School Education Rules, 1973 (hereinafter for the sake of brevity referred to as "the 1973 Rules") : -

> *"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 recognised school; whether aided or not. F
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> (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. G
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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 H

A 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 school, the aid received from the Administrator.

B *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 realized by unaided recognised schools how to be utilized.—(1) Income derived by an unaided recognised school by C way of fees shall be utilized 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 utilized by its managing committee for meeting capital or D 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

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

F

(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;

G (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;

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

savings. A

(3) Funds collected for specific purposes, like sports, co-curricular activitics, 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). B

(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."

We also quote hereinbelow clauses (7) and (8) of the Order dated 15th C December, 1999 issued by the Director under Section 24(3) of the Act in terms of the Duggal Committee report :-

"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 D 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. E

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 recognised uinaided school fund of a school to the society or the trust or any other institution." F

ARGUMENTS:

On behalf of the schools, it has been urged that under above Rule 177(1), income derived by unaided schools from fees shall be utilized firstly to meet salaries of employees and the balance could be utilized to establish G any other school or to assist any other school or institution under the same management and, therefore, the legislature intended to permit societies/trusts to utilize such savings to meet capital/contingent expenditure or to meet one or more educational purposes which included establishment of any other school under the same management. That Rule 177 is a very sensible provision of law. That on account of such provision, societies/trusts have been able to H

A expand their educational institutions. That because of this provision, educational societies/trusts are able to establish other schools in Delhi under the same management. It was submitted that if transfer of funds is prohibited as mentioned in clause 8, it would make big industrial houses to open up schools for the rich classes sacrificing the interest of the middle and lower middle classes, which would be against public interest. It was further submitted B that clause 8 was in conflict with Rule 177(1)(b), which permits the management to establish any other recognized school and, therefore, clause 8 was bad in law and of no legal effect. It was urged on behalf of the management that in the impugned judgment the High Court had erred in holding that tuition fees should be ordinarily utilized for payment of salaries and if incidental surplus remained, it could be used for other educational purposes'but that would not C empower the management to levy higher tuition fees. It was submitted on behalf of the management that the Government has no authority to regulate the fees payable by the students of unaided schools as indicated by Section 17(3) of the Act which required the management only to submit to the Director a full statement of fees leviable during the ensuing academic session. In this connection, Section 17(3) was contrasted with Section 17(1) and Section 17(2) D of the Act, which empower the Government to regulate the fees payable by the students of aided schools. It was next submitted that the society/trust was entitled to charge and regulate development fees without any limit and that the Director has no authority to limit such development fees as purported to have been done under clause (7) of the Order dated 15th December, 1999.

E **FINDINGS:**

The first point for determination is — whether the Director of Education has the authority to regulate the fees of unaided schools?

At the outset, before analyzing the provisions of 1973 Act, we may state that it is now well settled by catena of decisions of this Court that in F the matter of determination of the fee structure, the unaided educational institutions exercise a great autonomy as, they, like any other citizen carrying on an occupation, are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions, it has been held, have to plan their investment and expenditure so as to generate profit. What is, however, prohibited is commercialization of education. Hence, we have to G strike a balance between autonomy of such institutions and measures to be taken to prevent commercialization of education. However, in none of the earlier cases, this Court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of 1973 Act.

H As far back as 1957, it has been held by this Court in the case of *State*

of Bombay v. *R.M.D. Chamarbaugwala* reported in AIR (1957) SC 699 that education is *per se* an activity that is charitable in nature. Imparting of education is a State function. The State, however, having regard to its financial constraints, is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of *Unni Krishnan, J.P.* v. *State of A.P.* (supra), looking to the above ground realities, this Court formulated a self-financing mechanism/ scheme under which institutions were entitled to admit 50% students of their choice as they were self-financed institutions, whereas rest of the scats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including Medical Council of India, University Grants Commission etc. were directed to make end or amend regulations so as to bring them on par with the said scheme. In the case of *TMA Pai Foundation* v. *State of Karnataka,* reported in [2002] 8 SCC 481, the said scheme formulated by this Court in the case of *Unni Krishnan* (supra) was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue short-falls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in *Unni Krishnan's* case (supra) were held to be unconstitutional. This Court observed in the said judgment that the right to establish and administer an institution included the right to admit students; right to set up a reasonable fee structure; right to constitute a governing body; right to appoint staff; and right to take disciplinary action. *TMA Pai Foundation's* case for the first time brought into existence the concept of education as an "occupation", a term used in Article 19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, right to establish an institution under Article 19(1)(g) is subject to reasonable restiction in terms of clause (6) thereof. Similarly, the right conferred on minorities, relgious or linguistic, to establish and administer educational institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which *inter alia* may be framed having regard to public interest and national interest. In the said judgment, it was observed vide para 56 that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering was held to be forbidden. Subject to the above two prohibitory parameters, this Court in *TMA Pai Foundation's* case held that fees to be charged by the unaided educational institutions cannot be regulated. Therefore, the issue before us is as to what constitutes

A reasonable surplus in the context of the provisions of the 1973 Act. This issue was not there before this Court in the *TMA Pai Foundation's* case.

The judgment in *TMA Pai Foundation's* case was delivered on 31.10.2002. The Union of India, State Governments and educational institutions understood the majority judgment in that case in different perspectives. It led B to litigations in several courts. Under the circumstances, a bench of five Judges was constituted in the case of *Islamic Academy of Education* v. *State of Karnataka* reported in, [2003] 6 SCC 697, so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such C institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure. It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by D the Government. As against this, on behalf of Union of India, State Governments and some of the students, it was submitted, that the right to set-up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests. It was contended that imparting education was a State function but due to resource crunch, the States were E not in a position to establish sufficient number of educational institutions and consequently, the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in *TMA Pai Foundation's* case. In view of rival submissions, four questions were formulated. We are F concerned with first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of G that educational institution. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that profits/ H surplus cannot be diverted for any other use or purpose and cannot be used

for personal gains or for other business or enterprise. The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute.

In the light of the judgment of this Court in the case of *Islamic Academy of Education* (supra) the provisions of 1973 Act and the rules framed thereunder may be seen. The object of the said Act is to provide better organization and development of school education in Delhi and for matters connected thereto. Section 18(3) of the Act states that in every recognized unaided school, there shall be a fund, to be called as Recognized Unaided School Fund, consisting of income accruing to the school by way of fees, charges and contributions. Section 18(4)(a) states that income derived by unaided schools by way of fees shall be utilized only for the educational purposes as may be prescribed by the rules. Rule 172(1) states that no fee shall be collected from any student by the trust/society running any recognized school; whether aided or unaided. That under rule 172(2), every fee collected from any student by a recognized school, whether aided or not, shall be collected in the name of the school. Rule 173(4) *inter alia* states that every Recognized Unaided School Fund shall be deposited in a nationalized bank. Under rule 175, the accounts of Recognized Unaided School Fund shall clearly indicate the income accruing to the school by way of fees, fine, income from rent, income by way of interest, income by way of development fees etc. Rule 177 refers to utilization of fees realized by unaided recognized school. Therefore, rule 175 indicates accrual of income whereas rule 177 indicates utilization of that income. Therefore, reading section 18(4) with rules 172, 173, 174, 175 and 177 on one hand and section 17(3) on the other hand, it is clear that under the Act, the Director is authorized to regulate the fees and other charges to prevent commercialization of education. Under section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading section 17(3) with Sections 18(3) and (4) of the Act and the rules quoted above, it is clear that the Director has the authority to regulate the fees under section 17(3) of the Act.

The second point for determination is — whether clause (8) of the Order passed by the Director on 15th December, 1999 (hereinafter referred to as "the said Order") under section 24(3) of the Act is contrary to rule 177?

It was argued on behalf of the management that rule 177 allows the schools to incur capital expenditure in respect of the same school or to assist

A any other school or to set up any other school under the same management and consequently, the Director had no authority under clause (8) to restrain the school from transferring the funds from the Recognized Unaided School Fund to the society or the trust or any other institution and, therefore, clause (8) was in conflict with rule 177.

B We do not find merit in the above arguments. Before analyzing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialization of education has been a problem area for the last several years. One of the methods of eradicating commercialization of education in schools is to insist on every school following principles of accounting applicable to not-for-profit C organizations/non-business organizations. Under the Generally Accepted Accounting Principles, expense is different from expenditure. All operational expenses for the current accounting year like salary and allowances payable to employees, rent for the premises and payment of property taxes are current revenue expenses. These expenses entail benefits during the current accounting period. Expenditure, on the other hand, is for acquisition of an asset of an D enduring nature which gives benefits spread over many accounting periods, like purchase of plant and machinery, building etc. Therefore, there is a difference between revenue expenses and capital expenditure, Lastly, we must keep in mind that accounting has a linkage with law. Accounting operates within legal framework. Therefore, banking, insurance and electricity companies have their own form of balance-sheets unlike balance-sheets prescribed for E companies under the Companies Act, 1956. Therefore, we have to look at the accounts of non-business organizations like schools, hospitals etc. in the light of the statute in question.

In the light of the above observations, we are required to analyse rules 172, 175, 176, and 177 of 1973 rules. The above rules indicate the manner in F which accounts are required to be maintained by the schools. Under section 18(3) of the said Act, every recognised school shall have a fund titled "Recognised Unaided School Fund". It is important to bear in mind that in every non-business organization, accounts are to be maintained on the basis of what is known as 'Fund Based System of Accounting'. Such system brings G about transparency. Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting. The said Fund contemplated by Section 18(3), shall consist of income by way of fees, fine, rent, interest etc. Section 18(3) is to be read with rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognised Unaided School Fund. Further, rule 175 indicates H accrual of income unlike rule 177 which deals with utilization of income. Rule

177 does not cover all the items of income mentioned in rule 175. Rule 177 only deals with one item of income for the school, namely, fees. Rule 177(1) shows that salaries, allowances and benefits to the employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in rule 177(2) and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or to set up another school under the same management. Therefore, rule 177 deals with application of income and not with accrual of income. Therefore, rule 177 shows that slaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings. Therefore, capital expenditure cannot constitute a component of the financial fees structure as is submitted on behalf of the schools. It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure/capital investments have to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuing academic year with the Director. In the light of the analysis mentioned above, we are directing the Director to analyse such statements under section 17(3) of the Act and to apply the above principles in each case. This direction is required to be given as we have gone through the balance-sheets and profit and loss accounts of two schools and *prima facie*, we find that schools are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Their accounts are not maintained on the principles of accounting applicable to non-business organizations/not-for-profit organizations.

As stated above, it was argued that clause 8 of the order of Director was in conflict with rule 177. We do not find any merit in this argument.

Rule 177(1) refers to income derived by unaided recognized school by way of fees and the manner in which it shall be applied/utilized. Accrual of income is indicated by rule 175, which states that income accruing to the school by way of fees, fine, rent, interest and develoment fees shall form part of Recognized Unaided School Fund Account. Therefore, each item of income has to be separately accounted for. This is not being done in the present case. Rule 177(1) further provides that income from fees shall be utilized in the first instance for paying salaries and other allowances to the employees and from the balance the school shall provide for pension, gratuity, expansion of the same school, capital expenditure for development of the same school, reserve find etc. and the net savings alone shall be applied for establishment of any other recognized school under rule 177(1)(b). Under accounting principles

there is a difference between appropriation of surplus (income) on one hand and transfer of funds on the other hand. In the present case, rule 177(1) refers to appropriation of savings whereas clause 8 of the order of Director prohibits transfer of funds to any other institution or society. This view is further supported by the rule 172 which states that no fee shall be collected from the student by any trust or society. That fees shall be collected from the student only for the school and not for the trust or the society. Therefore, one has to read rule 172 with rule 177. Under rule 175, fees collected from the school have to be credited to Recognized Unaided School Fund. Therefore, reading rules 172, 175 and 177, it is clear that appropriation of savings (income) is different from transfer of fund. Under clause 8, the management is restrained from transferring any amount from Recognized Unaided School Fund to the society or the trust or any other institution, whereas rule 177(1) refers to appropriation of savings (income) from revenue account for meeting capital expenditure of the school. In the circumstances, there is no conflict between rule 177 and clause 8.

The third point which arises for determination is — whether the managements of recognised unaided schools are entitled to set up a Development Fund Account?

In our view, on account of increased cost due to inflation, the management is entitled to create Development Fund Account. For creating such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of Duggal Committee, development fees could be levied at the rate not exceeding 10% to 15% of total annual tuition fee. Direction no. 7 further states that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. It further states that development fees shall be treated as Capital Receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, direction no. 7 is appropriate. If one goes through the report of Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the report of Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, direction no. 7 seeks to introduce a proper accounting practice to be followed by non-business organizations/not-for-profit organization. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15th December, 1999 and 31st December, 2003 we are of the view that the management of recognized unaided schools should be permitted to charge development fee

not exceeding 15% of the total annual tuition fee. A

To sum up, the interpretation we have placed on the provisions of the said 1973 Act, is only to bring in transparency, accountability, expenditure management and utilization of savings for capital expenditure/investment without infringement of the autonomy of the institute in the matter of fee fixation. It is also to prevent commercialization of education to the extent possible. B

CONCLUSION:

In addition to the directions given by the Director of Education, vide order DE. 15/Act/Duggal Com/203/99/23989-24938 dated 15th December, 1999, we give further directions as mentioned hereinbelow : - C

(a) Every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organization/not-for-profit organization;

In this connection, we *inter alia* direct every such school to prepare its financial statement consisting of Balance-sheet, Profit and Loss Account, and Receipt and Payment Account. D

(b) Eveery 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); E F

(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 recognized unaided schools. We reproduce herein clauses 16 and 17 of the sample letter of allotment : - G

"16. The school shall not increase the rates of tuition fee without the prior sanction of the Directorate of Education, Delhi Admn. and

H

A shall fellow the provisions of 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 rules by the Delhi Administration, from time to time strictly complied. They will B ensure admission to the students belonging to weaker sections to the extent of 25% and grant freeship to them."

We are directing the Director of Education to look into letters of allotment issued by the Government and ascertain whether they have been complied with by the schools. This exercise shall be complied with within a period of C three months from the date of communication of this judgment to the Director of Education. If in a given case, the Director finds non-compliance of the above terms, the Director shall take appropriate steps in this regard.

All civil appeals stand disposed of in terms of the above judgment, with no order as to costs.

D

S.B. SINHA, J. INTRODUCTION:

How far and to what extent unaided private institutions can be subjected to regulations, is the core question involved in these appeals which arise out of a common judgment and order dated 30.10.1998 passed by the High Court E of Delhi in C.W.P. Nos. 3723, 4021, 4119 and 5330 of 1997.

THE LAW OPERATING IN THE FIELD:

The Delhi School Education Act, 1973 (for short 'the Act') was enacted *inter alia* to provide for better organisation and development of school F education. By reason of the provisions of the Act, school education, whether imparted in a government institution, a minority institution, an aided or unaided private institution, is sought to be regulated. The power of Administrator to regulate education in all the schools in Delhi, however, is to be made in accordance with the provisions of the Act. Section 4 of the Act provides for G recognition of the institution. A scheme of management for managing the affairs of the school is required to be framed in terms of Section 5 thereof conforming to the provisions of the rules made thereunder.

However, in relation to the recognised private school which does not receive any aid, the scheme of management may apply with such variations H and modifications in the rules as may be prescribed. It has not been brought

to our notice as to whether any separate rules have been framed as regards scheme of management of recognised unaided private schools. The second proviso appended to Section 5, however, states that the scheme relating to the previous approval of the appropriate authority shall not apply to a scheme of management for unaided minority school. Section 6 of the Act provides for grant of aid to recognised schools. The matter relating to payment of salaries to the employees of the school is controlled by Section 10 of the Act stating that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than the amount payable to employees of the corresponding status in school run by the State.

Chapter V of the Act applies to unaided minority schools. Section 15 relates to contract of service in terms whereof a written contract is required to be entered into by and between the managing committee and every employee of a school. Section 17 regulates fees to be charged by aided schools. No such provision has been made in relation to the recognised unaided schools. Sub-Section (3) of Section 17 merely requires the manager of every recognised school, whether aided or unaided, to file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and, furthermore, except with the prior approval of the Director, no school shall charge during that academic session any fee in excess thereof. The Act, therefore, does not provide for any regulation as regards charging of any fee or any other amount by the unaided recognised schools.

Section 18 the Act provides for a school fund. Sub-sections (1) and (2) of Section 18 relate to aided schools whereas Sub-section (3) thereof provides for recognized unaided school fund and such fund may be credited with income accrued to the School by way of fees, any charges or payments which may be realized by the School for other specific purpose or any other contribution, endowment, gift and the like. Clause (a) of Sub-section 4 of Section 18 specifies that the income derived by unaided schools by way of fees shall be utilized only for such educational purposes as may be prescribed whereas in terms of Sub-Clause (b) thereof, charges and contributions received by the school are required to be utilised for the specific purpose wherefor they were received. Any endowment or gift to a society/trust for establishment of a new school or establishing any branch thereof, therefore, is not prohibited.

Section 22 provides for establishment of Delhi Schools Education Advisory Board. Section 24 provides for inspection of schools which is in the following terms:

A "24. Inspection of schools.— (1) Every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed.

(2) The Director may also arrange special inspection of any school on such aspects of its working as may, from time to time, be considered B necessary by him.

(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.

C (4) If the manager fails to comply with any direction given under sub-section (3) the Director may, after considering the explanation or report, if any, given or made by the manager, take such action as he may think fit, including

(a) stoppage of aid,

D (b) withdrawal of recognition, or

(c) except in the case of a minority school, taking over of the school under section 20."

The Administrator in exercise of its power conferred upon it under E Section 28 of the Act framed rules known as the Delhi School Education Rules, 1973 (The Rules). Rule 44 mandates that every society or trust desiring to establish a new school (not being a minority school), shall give an intimation therefor in writing, communicating their intention to establish the school. Rule 50 provides for the conditions for recognition. Rule 51 enumerates the facilities to be provided by a school seeking recognition. Rule 59 provides for the F scheme of management of recognised schools. Chapter VI of the Rules provides for grant-in-aid and conditions therefor. Chapter VIII provides for recruitment and terms and conditions of service of the employees of private schools other than unaided minority ones. Chapter XIII of the Rules specifies the mode and manner in which fees and other charges in aided schools G should be expended. Rule 151 provides for development of fees.

The expression 'Fees' has been defined in Rule 157. Chapter XIV provides for establishment of a school fund. Rules 172 to 177 provide for the manner in which the fees realised by the aided and unaided institutions is to be utilised.

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Rules 176 and 177 of the Rules read thus :

"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 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) 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 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; and

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

(3) Funds collected for specific purposes, like sports, co-curricular

A 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).

B (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."

Rule 180 mandates that the unaided schools shall submit returns.

C **ANALYSIS:**

The said Act and the rules framed thereunder provide for a complete code not only as regards regulation of education but also organisation and development thereof.

D Establishment of a private educational institutional has been held to be a fundamental right by this Court in *T.M.A. Pai Foundation and Ors.* v. *State of Karnataka and Ors.*, [2002] 8 SCC 481. The fundamental right to establish educational institution as contained in Article 19(1)(g) of the Constitution of India would, however, be subject only to the reasonable restrictions which may be imposed by any law in terms of Clause (6) thereof. The Act is a law E regulating education. The Act seeks to regulate education, necessary corollary whereof would be that education imparted in an individual institution may also be subjected to regulation. But any control or regulation over education or educational institution must be imposed only by a legislative act and not by any executive instruction. [See *Union of India* v. *Naveen Jindal and Anr.*, [2004] 2 SCC 510.

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This Court analysing the provisions of Articles 19, 26 and 30 of Constitution of India in *T.M.A. Pai Foundation* (supra) *inter alia,* stated:

(a) The majority community as well as linguistic and religious minorities would have a right under Articles 19(1)(g) and 26 to G establish educational institutions. In addition, Article 30(1), in no uncertain terms, gives the right to the religious and linguistic minorities to establish and administer educational institutions of their choice.

(b) The Scheme framed by this Court in *Unni Krishnan, J.P.* v. *State* H *of A.P.*, [1993] 1 SCC 645 is unconstitutional as thereby restrictions

imposed make it difficult, if not impossible, for the educational institutions to run efficiently. The restrictions thus imposed cannot be said to be reasonable ones. A

(c) The private unaided educational institutions imparting education cannot be deprived of their choice in matters, *inter alia*, of selection of students and fixation of fees and it is not open to the court to insist that statutory authorities should impose any condition for the purpose of grant of affiliation or recognition which would completely destroy the institutional autonomy and the very objective of establishment of the institution. B

(d) Education, particularly, higher education, must be perceived in the light of the idea of an academic degree as a "private good" that benefits the individual rather than a "public good" for society which is now widely accepted. The logic of today's economics and an ideology of privatization have contributed to the resurgence of private higher education and the establishment of private institutions where none or very few existed before. C D

(e) The right to establish and administer broadly comprises of the following rights :-

(a) to admit students;

(b) to set up a reasonable fee structure; E

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any employees. F

(f) While the private educational institutions, in the matter of setting up a reasonable fee structure, may not resort to profiteering but they may take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. The regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure would be an G H

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unacceptable restriction. The essence of a private educational institution is the autonomy that the institution must have in its management and administration.

(g) There, necessarily, has to be a difference in the administration of private unaided institutions and the government aided institutions. In the latter case, the Government will have greater say *inter alia* in fixing of fees but in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence.

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(h) While running an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including loans or borrowings, it would be important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

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(i) An unaided institution can charge fee from the students. One cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. A large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where normally economic forces have a role to play. 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. The object of setting up an educational institution is by definition "charitable", the making of profit should not be the object. 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.

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The Judgment of this Court in *T.M.A. Pai Foundation* (supra) came to be interpreted by a Constitution Bench of this Court in *Islamic Academy of Education and Anr.* v. *State of Karnataka and Ors.*, [2003] 6 SCC 697 wherein

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inter alia the following question was raised for consideration: "Whether the educational institutions are entitled to fix their own fee structure;" A

Answering the said question, this Court held:

> "7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefits of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise..."

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The Court, having regard to the fact that the validity of the statutes/ regulations governing the fixation of fees, had not been considered, directed constitution of a committee headed by a retired High Court Judge for the said purpose. One of us while concurring with the said directions, stated: F

> "147. On a bare reading of the relevant paragraphs of the judgment some of which are referred to hereinbefore, it is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizens carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. As stated in

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A paragraph 56, economic forces have a role to play. They, thus, indisputably have to plan their investment and expenditure in such a manner that they may generate some amount of profit. What is forbidden is (a) capitation fee, and (b) profiteering.

154. The fee structure, thus, in relation to each and every college must B be determined separately keeping in view several factors including, facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard, etc.. The case of each institution in this behalf is required to be considered by an appropriate Committee. For C the said purpose, even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more."

D The principles for fixing fee structure of particular institutions have, thus, been illustrated in *T.M.A. Pai Foundation* (supra) and *Islamic Academy of Education* (supra) but it must be borne in mind that those principles were laid down in absence of any statute operating in the field. Where, however, a statute operates in the field, regulation of education would be governed thereby. In this case, as the regulation of education is governed by a E Legislative Act, the court cannot impose any other or further restrictions by travelling beyond the scope, object and purport thereof.

The High Court by reason of the impugned judgment travelled beyond the legislative scheme as regards administration of a private institution as also fixation of fee while issuing the impugned directions in the light of the F decision of this Court in *Unni Krishnan* (supra). It is not in dispute that pursuant to, or in furtherance of, the directions issued by the High Court a Committee known as Duggal Committee was constituted. The said Committee has submitted its report. Pursuant to the recommendations made by the Committee, a circular dated 15th December, 1999, has been issued purported G to be in terms of Sub-Sections (3) and (4) of Section 24 of the Act. The same apparently is beyond the scope and purport of the Act and the Rules as the directions thereunder can be issued only for the purpose of rectifying the defects and deficiencies found at the time of inspection or otherwise in the working of the school and not pursuant to the recommendations made by a committee constituted in terms of the judgment of the High Court. 'Defects H and deficiencies' within the meaning of the said provisions would mean

defects and deficiencies while applying the provisions of the Act and the rules framed thereunder only and not the recommendations of a committee de'hors 'the Act' and 'the rules'. The said directions, therefore, do not have the force of law within the meaning of Clause (6) of Article 19 of the Constitution of India. State indisputably can issue directions which would only meet the criteria of a 'law' within the meaning of Article 13 of the Constitution of India. (See *Naveen Jindal* (supra))

This Court in *T.M.A. Pai Foundation* (supra), thus, not only upheld the right to establish and administer educational institutions as being guaranteed by Articles 19(1)(g) and 26 subject to the provisions of Articles 19(6) and 26(a) and, particularly, minorities under Article 30, it emphasised the requirement of grant of greater autonomy to the private unaided institutions. The Court while holding that the scheme framed in *Unni Krishnan* (supra) as unconstitutional, made an observation that thereby 'education' in respect of important features thereof is sought to be nationalised, viz., right of a private unaided institution to give admission and to fix fee. By reason of such a scheme, as private institutions became indistinguishable from the government institutions which would amount to curtailing of all essential features of the right of administration of a private unaided educational institution, the same was liable to be struck down being unfair and unreasonable. The Court in no uncertain terms held that the fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. It is true that a declaration was made to the effect by the Court that since the object of setting up of educational institution is by definition "charitable" as fee cannot be charged which would not be required for the purpose of fulfilling that object. The object of an educational institution although may not be to make profiteering but generation of a reasonable revenue surplus for the purpose of development of education and expansion of the institution is permissible. In the case of unaided private schools, this Court held that the maximum autonomy must be with the management as regards administration, disciplinary powers, admission of students and the fees to be charged. This Court noticed that the examination results at all levels of unaided private schools despite stringent regulations of the governmental authorities, were far superior to the results of the government-maintained schools. The Court held that curtailment of income of such private schools is impermissible as it disables those schools from affording the best facilities because of lack of funds. It was suggested that if the lowering of standards from excellence to a level of mediocrity is to be avoided,

A the solution lies in the States not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidizing the fees payable by the students there.

We are bound by the decisions of the larger Benches of this Court.

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This Court, having regard to *T.M.A. Pai Foundation* (supra) cannot thus issue any direction or make a scheme which would not be constitutional being violative of clause (6) of Article 19 of the Constitution.

Indisputably, the standard of education, the curricular and co-curricular C activities available to the students and various other factors, are matters which are relevant for determining the fee structure. The courts of law having no expertise in the manner and/or having regard to its own limitations keeping in view the principles of judicial review, always refrain from laying down precise formulae in such matters. Furthermore, while undertaking such exercise D the respective cases of each institution, their plans and programmes for the future expansion and several other factors are required to be taken into consideration. The Constitution Bench in *Islamic Academy of Education* (supra) which as noticed hereinbefore subject to making of an appropriate legislation, directed setting up of two committees, one of which would be for determining fee structure. This Court both in *T.M.A. Pai Foundation* (supra) E and *Islamic Academy of Education* (supra) had upheld the rights of the minorities and unaided private institutions to generate a reasonable surplus for future development of education.

Dawn Oliver in Constitutional Reform in the UK under the heading 'The Courts and Theories of Democracy, Citizenship, and Good Governance' at F page 105, states:

> "However, this concept of democracy as rights-based with limited governmental power, and in particular of the role of the courts in a democracy, carries high risks for the judges — and for the public. G Courts may interfere inadvisedly in public administration. The case of *Bromley London Borough Council* v. *Greater London Council,* (1983) 1 AC 768, HL is a classic example. The House of Lords quashed the GLC cheap fares policy as being based on a misreading of the statutory provisions, but were accused of themselves misunderstanding transport policy in so doing. The courts are not experts in policy and public H administration — hence Jowell's point that the courts should not step

beyond their institutional capacity (Jowell, 2000). Acceptance of this approach is reflected in the judgments of Laws LJ in *International Transport Roth GmbH* v. *Secretary of State for the Home Department,* (2002) EWCA Civ 158, (2002) 3 WLR 344 and of *Lord Nimmo Smith in Adams* v. *Lord Advocate* (Court of Session, Times, 8 August 2002) in which a distinction was drawn between areas where the subject matter lies within the expertise of the courts (for instance, criminal justice, including sentencing and detention of individuals) and those which were more appropriate for decision by democratically elected and accountable bodies. If the courts step outside the area of their institutional competence, government may react by getting Parliament to legislate to oust the jurisdiction of the courts altogether. Such a step would undermine the rule of law. Government and public opinion may come to question the legitimacy of the judges exercising judicial review against Ministers and thus undermine the authority of the courts and the rule of law."

The aforementioned paragraph has been noticed by this Court in *Chairman and M.D., BPL Ltd.* v. *S.P. Gururaja and Ors.,* [2003] 8 SCC 567.

The States have a duty to impart education and particularly, primary education having regard to the fact that the same is a fundamental right within the meaning of Article 21 of the Constitution of India, but as the Government had neither resources nor the ability to provide for the same, it appears, the Legislature permitted the Societies/Trusts to establish the educational institutions from the savings made by them from the Unaided Institutions.

It is not the case of the respondents that Rule 177 is unconstitutional. The vires or otherwise of the said rule may be considered in an appropriate proceeding but without going into the said question in great details, it may not be appropriate for us to read down the provisions thereof and issue any direction in derogation thereto. I do not find any conflict in Rules 176 and 177 of the Rules.

In view of the fact that the plain language has been employed in Rule 177 of the Rules, a strict construction thereof may not be justified. The proviso appended to Rule 177 is not exhaustive. There is no reason as to why the expression "capital or contingent expenditure" of the school should be given a narrow meaning, particularly having regard to the fact that Clause *(b)* thereof permits the Managing Committee to establish any other recognised school out of the saving from the fees collected by such school and clause

A (c) thereof permits rendition of assistance to any other school or educational institution under the Management of the same society or trust by which the first mentioned school is run.

The provisions of the Act and the rules framed thereunder in my opinion are absolutely clear and unambiguous. This Court has to interpret the B provisions of the Act and the Rules framed thereunder in the light of the fundamental rights of the appellants. Any direction, therefore, which would further curtail their fundamental rights, would be wholly unwarranted.

Furthermore, the impugned judgment of the Delhi High Court was C rendered having regard to the decision of this Court in *Unni Krishnan* (supra). *Unni Krishnan* (supra) no longer holds the field. Its dicta that imparting of education is not a fundamental right, stands overruled. The scheme framed by it has also been held to be unconstitutional. All orders and directions issued by the High Court pursuant to, or in furtherance of the directions in *Unni Krishnan* (supra) or any decision following the same must, D therefore, be kept out of consideration.

Thus, the question posed in these matters needs to be answered differently as imparting of education is now a fundamental right. Such a right, therefore, requires a fresh look and not through the glasses of *Unni Krishnan* (supra).

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An eleven-Judge Bench as also a Constitution Bench of this Court in *T.M.A. Pai Foundation* (supra) and *Islamic Academy of Education* (supra), as noticed hereinbefore, have merely forbidden profiteering.

'Profiteering' has been defined in Black's Law Dictionary, Fifth Edition F as:

> "Taking advantage of unusual or exceptional circumstances to make excessive profits"

Although decisions are galore, the purpose would be better served by G referring to G.P. Singh Principles of Statutory Interpretation, Ninth Edition, 2004, pages 120-122, which is in the following terms:

> "4. Regard to Consequences:
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> If the language used is capable of bearing more than one construction, H in selecting the true meaning regard must be had to the consequences

resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate, has to be rejected and preference should be given to that construction which avoids such results. This rule has no application when the words are susceptible to only one meaning and no alternative construction is reasonably open.

(a) Hardship, inconvenience, injustice, absurdity and anomaly to be avoided :

In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things" as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly, a construction giving rise to anomalies should be avoided. As approved by Venkatarama Aiyar, J., "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

It would not, therefore, be proper to impose any further restrictions in this behalf and interpret *T.M.A. Pai Foundation* (supra) in a different way so as to take away some of the rights of the appellants which are recognised therein.

We have noticed hereinbefore that *T.M.A. Pai Foundation* (supra) gave a new look to the concept of 'education', viz., opening up of economy and concept of globalisation. We, therefore, cannot look at the question differently. It must further be borne in mind that by reason of judicial direction this Court cannot override a statute or statutory rules governing the field and, thus, no direction can be issued by this Court contrary thereto or inconsistent therewith.

Furthermore, the expression 'development of education' is a broad term.

There does not exist any reason as to why the said right would be limited, regulated or curtailed in absence of any provisions contained in the Act or the rules framed thereunder. When the law permits utilisation of surplus fund of an institution for setting up another institution, the Court should not come in their way from doing so.

This Court, when such legislations are operating in the field, should be loathe to impose any further restrictions. This Court normally does not pass an order even in exercise of its jurisdiction under Article 142 of the Constitution of India which would be contrary to the law. (See *Government of West Bengal* v. *Tarun K. Roy and Ors.,* (2003) 9 SCALE 671, paragraphs 32 to 34 and *Jamshed Hormusji Wadia* v. *Board of Trustees, Port of Mumbai and Anr.,* [2004] 3 SCC 214

The need of the day, therefore, is strict implementation and enforcement of the statute. The administration, in the event, comes to the conclusion that the rules are required to be amended, they are free to do so; but only because there are a few cases of mismanagement, the same by itself should not be considered to be an indicia that all institutions are being run in an unprofessional or unethical manner.

Once, the legislature has laid down an educational scheme, the jurisdiction of the court is merely to interpret the same. It cannot and should not issue any other or further direction. It would not supplant a statutory provision by issuing any direction except in some exceptional cases.

The statutory scheme of the Act must be considered also from the point of view that a Society running several institutions, may have to impart education in different areas: slum, semi urban or urban. It may not, therefore, be improper for an institution to generate some surplus fund from an institution which is situated within a metropolitan area for the purpose of starting a school in a slum or a semi urban area.

It may also not be necessary to issue direction as to how and in what manner the institutions should maintain their accounts. In absence of any statutory provision governing the field, it is for the administration of the educational institution to determine the same having regard to the prevailing law like Income Tax Act, 1961.

I am, furthermore of the opinion, that as it is permissible in law, the excess income from an institution may be spent by the Society/Trust to

establish another school keeping in view the fact that more and more educational institutions are required to be established, particularly, in rural or semi urban area.

So far as allotment of land by the Delhi Development Authority is concerned, suffice it to point out that the same has no bearing with the enforcement of the provisions of the Act and the rules framed thereunder but indisputably the institutions are bound by the terms and conditions of allotment. In the event such terms and conditions of allotment have been violated by the allottees, the appropriate statutory authorities would be at liberty to take appropriate step as is permissible in law.

For the reasons aforementioned, I respectfully dissent with the opinion of Brother Kapadia, J. I would allow the appeals. No costs.

ORDER

In view of the majority judgement delivered by Hon'ble Mr. Justice S.H. Kapadia on behalf of Himself and Hon'ble the Chief Justice, the civil appeals are diposed of with no order as to cost.

N.J. Appeals disposed of.