IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

WRIT PETITION NO.6313 OF 2017 (EDN)
c/w
WRIT PETITION NOS. 33161 OF 2017, 47074 OF 2018, 47077 OF 2018, 5072 OF 2019, 6185 OF 2019, 9149 OF 2019, 11657 OF 2019, 14703 OF 2019, 6396 OF 2020, 15241 OF 2021, 15268 OF 2021 AND 16418 OF 2021

IN WP No.6313 of 2017

BETWEEN:

1. RASHMI EDUCATION TRUST
   VIDYANIKETAN SCHOOL,
   NEAR SALLAPURADAMMA LAYOUT,
   SUNKADAKATTE,
   BENGALURU - 560 091.
   REPARESENTED BY ITS MANAGING TRUSTEE,
   SRI. DHANANJAYA K.H.

2. NIMISHAMBA EDUCATION SOCIETY
   SRI KRISHNA INTERNATIONAL PUBLIC SCHOOL,
   3RD AND 4TH CROSS, LAKSHMANA NAGAR
   OPP: MOHAN THEATRE,
   HEGGANAHALLI CROSS,
   BENGALURU - 560 091.
   REPRESENTED BY ITS ADMINISTRATOR
   SRI. MOHAN KUMAR,

3 . KALPATHARU EDUCATION SOCIETY

BISHOP SERGEANT CENTRAL SCHOOL,
NO.11/1, DEVINAGAR
BENGALURU - 560 094.
REPARESENT ED BY ITS SECRETARY
SRI. YATHISH.

4 . KIRAN KUMAR EDUCATION SOCIETY
HEGGANAHALLI,
BENGALURU - 560 091.

BY ITS SECRETARY SRI BHADRAIAH,
S/O LATE VEERABHADRAIAH,
R/AT NO.22, 2ND CROSS,
GANGADHAR LAYOUT,
GOVINDARAJNAGAR
BENGALURU - 560 040.

5 . CHINMAYI EDUCATION TRUST (R)
NEW CARMEL HIGH SCHOOL,
I MAIN ROAD,
MUNESHWARA LAYOUT,
HEGGANAHALLI,
BENGALURU - 560 091.
REPRESENTED BY ITS SECRETARY
SMT. BHARATHI.C.

...PETITIONERS

(BY SRI M P SRIKANTH, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
PRIMARY AND SECONDARY EDUCATION,
M.S. BUILDING,
DR. AMBEDKAR VEEDHI,
BENGALURU -560 001.

2 . THE COMMISSIONER FOR PUBLIC
INSTRUCTIONS,
PRIMARY & SECONDARY EDUCATION,
NEW PUBLIC OFFICES,
NRUPATHUNGA ROAD,
K.R. CIRCLE,
BENGALURU - 560 001.

3 . THE DIRECTOR OF PUBLIC INSTRUCTIONS
PRIMARY EDUCATION,
NEW PUBLIC OFFICES,
NRUPATHUNGA ROAD,
K.R. CIRCLE,
BENGALURU - 560 001.

4 . THE DIRECTOR OF PUBLIC INSTRUCTIONS,
SECONDARY EDUCATION,
NEW PUBLIC OFFICES,
NRUPATHUNGA ROAD,
K.R. CIRCLE,
BENGALURU - 560 001.

5 . THE DEPUTY DIRECTOR OF PUBLIC
INSTRUCTIONS,
BANGALORE NORTH DISTRICT,
K.G. ROAD,
BENGALURU - 560 002.

6 . THE BLOCK EDUCATION OFFICER
DEPARTMENT OF PUBLIC INSTRUCTIONS,
NORTH RANGE-I,
RAJAJINAGAR II BLOCK,
BENGALURU - 560 010.

7 . THE BLOCK EDUCATION OFFICER
NORTH RANGE-II,
18TH CROSS, SAMPIGE ROAD,
MALLESWARAM,

BENGALURU - 560 003.

8 . THE DEPUTY COMMISSIONER
BANGALORE URBAN DISTRICT,
BENGALURU – 560 001.

9 . KARNATAKA VIDYARTHI POSHAKARA
JAGRUTHI VEDIKE
NO.160/1, 5TH "B" CROSS,
RAMAIAH LAYOUT, PEENYA II STAGE,
BENGALURU - 560 058.

....RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 TO R8;
SMT. SUMANA HEGDE, ADVOCATE FOR R9)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE PROVISIONS OF SECTION 48 OF THE KARNATAKA EDUCATION ACT, 1983 AS ARBITRARY AND UNCONSTITUTIONAL; AND ETC.

IN WP NO.33161 OF 2017

BETWEEN:

1. ASSOCIATED MANAGEMENTS OF GOVERNMENT
RECOGNISED ENGLISH MEDIUM SCHOOLS IN
KARNATAKA (KAMS)
REGD. OFFICE-MSR MAIN ROAD
MATHIKERE, BENGALURU-560 054
REPRESENTED BY ITS GENERAL SECRETARY
SRI D SHASHI KUMAR
AGED 47 YEARS
S/O SHRI DEVAPPA GOWDA.

2. M/S. RASHMI EDUCATIONAL TRUST

SALLAPURADAMMA LAYOUT,
SUNKADAKATTE
BENGALURU-560 091.
REPRESENTED BY ITS SECRETARY
SRI K H DHANANJAYA
AGED 56 YEARS
S/O LATE K HANUMANTHAIAH

3. M/S. KIRAN KUMAR EDUCATION SOCIETY
II CROSS, DODDANNA INDUSTRIAL ESTATE
ROAD, HEGGANAHALLI,
BENGALURU-560 091.
REPRESENTED BY ITS SECRETARY
SRI BHADRAIAH
AGED 66 YEARS
S/O LATE VEERABHADRAIAH

4. SRI NIMISHAMBADEVI EDUCATION SOCIETY
3RD AND 4TH CROSS
LAKSHAMAN NAGAR
HEGGANAHALLI CROSS
BENGALURU-560 091.
REPRESENTED BY ITS ADMINISTRATOR
SRI MOHAN KUMAR
AGED 40 YEARS
S/O LATE GANGAIAH

5. M/S. CHINMAYEE EDUCATION TRUST
I MAIN ROAD, MUNESWARA LAYOUT
HEGGANAHALLI
BENGALURU – 560 091.
REPRESENTED BY ITS SECRETARY
SMT. C BHARATHI
AGED 43 YEARS
W/O SRI MALLIKARJUNAIAH

6. M/S. KALPATHARU EDUCATION SOCIETY
NO.474, 3RD MAIN, RMS COLONY
BENGALURU-560 094.

REPRESENTED BY ITS SECRETARY
SRI YATISH PATEL
AGED 40 YEARS
S/O RANGEGOWDA

7. M/S. R T NAGAR EDUCATION TRUST
R T NAGAR PUBLIC SCHOOL
10/13, KHM BLOCK
GANGANAGAR
BENGALURU-560 032.
REPRESENTED BY ITS CHAIRMAN
SRI B R PRASANNA KUMAR
AGED 60 YEARS
S/O SRI B RAMAIAH.

....PETITIONERS

(BY SRI G R MOHAN, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF PRIMARY AND
HIGHER SECONDARY EDUCATION
VIDHANASOUDHA
BENGALURU-560 001.
REPRESENTED BY ITS
PRINCIPAL SECRETARY

2. THE COMMISSIONER
DEPARTMENT OF PUBLIC INSTRUCTIONS
K R CIRCLE
BENGALURU-560 001.

... RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS BY STRIKING DOWN THE KARNATAKA ACT NO.25 OF 2017 CALLED THE KARNATAKA EDUCATION (SECOND AMENDMENT) ACT, 2017 PUBLISHED IN THE KARNATAKA GAZETTE DATED 22.04.2017 AS PER ANNEXURE – J WHICH IS CONTRARY TO THE PROVISIONS VARIOUS CENTRAL ENACTMENTS, DECISIONS OF THIS HON'BLE COURT AND SUPREME COURT VIOLATION TO ARTICLE 19(1) (G) AND ARTICLE 21 OF THE CONSTITUTION OF INDIA.

IN WP NO.47074 OF 2018

BETWEEN

SRI GURURAGHAVENDRA EDUCATION SOCIETY
GAJANANANAGAR, HEGGANAHALLI CROSS
SUNKADAKATTE
BENGALURU-560 091
REPRESENTED BY ITS SECRETARY
SMT. K PREMA
W/O SRI T C NAGARAJAIAH

…PETITIONER

(BY SRI M P SRIKANTH, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA
BY ITS SECRETARY TO GOVERNMENT
PRIMARY AND SECONDARY EDUCATION
M S BUILDING, DR. AMBEDKAR VEEDHI
BENGALURU-560 001.

2 . THE COMMISSIONER FOR PUBLIC INSTRUCTION
PRIMARY & SECONDARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD

K R CIRCLE
BENGALURU-560 001.

3 . THE DIRECTOR OF PUBLIC INSTRUCTIONS
PRIMARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD, K R CIRCLE
BENGALURU -560 001.

4 . THE DIRECTOR OF PUBLIC INSTRUCTIONS
SECONDARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD, K R CIRCLE
BENGALURU -560 001

5 . THE DEPUTY DIRECTOR OF PUBLIC
INSTRUCTIONS
BANGALORE NORTH DISTRICT
K G ROAD,
BENGALURU -560 002.

6 . THE BLOCK EDUCATION OFFICER
NORTH RANGE-1
RAJAJINAGAR II BLOCK
BENGALURU -560 010

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 TO 6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO HOLD AND DECLARE PROVISIONS OF SECTION 2 (11) (A) AND SECTION 124(A) AS INSERTED IN THE EDUCATION ACT BY VIRTUE OF KARNATAKA EDUCATION (AMENDMENT) ACT 2017, (KARNATAKA ACT NO.25 OF 2017) AS UNCONSTITUTIONAL AND ILLEGAL ANNEXURE - S.

IN WP NO.47077 OF 2018

BETWEEN

1 . SHASTHRY'S CHARITABLE TRUST
OLD POST OFFICE ROAD,
HUNSUR, MYSURU DISTRICT
REPRESENTED BY TRUSTEES.

2 . HOSAMANE ALAMELAMMA
RAMASWAMY IYENGAR TRUS
(HARI TRUST)
NO.77 "VAISHNAVI" 2ND CROSS
2ND STAGE, GANGOTHRI LAYOUT
MYSURU-570 009.

3 . THE ORCHIDS EDUCATIONAL SOCIETY
PLOT NO.2, SWAMY VIVEKANANDA ROAD,
I BLOCK, RAMAKRISHNANGAR
MYSURU.

4 . PRAMATHI EDUCATIONAL AND
CULTURAL TRUST (R)
NO.1036/20, VIDYARANYAPURAM
MYSURU.

…PETITIONERS

(BY SRI M P SRIKANTH, ADVOATE)

AND

1 . THE STATE OF KARNATAKA
BY ITS SECRETARY TO GOVERMENT
PRIMARY AND SECONDARY EDUCATION
M S BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU-560 001.

2 . THE COMMISSIONER FOR PUBLIC INSTRUCTIONS
PRIMARY & SECONDARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNA ROAD, K R CIRCLE
BENGALURU-560 001.

3 . CENTRAL BOARD OF SECONDARY EDUCATION
"SHIKSHA KENDRA"
2 COMMUNITY CENTRE
PREET VIHAR
DELHI-110 092.

4 . COUNCIL FOR THE INDIAN SCHOOL
CERTIFICATE EXAMINATIONS (ICSE)
PRAGATI HOUSE
3RD FLOOR, 47-48
NEHRU PLACE
NEW DELHI-110019.

5 . THE DIRECTOR OF PUBLIC INSTRUCTIONS
PRIMARY EDUCATION NEW PUBLIC OFFICES
NRUPATHUNGA ROAD, K R CIRCLE
BENGALURU-560 001.

6 . THE DIRECTOR OF PUBLIC
INSTRUCTIONS
SECONDARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD, K R CIRCLE
BENGALURU-560 001.

7 . THE DEPUTY DIRECTOR OF
PUBLIC INSTRUCTIONS
MYSURU-570 026.

8 . THE BLOCK EDUCATION
OFFICER
MYSURU-570 026.

9 . THE BLOCK EDUCATION
OFFICER, HUNSUR
MYSORE DISTRICT-571 105.

….RESPONDENTS

(BY SRI DHYAN CHINNAPPA AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1, 2 5 TO 9;
SRI M R SHYLENDRA, ADVOCATE FOR R3;
SRI P B APPAIAH, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO HOLD AND DECLARE PROVISIONS OF SECTIONS 2 (11) (A) AND SECTION 124 (A) AS INSERTED IN THE EDUCATION ACT BY VIRTUE OF KARNATAKA EDUCATION (AMENDMENT)ACT, 2017 (KARNATAKA ACT NO.25 OF 2017) AS UNCONSTITUTIONAL AND ILLEGAL.

IN WP NO.5072 OF 2019

BETWEEN

VIDYANIKETAN PUBLIC SCHOOL
A UNIT OF VIDYANIKETAN EDUCATION
& CULTURAL TRUST
ULLAL UPANAGAR
BENGALURU-560 056
REPRESENTED BY ITS PRINCIPAL
MR. VIJAI KRISHNA RAJAGOPAL
AGEDA BOUT 41 YEARS
S/O S RAJAGOPAL

…PETITIONER

(BY SRI ABHINAV RAMANAND A, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA

DEPARTMENT OF PRIMARY & SECONDARY EDCUCATION
M S BUILDING
BENGALURU-560 001
REPRESENTED BY ITS
PRINCIPAL SECRETARY.

2 . THE COMMISSIONER
DEPARTMENT OF PUBLIC INSTRUCTION
NRUPATHUNGA ROAD
BENGALURU-560 001.

3 . THE DEPUTY COMMISSIONER
BENGALURU URBAN DISTRICT & CHAIRMAN
DISTRICT EDUCATION REGULATORY
AUTHORITY (DERA)
KANDAYA BHAVANA
K G ROAD
BENGALURU-560 009.

4 . THE DEPUTY DIRECTOR OF PUBLIC INSTRUCTION
BENGALURU SOUTH DISTRICT
KALASIPALYA
BENGALURU-560 018.

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 TO 4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH RULE 4 SUBSTITUTED IN THE KARNATAKA EDUCATIONAL INSTITUTIONS (REGULATION OF CERTAIN FEES AND DONATIONS) RULES, 1999 AS AMENDED BY THE KARNATAKA EDUCATIONAL INSTITUTIONS (REGULATION OF CERTAIN FEES AND DONATIONS) (AMENDMENT) RULES, 2008 AS PER THE SECTION NO.2 CONTAINED IN THE NOTIFICATION DATED 18.05.2018 ISSUED BY THE RESPONDENT-1 AT ANNEXURE-C AS

BEING DISCRIMINATORY, ARBITRARY, UNCONSTITUTIONAL AND UNSUSTAINABLE IN LAW; AND ETC.

IN WP NO.6185 OF 2019

BETWEEN

1 . MANAGEMENTS OF INDEPENDENT
CBSE SCHOOLS ASSOCIATION
KARNATAKA
REPRESENTED BY ITS PRESIDENT
M SRINIVASAN
S/O MUTHUSWAMI GOUNDER
AGE 65 YEARS, NO.3/2
4TH FLOOR, AL-AMEEN APARTMENT
P T STREET, BASAVANAGUDI
BENGALURU-560004.

2 . MANAGEMENT ASSOCITAION
OF SCHOOLS KARNATAKA
(SCHOOLS AFFILIATED TO CISCE & CBSE)
REPRESENTED BY ITS TREASURER
S.N.V.L NARASIMHA RAJU
S/O LATE NARASARAJU
AGE 50 YEARS,
100 FEET RING ROAD,
INDIRA NAGAR
BENGALURU-560008.

3 . PREMIER EDUCATIONAL SOCIETY (ICSE SCHOOL)
REPRESENTED BY ITS SECRETARY
IABAL AHMED
S/O LATE A R AHMED
AGE 74, ADDRESS NO.1, 100 FEET RING ROAD,
BANASHANKARI 3RD STAGE,
BENGALURU-560085.

4 . MARUTI EDUCATION TRUST (CBSE SCHOOLS)

REPRESENTED BY ITS SECRETARY
V MURALIDHAR
S/O LATE K VENKATARAMAIAH
AGE 59 YEARS,
ADDRESS: ABHAYAPURI MELEKOTE
TUMKUR-572 105.

5 . NEW HORIZON PUBLIC SCHOOL (ICSE SCHOOL)
REPRESENTED BY ITS CHAIRMAN
DR. MOHAN MANGHNANI
S/O S B MANGUNANI
AGED 56 YEARS,
ADDRESS 100 FEET RING ROAD
INDIRA NAGAR
BENGALURU-560008.

....PETITIONERS

(BY SRI BASAVARAJ S, SENIOR COUNSEL FOR
SRI GOUTHAM A R, ADVOCATE)

AND

1 . STATE OF KARNATAKA
BY THE SECRETARY
DEPARTMENT OF EDUCATION
M.S. BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU-560001.

2 . COMMISSIONER FOR PUBLIC INSTRUCTIONS
NEW PUBLIC OFFICE NEAR RBI
NRUPATHUNGA ROAD
SAMPANGI RAMA NAGAR
AMBEDKAR VEEDHI
BENGALURU-560001.

3. KARNATAKA SCHOOLS PARENTS ASSOCIATION
A SOCIETY REGISTERED UNDER

THE KARNATKA SOCIETIES REGISTRATION ACT, 1960
NO.4153, TOWER 4,
PRESITGE SHANTINIKETAN
EPIP ZONE, WHITEFIELD,
BENGALURU-560 066
BY ITS PRESIDENT.

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 TO 2;
SRI PRAMOD NAIR, ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE KARNATAKA EDUCATION (SECOND AMENDMENT) ACT, 2017 WHICH IMPOSES SECTION 48 AND THE NEWLY INSERTED SECTION 124-A OF THE KARNATAKA EDUCATION ACT, 1983 ON THE PRIVATE, UNAIDED EDUCATIONAL INSTITUTIONS IMPARTING EDUCATION IN CBSE/ICSE PATTERN AS UNCONSTITUTIONAL AND VIOLATIVE OF ARTICLES 19(1) (G) OF THE CONSTITUTION OF INDIA; AND ETC.

IN WP NO.9149 OF 2019

BETWEEN

1 . SRI SAHAKARA EDUCATION SOCIETY
A SOCIETY REGISTERED UNDER
THE PROVISIONS OF KARNATAKA SOCIETIES
REGISTRATION ACT
N T I LAYOUT
RAJEEV GANDHI NAGAR
BENGALURU - 560097
REPRESENTED BY ITS PRESIDENT

2 . SCHOOL VIVEKANANDA
AFFILIATED TO THE COUNCIL
FOR THE INDIAN SCHOOL

CERTIFICATE EXAMINATION
NEW DELHI SCHOOL CODE : KA- 110
N T I LAYOUT, RAJEEV GANDHI NAGAR
BENGALURU – 560097
REPRESENTED BY ITS MANAGER.

…PETITIONERS

(BY SRI M P SRIKANTH, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA
BY ITS SECRETARY TO THE GOVERNMENT
PRIMARY & SECONDARY EDUCATION
DEPARTMENT,
M S BUILDING
DR AMBEDKAR VEEDHI
BENGALURU-560 001.

2 . COMMISSIONER FOR PUBLIC INSTRUCTIONS
NEW PUBLIC OFIFCES
NRUPATHUNGA ROAD,
BENGALURU-560 002.

3 . DIRECTOR OF PUBLIC INSTRUCTIONS
PRIMARY EDUCATION
NEW PUBLIC OFFICES,
NRUPATHUNGA ROAD,
BENGALURU -560 002.

4 . DIRECTOR OF PUBLIC INSTRUCTIONS
SECONDARY EDUCATION
NEW PUBLIC OFFICES,
NRUPATHUNGA ROAD,
BENGALURU -560 002.

5 . DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS

BANGALORE NORTH DISTRICT
K G ROAD,
BENGALURU -560 002.

6 . THE BLOCK EDUCATION OFFICER
NORTH RANGE - 4,
DEPARTMENT OF PUBLIC INSTRUCTIONS,
DODDABALLAPURA MAIN ROAD,
NEAR BY TALUK PANCHAYATH
YELAHANKA TOWN
BENGALURU- 560064.

7 . THE CHAIRMAN & THE DEPUTY COMMISSIONER
DISTRICT EDUCATION REGULATING AUTHORITY
KANDAYA BHAVAN
BANGALORE URBAN DISTRICT
BENGALURU-560 002
REPRESENTED BY ITS MEMBER SECRETARY

8 . DISTRICT EDUCATION REGULATING
AUTHORITY
KANDAYA BHAVAN
BANGALORE URBAN DISTRICT
BENGALURU-560 002.
REPRESENTED BY ITS MEMBER SECRETARY.

9 . THRUPTHI SHEKAR
SINCE MINOR,
REPRESENTED BY HER FATHER
SRI SOMASHEKAR K B
RESIDING AT #23
APPANNA BUILDING
1ST CROSS, 1ST MAIN,
NEAR HDFC BANK
BYATARAYANAPURA
BENGALURU – 560092.

10 . NISHANTH MURTHY B S

SINCE MINOR,
REPRESENTED BY HER FATHER
SRI SRINIVAS MURTHY B S
RESIDING AT NO.50,
CQAH LAYOUT, 12TH 2ND CROSS,
SAHAKARANAGAR
BENGALURU – 560092.

11 . HARSHITH V GOWDA
SINCE MINOR,
REPRESENTED BY HIS FATHER
SRI B T VENKATESH
RESIDING AT NO.821,
LAKSHMI NIVAS, 3RD MAIN,
SANJEEVANI NAGAR,
SAHAKARANAGAR
BENGALURU – 560092.

12 . NAVYA DEEPTHI
SINCE MINOR
REPRESENTED BY HER FATHER
SRI ACHUTH NARAYANA
RESIDING AT # 32,
18TH CROSS,
JAKKUR, ST. JOHN SCHOOL ROAD,
AMRUTHAHALLI
BENGALURU – 560092.

13 . AMRUTH R B
SINCE MINOR REPRESENTED BY HIS FATHER
SRI RAMESH B
RESIDING AT NO.9,
CHIGURA, 6TH 'D' MAIN,
GANESHA NAGAR,
VIDYARANYAPURA
BENGALURU – 560097.

14 . SHASHANK DHATT B J

SINCE MINOR
REPRESENTED BY HIS FATHER
SRI JAGANNATH
RESIDING AT # 7,
E BLOCK, KODIGEHALLI GATE,
SAHAKARANAGAR
BENGALURU-560 092.

15 . DAKSHITH REDDY
SINCE MINOR REPRESENTED BY HIS FATHER
SRI THAMMI REDDY
RESIDING AT 691/47
2ND MAIN ROAD,
6TH 'B' CROSS,
SRK SCHOOL ROAD,
HANUMAIAH LAYOUT
KODIGEHALLI
BENGALURU – 560092.

16 . THANMAY M
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI MANJUNATH C
RESIDING AT NO.752
I CROSS, 'A' BLOCK
SAHAKARANAGAR
BENGALURU – 560092.

17 . NIKSHITHAA
SINCE MINOR
REPRESENTED BY HER FATHER
SRI RAJANNA B
RESIDING AT NO.4, THINDLU,
VIDHYRANYAPURA POST,
NEAR NARAYANA HOSPITAL ,
THINDLU, KODIGEHALLI MAIN ROAD,
BENGALURU – 560097.

18 . DHANUSH G H GOWDA
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI G B HEMANTH KUMAR
RESIDING AT NO.500
PRAKRUTHI, DR. RAJKUMAR ROAD
TALACAUVERY LAYOUT
SAHAKARANAGAR POST
BENGALURUE – 560092.

19 . AKSHOBHYA RAO
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI PHANEENDRA KUMAR
RESIDING AT NO.963,
12TH MAIN 'D' BLOCK,
SAHAKARNAGAR
BENGALURU – 560092.

20 . DHEERAJ R K
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI SREENATH R K
RESIDING AT NO.36 ,
I MAIN, SIDHIVINAYAKA LAYOUT
VIDHAYRANYAPURA
BENGALURU – 560097.

21 . MANASA V N
SINCE MINOR
REPRESENTED BY HER FATHER
SRI NARASHIMA PRASAD
RESIDING AT NO.69/1, 1ST MAIN,
SIDDALINGESHWARA ROAD,
THINDLU
BENGALURU – 560097.

22 . POOJITHA K NAIDU

SINCE MINOR
REPRESENTED BY HER FATHER
SRI KRISHNA K NAIDU
RESIDING AT NO.1838
'C' BLOCK NEAR MANGALORE BUILDING
SAHAKARANAGAR
BENGALURU – 560092.

23 . NEHA C
SINCE MINOR
REPRESENTED BY HER FATHER
SRI CHANDRACHAR G
RESIDING AT NO.13,
NEHA NILAYA SONNE GOWDA LAYOUT
(NEAR PARIKRAMA SCHOOL)
KODIGEHALLI SAHAKARANAGAR POST
BENGALURU – 560092.

24 . PARINIKAA S
SINCE MINOR
REPRESENTED BY HER FATHER
SRI K SRINIVASA
RESIDING AT #2039/1,
'C' BLOCK SAHAKARNAGAR
BENGALURU – 560092.

25 . NANDEESH
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI SRINIVASA GOWDA
RESIDING AT NO.32, AVR BLOCK
I MAIN, I CROSS,
DHANALAKSHMI LAYOUT
VIRUPAKSHAPURA
BENGALURU – 560 097.

26 . PRAFUL RAYA H G
SINCE MINOR

REPRESENTED BY HIS FATHER
SRI GURUNATH H P
RESIDING AT NO.105
SRINIVASA, CQAL LAYOUT
NEAR BBMP OFFICE
SAHAKARANAGAR
BENGALURU – 560092.

27 . PRANAV S BHARADWAJ
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI SRIDHAR S K
RESIDING AT NO.22665 'D' BLOCK
SAHAKARANAGAR
BENGALURU – 560092.

28 . NIKHIL SHARMA
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI RAJESH T C
RESIDING AT NO.59,
13TH CROSS, 9TH MAIN,
CQAL LAYOUT
SAHKARANAGAR
BENGALURU – 560092.

29 . PAAVNI K
SINCE MINOR
REPRESENTED BY HER FATHER
SRI KESHAVAMURTHY G
RESIDING AT NO.140 D
9TH CROSS,
CANARA BANK LAYOUT
VIDYARANYPURA POST
BENGALURU – 560097.

30 . DHRUV P C
SINCE MINOR

REPRESENTED BY HIS FATHER
SRI CHIDANANDA P E
RESIDING AT NO.F 460
BANASHANKARI F BLOCK,
SAHAKARANAGAR
BENGALURU – 560092.

31 . RANJITH D AKSHAR
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI DHANANJAYA R
RESIDING AT # 1561,
15TH CROSS, R K HEDGANAR
SRK NAGAR POST
BENGALURU – 560092.

32 . PRANATHI K R
SINCE MINOR
REPRESENTED BY HER FATHER
SRI RAGHAVENDRA
RESIDING AT # 1353,
BEHIND SAI BABA TEMPLE,
KODIGEHALLI
BENGALURU – 560092.

33 . LALITH GOWDA B .M
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI MANJUNATHA M
R/AT #265
1ST MAIN ROAD,
BYATARANAYAPURA
SAHAKARANAGAR POST
BENGALURU – 560092.

34 . SAMANTHA H
SINCE MINOR
REPRESENTED BY HER FATHER

SRI HARIPRASAD N
R/AT #12, DODDAMMA MAHESHWARAMMA
TEMPLE ROAD,
BYATARANYAPURA
BENGALURU – 560092.

35 . PREETHI SAGAR
SINCE MINOR
REPRESENTED BY HER FATHER
SRI VIJAY SAGAR S
R/AT NO.354, 5TH MAIN
I CROSS, CANARA BANK LAYOUT
VIDYARANYAPURA
BENGALURU – 560097.

36 . MANISH GOWDA T.S
SINCE MINOR
REPRESENTD BY HIS FATHER
SRI SRINIVASA T N
R/AT #2, 1ST MAIN,
1ST CROSS, AMCO LAYOTU,
KODEGEHALLI MAIN ROAD,
SAHAKAR NAGAR POST
BENGALURU - 560092.

37 . YOGESH CHANDRA N
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI NARASHIMHA MURTHY
R/AT NO.A, SHANTHI DHAMA,
NAGASHETTIHALLI MAIN ROAD,
KODIGEHALLI,
BENGALURU - 560092.

38 . AKSHATHA C
SINCE MINOR
REPRESENTED BY HER FATHER
SEI CHETHAN KUMAR S

R/AT #86, 9TH CROSS,
SANJEEVENI NAGAR
SAHAKARNAGAR,
BENGALURU – 560092.

39 . NIHAL S GOWDA
SINCE MINOR
REPERESENTED BY HIS FATHER
SRI SREENATH V
R/AT #14 KOTE BEEDI
KODIGEHALLI
SAHAKARANAGAR
BENGALURU – 560092.

40 . DIYA S KIRAN
SINCE MINOR
REPRESENTED BY HER FATHER
SRI B.C. SHASHI KIRAN
R/AT #57, 1ST CROSS,
DHANALAKSHMI LAYUT
VIRUPAKSHAPURA,
BENGALURU – 560097.

41 . SAI PRANEETH K NAIDU
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI KRISHNA NAIDU
R/AT #1838 'C' BLOCK
NEAR MANGALORE BUILDING,
SAHAKARA NAGAR,
BENGALURU – 560092.

42 . MANISH G R
SINCE MINOR
REPRESENTD BY HIS FATHER
SRI. G.A. RAGHU KUMAR
R/AT #8, BHUDDAJOLI LAYOUT
VIRUPAKSHAPURA

KODIGEHALLI, VIDYARANYAPURA
BENGALURU – 560097.

43 . SHREYASHREE P.C
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI CHIDANANDA P.E
R/AT F-460,
" BANASHANKARI", F-BLOCK,
SAHAKARNAGAR,
BENGALURU – 560092.

44 . SAANVI K
SINCE MINOR
REPRESENTED BY HER FATHER
SRI KESHAV MURTHY
R/AT #140 D,
9TH CROSS, CANARA BANK LAYOUT
VIDHYARANYAPURA,
BENGALURU – 560097.

45 . POORVI SAGAR V
SINCE MINOR
REPRESENTED BY HER FATHER
SRI VIJAY SAGAR S
RESIDING AT #354, 5TH MAIN
1ST CROSS, CANARA BANK LAYOUT
VIDYARANYAPURA POST,
KODIGEHALLI
BENGALURU – 560097.

46 . ADITYA NAIK
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI RAMA NAIK
R/AT NO.66, 6TH CROSS,
GANESH NAGAR LAYOUT
VIRUPAKSHAPURA KODIGEHALLI

VIDYARANYAPURA POST
BENGALURU - 560 097.

47 . VARSHINI M
SINCE MINOR
REPRESENTED BY HER FATHER
SRI MANJUNATH C
R/AT 752 'A' BLOCK
1ST CROSS SAHAKARA NAGAR
BENGALURU – 560092.

48 . ARVIND RAJ
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI ACHUTH NARAYAN
RESIDING AT #32, 18TH CROSS,
AMRUTHAHALLI,
ST. JOHN SCHOOL STREET,
BENGALURU – 560092.

49 . KEERTHANA H
SINCE MINOR
REPRESENTEDBY HER FATHER
SRI HARIPRASAD N
RESIDING AT: #12,
DODDAMMA MAHESHWARAMMA
TEMPLE ROAD,
BYATARANYAPURA
BENGALURU – 560092.

50 . NAMANA N
SINCE MINOR
REPRESENTED BY HER FATHER
SRI NANDA KUMAR
R/AT SAHAKANARANAGARA 'C' BLOCK
NEAR GANESHA STORE
BENGALURU – 560092.

51 . VINITH S KIRAN
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI SHASHI KIRAN B C
R/A NO.57, I CROSS
DHANALAKSHMI LAYOUT
VIRUPAKSHAPURA
BENGALURU – 560097.

52 . ROHIT D VIBHUTI
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI DINESH KUMAR VIBHUTI
R/A #41/1, 3RD FLOOR, I MAIN
3RD CROSS, AMCO LAYOUT
KODIGEHALLI
BENGALURU – 560092.

53 . KARI BASAVA M K
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI LINGARAJU M B
R/A LINGARAJU M B
#39, 13TH CROSS
VISHWARAIYA LAYOUT
THINDLU VIDYARANYAPURA POST
BENGALURU – 560092.

54 . PRATHIK S BHARADWAJ
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI SRIDHAR
R/A #2265
WATER TANK ROAD
'D' BLOCK, SHAHAKARA NAGAR
BENGALURU – 560092.

55 . JAI DINESH KUMAR VIBHUTI

SINCE MINOR
REPRESENTED BY HIS FATHER
SRI DINESHKUMAR VIBHUTI
R/AT DOOR NO.41/1
3RD FLOOR, I MAIN, 3RD CROSS
KODIGEHALLI
BENGALURU – 560092.

56 . HARSHA C N
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI NANJEGOWDA C B
R/A NO.2151
11TH CROSS, KODIGEHALLI MAIN ROAD
SANJEEVINI NAGAR
BENGALURU – 560092.

57 . NIKHIL B
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI BALAKRISHNA N
R/AT #39/1, HOTTAPPA LAYOUT
KASHINAGAR ROAD
AMRUTHAHALLI
BENGALURU – 560092.

58 . MUKUL K R
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI RAGHAVENDRA K M
R/A NEAR SAI BABA TEMPLE
#1353, KODIGEHALLI
SAHAKARNAGAR
BENGALURU – 560092.

59 . MEDHA REDDY K
SINCE MINOR
REPRESENTED BY HER FATHER

SRI SUKUMAR REDDY K
R/AT #15, E BLOCK,
SAHAKARANAGAR
BENGALURU – 560092.

60 . TARUN M
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI P MURALI
R/A #17/1, I FLOOR
NEAR SUB REGISTRAR OFFICE
KODIEGEHALLI MAIN ROAD
SAHAKARANAGAR POST
BENGALURU – 560092.

61 . NIKHIL CHANDRAN N
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI NARASHIMHA MURTHY C
R/A NO.1, LAKSHMI VENKATESHWSARA NILAYA
NAGASHETTYHALLI MAIN ROAD
KODIGEHALLI
BENGALURU – 560092.

62 . N SAANYA
SINCE MINOR
REPRESENTED BY HER FATHER
SRI N VASUDEV RAJU
R/A NO.87, I FLOOR,
5TH 'B' MARUTHI LAYOUT
VIDYARANYAPURA POST
BENGALURU – 560097.

63 . PUNITH R B
SINCE MINOR
REPRESENTED BY HIS FATHER
SRI RAMESH B
R/A # 9, 6TH CHIGURU

6TH 'D' MAIN
GANESH NAGAR
VIDYARANYAPURA
BENGALURU – 560097.

64 . TRISHA R
SINCE MINOR
REPRESENTED BY HER FATHER
SRI RAMAKRISHNA B
R/A NO.2, SITA, BYRAVESWARA PRASANNA
4TH CROSS, NEAR RAJANA WATER TANK
SIR M V LAYOUT
BENGALURU – 560097.

65 . BUMIKA R
SINCE MINOR
REPRESENTED BY HER FATHER
SRI RAMAKRISHNA B
R/A NO.2, SITA BYRAVESWAR PRASANNA,
4TH CROSS, NEAR RAJANNA WATER TANK
SIR M V LAYOUT
BENGALURU – 560097.

66 . NITHISHA K REDDY
SINCE MINOR
REPRESENTED BY HER FATHER
SRI K DEENADAYALU REDDY
R/A NO.237
1ST FLOOR, SAPTHAGIRI NILAYA
6TH CROSS, CANARA BANK LAYOUT
BENGALURU – 560097.

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 TO 8;
SMT. SUMANA HEGDE, ADVOCATE FOR R27, 54 AND 60;
SRI AMRUTESH N P, ADVOCATE FOR R9, 15, 18, 19, 26,

29, 30, 34, 35, 36, 40, 42 TO 46, 49, 51, 52, 54, 55, 56, 60 AND 62 TO 66;
R11, 13, 14, 16, 17, 20, 22, 23, 24, 25, 32, 33, 37, 38, 39, 41, 47, 50, 53, 57, 58 ARE SERVED AND UNREPRESENTED;
VIDE ORDER DATED 27.11.2020 SERVICE OF NOTICE TO R12, 21, 28, 31, 48, 59 AND 61 DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO HOLD AND DECLARE PROVISIONS OF SECTIONS 2(11) (A) AND SECTION 124(A) AS INSERTED IN THE EDUCATION ACT BY VIRTUE OF KARNATAKA EDUCATION (AMENDMENT) ACT 2017 (KARNATAKA ACT NO.25 OF 2017) DATED 18.04.2019 AS UNCONSTITUTIONAL AND ILLEGAL VIDE ANNEXURE-K; AND ETC.

IN WP NO.11657 OF 2019

BETWEEN

KNA FOUNDATION FOR EDUCATION
70, CHIKKANAYAKANAHALLI
OFF SARJAPUR ROAD,
DODDAKANELLI
BENGALURU-560070.

...PETITIONER

(BY SRI BASAVARAJ S, SENIOR COUNSEL FOR
SRI GAUTHAM A R, ADVOCATE)

AND

1 . STATE OF KARNATAKA
BY THE SECRETARY
DEPARTMENT OF EDUCATION
M.S. BUIDLING
DR.AMBEDKAR VEEDHI
BENGALURU-560001.

2 . COMMISSIONER FOR PUBLIC INSTRUCTIONS
NEW PUBLIC OFFICE NEAR-RBI,
NRUPATHUNGA ROAD
SAMPANGI RAMA NAGAR
AMBEDKAR VEEDHI
BENGALURU-560001.

....RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 AND 2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE KARNATAKA EDUCATION (SECOND AMENDMENT) ACT, 2017 WHICH IMPOSES SECTION 48 AND THE NEWLY INSERTED SECTION 124-A OF THE KARNATAKA EDUCATION ACT, 1983 ON THE PRIVATE, UNAIDED EDUCATIONAL INSTITUTIONS IMPARTING EDUCATION IN CBSE/ICSE PATTERN, AS UNCONSTITUTIONAL AND VIOLATIVE OF ARTICLES 19(1)(G) OF THE CONSTITUTION OF INDIA; AND ETC.

IN WP NO.14703 OF 2019

BETWEEN

ASSOCIATION OF INDIAN SCHOOLS
AN ASSOCIATION OF PRIVATE UNAIDED
SCHOOLS IN A SOCIETY REGISTERED UNDER
THE SOCIETIES REGISTRATION ACT, 1880
HAVING ITS ADDRESS AT CST, NO.104-E
NEAR ASTER SOCIETY, FIRE BRIGADE
OPP. OBEROI MALL, DINDOSHI, MALAD (E)
MUMBAI – 400097.

REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE
MR.DEEPAK JAYANT CHOUDHARI
S/O MR. JAYANT CHOUDHARI
AGED ABOUT 51 YEARS

…PETITIONER

(BY SRI MADHUSUDAN R NAIK, ADVOCATE FOR
SMT. ANUPARNA BODOLOI, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA
THROUGH ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF PRIMARY EDUCATION
VIDHAN SOUDHA
BENGALURU-560001 .

2 . THE PRINCIPAL SECRETARY TO THE GOVERNMENT
(PRIMARY AND SECONDARY)
6TH FLOOR, M S BUILDING
NRUPATHUNGA ROAD
BENGALURU-560001.

3 . THE COMMISSIONER FOR PRIMARY
INSTRUCTIONS PRIMARY AND SECONDARY
EDUCATION NEW PUBLIC OFFICES
NRUPATHUNGA ROAD
BENGALURU-560001.

4 . THE DIRECTOR FOR PUBLIC INSTRUCTIONS
SECONDARY EDUCATION
OFFICE OF CPI, N T ROAD
BENGALURU – 560001.

….RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 TO 4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE KARNATAKA EDUCATIONAL INSTITUTIONS (REGULATION OF CERTAIN FEES AND DONATIONS) RULES 1999 AS AMENDED VIDE NOTIFICATION-I DATED 18.05.2018 READ

WITH NOTIFICATION-II DATED 18.05.2018 ISSUED BY UNDER SECRETARY TO THE DEPARTMENT OF PRIMARY EDUCATION IN EXERCISE OF THE POWERS CONFERRED UNDER THE KARNATAKA EDUCATION ACT, 1983 IS UNCONSTITUTIONAL AND VOID, AND STRIKE DOWN THE SAME IN ITS ENTIRETY, AS BEING VIOLATIVE OF ARTICLES 14, 19 (1)(G) AND 30 OF THE CONSTITUTION OF INDIA VIDE ANNEXURE-A TO A2; AND ETC.

IN WP NO.6396 OF 2020

BETWEEN

1. NEEV TRUST
   HAVING ITS OFFICE AT NO.3367/K,
   13TH MAIN, HAL 2ND STAGE,
   INDIRA NAGAR,
   BENGALURU - 560008.
   BY ITS FINANCE AND LEGAL
   HEAD MS.SWAPNILI TEWARI,
   AGED 39 YEARS,
   ADDRESS AS ABOVE

2. NEEV ACADEMY
   EDUCATIONAL INSTITUTION
   13TH MAIN, HAL 2ND STAGE
   INDIRANAGAR
   BENGALURU-560 008.
   BY ITS FINANCE AND LEGAL HEAD
   MS. SWAPNILI TEWARI
   AGED 39 YEARS
   ADDRESS AS ABOVE.

…PETITIONERS

(BY SRI BASAVARAJ S, SENIOR COUNSEL FOR
SRI GAUTHAM A R, ADVOCATE)

AND

1 . STATE OF KARNATAKA

BY THE SECRETARY,
DEPARTMENT OF EDUCATION,
M.S.BUIDLING,
DR.AMBEDKAR VEEDHI,
BENGALURU - 560001.

2 . DEPARTMENT OF PUBLIC INSTRUCTIONS
NEW PUBLIC OFFICE NEAR -RBI,
NRUPATHUNGA ROAD,
SAMPANGI RAMA NAGAR,
AMBEDKAR VEEDHI,
BENGALURU - 560001.
REPRESENTED BY ITS
COMMISSIONER

....RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN, AGA FOR R1 TO 2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE KARNATAKA EDUCATION (SECOND AMENDMENT) ACT, 2017 WHICH IMPOSES SECTION 48 AND THE NEWLY INSERTED SECTION 124-A OF THE KARNATAKA EDUCATION ACT, 1983 ON THE PRIVATE UNAIDED EDUCATIONAL INSTITUTIONS IMPARTING EDUCATION IN CBSE/ICSE PATTERN AS UNCONSTITUTIONAL AND VIOLATIVE OF ARTICLE 19(1)(g) OF THE CONSTITUTION OF INDIA; AND ETC.

IN WP NO. 15241 OF 2021

BETWEEN

KARNATAKA PRIVATE SCHOOLS COMMITTEE
REPRESENTED BY GENERAL SECRETARY
SRI MOHANKUMAR G
NO.25/1, 6TH CROSS
NHCS LAYOUT

CAUVERY NAGAR
BENGALURU-560079.

…PETITIONER

(BY SRI SRIKANTH M P, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA
BY ITS SECRETARY TO THE GOVERNMENT
PRIMARY AND SECONDARY
EDUCATION DEPARTEMNT
M S BUILDING
DR. AMBEDKAR VEEDHI
BENGALURU – 560 001.

2 . COMMISSIONER FOR PUBLIC INSTRUCTIONS
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD
BENGALURU -560 002.

3 . DIRECTOR OF PUBLIC INSTRUCTIONS
PRIMARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD
BENGALURU – 560002.

4 . DIRECTOR OF PUBLIC INSTRUCTIONS
SECONDARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD
BENGALURU – 560 002.

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN AGA FOR R1 TO 4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE REPRESENTATION DATED 26.12.2019 VIDE ANNEXURE-M, SUBMITTED TO THE RESPONDENTS BEFORE IMPLEMENTING THE PUBLICATION OF INFORMATION IN TERMS OF THE NOTIFICATION DATED 24.07.2019 ANNEXURE-N; AND ETC.,

IN WP NO. 15268 OF 2021

BETWEEN

KARNATAKA PRIVATE SCHOOLS COMMITTEE
REPRESENTED BY GENERAL SECRETARY
SRI MOHANKUMAR G
NO.25/1, 6TH CROSS
NHCS LAYOUT
CAUVERY NAGAR
BENGALURU-560079.

...PETITIONER

(BY SRI SRIKANTH M P, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA
BY ITS SECRETARY TO THE GOVERNMENT
PRIMARY AND SECONDARY
EDUCATION DEPARTMENT
M S BUILDING
DR AMBEDKAR VEEDHI
BENGALURU-560 001.

2 . COMMISSIONER FOR PUBLIC INSTRUCTIONS
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD
BENGALURU-560 002.

3 . DIRECTOR OF PUBLIC INSTRUCTIONS
PRIMARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD
BENGALURU-560 002.

4 . DIRECTOR OF PUBLIC INSTRUCTIONS
SECONDARY EDUCATION
NEW PUBLIC OFFICES
NRUPATHUNGA ROAD
BENGALURU-560 002

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN AGA FOR R1 TO 4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO HOLD AND DECLARE PROVISIONS OF SECTIONS 2(11)(a) AND SECTION 124-A AS INSERTED IN THE EDUCATION ACT BY VIRTUE OF KARNATAKA EDUCATION (AMENDMENT) ACT, 2017 (KARNATAKA ACT NO.25/2017) AS UNCONSTITUTIONAL AND ILLEGAL VIDE ANNEXURE-B; AND ETC.

IN WP NO. 16418 OF 2021

BETWEEN

JAIN PUBLIC SCHOOL
NO.13, KAVALAGANAHALLI,
CHINTAMANI - 563125,
CHIKKABALLAPUR DISTRICT,
REPRESENTED BY ITS PRINCIPAL,
SRI MANJUNATHA N.

…PETITIONER

(BY SRI R KIRAN, ADVOCATE)

AND

1 . STATE OF KARNATAKA
BY THE SECRETARY
DEPARTMENT OF EDUCATION
M S BUILDING, DR. AMBEDKAR VEEDHI,
BENGALURU -560001.

2 . COMMISSIONER FOR PUBLIC
INSTRUCTIONS
NEW PUBLIC OFFICE NEAR RBI,
NRUPATHUNGA ROAD,
SAMPANGI RAMA NAGAR,
AMBEDKAR VEEDHI,
BENGALURU - 560001.

3 . DEPUTY DIRECTOR PUBLIC
EDUCATION DEPARTMENT
OFFICE OF THE PUBLIC
EDUCATION DEPARTMENT
CHIKKABALLAPUR-562 101.

4 . DISTRICT EDUCATION
REGULATING AUTHORITY
ZILLA PANCHAYAT OFFICE
CHIKKABALLAPUR-562 101.
REPRESENTED BY ITS
CHAIRMAN
SRI GURUDATH HEGDE

…RESPONDENTS

(BY SRI DHYAN CHINNAPPA, AAG A/W
SMT. PRAMODHINI KISHAN AGA FOR R1 TO 4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER / NOTICE ISSUED BY THE R3 DATED 27.07.2018 PER ANNEXURE-J BASED ON THE RECOMMENDATION OF

RESPONDENT 4 DATED 20TH JULY, 2018 PER ANNEXURE-H; AND ETC.

IN THESE WRIT PETITIONS ARGUMENTS BEING HEARD, JUDGMENT RESERVED, COMING ON FOR "PRONOUNCEMENT OF ORDERS", THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

"***Education's purpose is to replace an empty mind with an open one. The function of education is to teach one to think intensively and to think critically.***"

-Malcolm Stevenson Forbes

In these batch of petitions, petitioners have contended that the following provisions under Karnataka Education Act, 1983 read with relevant Rules as ultra vires the Constitution of India and to be declared as unconstitutional:

1) Sections 2(11-A), 5-A, 48, 112-A and 124-A of the Karnataka Education Act, 1983;

2) Rules 10(3)(a)(i) and 10(3)(c) of the Karnataka Educational Institutions (Classification, Regulation, Prescription of Curricula etc.) Rules, 1995;

3) Rules 2, 4, and 7 of the Karnataka Educational Institutions (Regulation of certain Fees and Donations) Rules, 1999.

Facts of the case:

Foundational facts, which had led to filing of these writ petitions can be crystallized as under:

2. Petitioners in Writ petition No.6313 of 2017 are educational institutions, of which, some of the educational institutions receive grant-in-aid by the respondent-Government; and petitioner No.4 is an unaided educational institution. In this writ petition, petitioners have challenged Section 48 of the Karnataka Education Act, 1983 (for brevity hereinafter referred to as 'the Act'), so also, seeking declaration that Rule 10 of the Karnataka Educational Institutions (Classification, Regulation, Prescription of Curricula etc.) Rules, 1995 (for brevity hereinafter referred to as 'Rules 1995'); and Rule 4 of the Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999 (for brevity hereinafter referred to as

'Rules 1999'), as unconstitutional and sought for holding that they are ultra vires the Constitution of India. It is the case of petitioners that these institutions are run by private management and some of them are unaided educational institutions, and have availed loan from Banks to run the institution. It is the case of petitioner-Institutions that these institutions depend upon the revenue generated from the fees collected. It is further stated that Rules 1995 and Rules 1999 were challenged before the Division Bench of this Court in Writ Appeal No.3530 of 2001 and connected appeals and this Court, by order dated 12th July, 2004, disposed of the Appeals with a direction to govern the decision of the Hon'ble Supreme Court in the case of KARNATAKA (R) UNADIDED SCHOOL MANAGEMENT ASSOCIATION AND ANOTHER v. STATE OF KARNATAKA in Civil Appeals No.334-335 of 2004 decided on 11th February, 2010, which is pursuant to the law declared by the Hon'ble Supreme Court in the case of T.M.A. PAI FOUNDATION AND OHTERS v. STATE OF KARNATAKA AND OTHERS reported in (2002)8 SCC 481 (for short, hereinafter referred to as "T.M.A. PAI FOUNDATION case"). It is also the case of petitioner-institutions

that they are admitting students under the provisions of Right of Children to Free and Compulsory Education Act, 2009 (for brevity hereinafter referred to as 'RTE Act'). It is the categorical assertion of petitioner-institutions that the private unaided educational institutions are different from the aided educational institutions insofar as financial aspects and therefore, the fee structure of these private unaided educational institutions should be distinct and cannot be controlled by the Fee structure imposed by the respondent-State. Despite, these institutions are also extending admissions to the students under RTE Act. Relying upon the judgment in the case of T.M.A. PAI FOUNDATION, petitioner-Institutions urged that these private educational institutions have a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India, particularly in respect of admissions to the Institutions, and therefore, these institutions have an autonomy and independence to have their own fee structure. It is the contention of the petitioner-Institutions that as these institutions are not aided or funded by the State-Government and the fee structure of the State-Government is lesser than what has been prescribed by the

institutions coming under the purview of RTE Act and therefore, Rule 10 of the Rules 1995, which provides for collection of fees, cannot be made applicable to the unaided private educational institutions and accordingly, sought for invalidating Rule 10 of Rules 1995 and Rule 4 of Rules 1999, as ultra vires the Constitution of India, so also, contrary to the law declared in T.M.A. PAI FOUNDATION case. It is the grievance of petitioner-Institutions that frequent interference by the respondent-Department in relation to charging of fees, matters of admissions of students and other related issues, in terms of the aforementioned Rules, are contrary to the spirit of judgment of T.M.A. PAI FOUNDATION case and such interference is arbitrary and contrary to Article 14 of the Constitution of India and therefore, contended that it is the prerogative of private unaided educational institutions to have their own fee structure and as such, Karnataka Education (Amendment Act), 2017 - Karnataka Act 25 of 2017 incorporating constitution of Committee under Sections 2(11-A) and 124-A of the Act, providing penalty for contravention of Section 48 of the Act, are ultra vires and are liable to be held unconstitutional. It is further stated that there

is no independence for these institutions to charge fee reasonably, and as such, Section 124-A of the Act, which extends unfettered power to the respondent-authorities, is arbitrary and therefore, it is contended that the Rules framed thereunder is contrary to Article 14 of the Constitution of India. Referring to Rule 10 of the Rules 1995, petitioners have stated that the said Rule provides for only certain kind of fees that can be charged by educational institutions, however, Rule 10(2)(b)(ii) provides that quality of education being the criteria in arriving at the fee structure and as the quality of education being an objective, Rule 10 of the Rules 1995 would come in the way of fees to be charged by the unaided educational institutions and therefore, it is stated that any such interference made by the State-Government with the functioning and managing of the private unaided educational Institutions, would violate Articles 14 and 19(1)(g) of the Constitution of India.

2.1. Petitioner in writ petition No.47074 of 2018 is a private unaided educational institution and challenge is made to the validity of Sections 2(11-A) and 124-A of the Act. Petitioner

has raised similar contentions that are raised by petitioner-institutions in Writ Petition No.6313 of 2017.

2.2. Petitioners in writ petitions No.47077 of 2018; 5072 of 2019; 6185 of 2019; 9149 of 2019; 11657 of 2019, 6396 of 2020; 15268 of 2021; and 16418 of 2021 are the educational institutions that are affiliated to Central Board for Secondary Education (CBSE) and Indian Certificate of Secondary Education (ICSE). Writ Petition No.15241 of 2021 is filed by the Karnataka Private Schools Committee, which are affiliated to CBSE/ICSE syllabus. In these writ petitions, petitioner-Institutions are the managements of Private Educational Institutions, which are permanently unaided and are affiliated to CBSE/ICSE syllabus. It is stated that, quality of education and integrity of management, is the mantra of these institutions and petitioner-institutions have excelled academically and professionally in various fields. These institutions are self-financing bodies without any grant-in-aid either by Government or by any other source. The bye-laws of CBSE/ICSE framed to regulate such schools, are set out in paragraphs 10 to 16 in Writ Petition

No.6185 of 2019. It is further stated that the Karnataka Education Act, 1983 got Presidential Assent in the year 1993 and the Act was challenged in Writ Petition No.27432 of 1995 and connected petitions and the said writ petitions were referred to the Division Bench of this Court. The Division Bench, by order dated 10th October, 1996, upheld the validity of the Act and being aggrieved by the same, Special Leave Petitions were preferred before the Hon'ble Supreme Court, wherein leave was granted and accordingly, Civil Appeals No.366-368 of 2004 were registered before the Hon'ble Supreme Court. During the interregnum, though the constitutional validity of the Act was upheld, the Division Bench of this Court excluded the educational institutions affiliated to CBSE/ICSE syllabus from the purview of the Act. Section 1(3)(iii-a) was incorporated by Karnataka Act No.25 of 2017 on 22nd April, 2017 continuing to apply Sections 5-A, 48, 112-A and 124-A to schools affiliated to CBSC/ICSE syllabus. It is further stated that, as amended by Karnataka Act 8 of 1998, inclusion of schools affiliated to CBSE/ICSE syllabus within the purview of Education Act, was challenged in AIRFORCE SCHOOL PARENTS WELFARE ASSOCIATION,

BENGALURU v. STATE OF KARNATAKA AND OHTERS reported in 2011(2) KLJ 363 and this Court held that the inclusion of schools affiliated to CBSE/ICSE syllabus under the Act, is violative of Article 14 of the Constitution of India. The said order of the learned Single Judge was challenged before the Division Bench in the case of GOVINDAGIRI AND OTHERS v. GOVERNMENT OF KARNATAKA AND OTHERS reported in 2011(6) KLJ 133, and the Division Bench, dismissed the appeal. Despite the same, it is contended by the petitioners that, the State Government by amending the Act, extended the provisions of Sections 5-A, 48, 112-A and 124-A of the Act to the educational institutions affiliated to CBSE/ICSE syllabus, which is contrary to the aforementioned judgments. It is the principal contention of these educational institutions that, what is being done through the judicial proceedings excluding these institutions from the purview of the Act, has been illegally brought through Karnataka Education (Second Amendment) Act, 2017 and same is contrary to the law declared by the Division Bench of this Court in the case of GOVINDAGIRI (supra). It is contended that including these institutions under the Act would also run contrary to the

judgment of T.M.A. PAI FOUNDATION case, wherein it is held that the private educational institutions must have independent right to fix their own fee structure, subject to the restriction that the same should not amount to profiteering or charging captivation fee and accordingly, sought for invalidating the impugned provisions of the Act as ultra vires the Constitution of India. It is the contention of petitioners in Writ Petition No.12520 of 2021 that, Sections 2(11-A) and 124-A of Amendment Act are unconstitutional, so also, challenged Rule 4 of Rules 1999 as contrary to the law declared in T.M.A. PAI FOUNDATION case.

2.3. Writ Petition No.14703 of 2019 is filed by an Educational Institution which is a Minority institution under Article 30 of the Constitution of India. The principal contention of the petitioner is that Rule 4 of Rules 1999 and Rule 10 of Rules 1995 are contrary to the law declared in T.M.A. PAI FOUNDATION case and are outside the scope of Article 30 of the Constitution of India. It is the contention of the petitioner that the State Government has no right to fix the fees of the private

unaided educational institutions, particularly referring to minority institutions, as these educational Institutions are protected under the constitutional guarantee enshrined under Article 30 of the Constitution of India, since these private unaided educational institutions do not receive any financial assistance from the Government or the local authority for its administration and accordingly, sought for striking down Rules 1999 as amended vide Notification No.1 dated 18th May, 2018 produced as Annexure-A1 to the writ petition.

2.4. Writ Petition No.33161 of 2017 is filed by Associated Managements of Government Recognised English Medium Schools in Karnataka (KAMS) and such other Institutions. It is the contention of petitioners that the Division Bench of this Court in the case of ASSOCIATED MANAGEMENTS OF PRIMARY AND SECONDARY SCHOOLS AND OTHERS v. STATE OF KARNATAKA AND ANOTHER reported in ILR 1996 KAR 3669 held that the Act is not offending Articles 14, 19(1)(c), 19(1)(g), 29 and 30 of the Constitution of India. The said judgment was challenged before the Hon'ble Apex Court in Civil Appeals No.366-368 of 2004 and

the Hon'ble Apex Court, by order dated 26th February, 2004, remanded the matter to the respondent-Government to reconsider the issue in terms of law declared in T.M.A. PAI FOUNDATION case. Pursuant to the aforesaid order, the petitioner-Association made representation on 31st July, 2004 along with certain suggestions produced at Annexure-C to Writ Petition No.33161 of 2017. It is the contention of the petitioner-Association that the impugned Karnataka Act No.25 of 2017 is contrary to Article 19(1)(g) of the Constitution of India. It is further stated that, the introduction of Sections 2(11-A), 5-A, 112-A and 124-A to the Act, by way of amendment, contravenes Articles 14 and 19(1)(g) of the Constitution of India; and notifications made thereunder by the respondent-Government are overriding Central Acts in relation to child safety like Commission for Protection of Child Rights Act, 2005, Juvenile Justice (Care and Protection of Children) Act, 2000 and the Protection of Children from Sexual Offences Act, 2012 and accordingly, sought for interference of this Court.

3. In response to these writ petitions, respondent-Government entered appearance and filed detailed statement of objection. While justifying the Notification dated 18th May, 2018, it is stated that the said Notification has been issued in terms of Section 145 of the Act taking into account the interest of Children and to control the educational institutions from charging capitation fee and becoming profit motive. It is further stated that the impugned Notification/Amendment/Rules have been made under regulatory measures of the State Government to forbid charging of capitation fee and profiteering and as such, sought for dismissal of the writ petitions as the impugned provisions are in accordance with the dictum in T.M.A. PAI FOUNDATION case.

4. In the backdrop of these factual aspects, I have heard Sriyuths Madhusudan R Naik, S. Basavaraju, learned Senior Counsels; M.P. Srikanth, G.R. Mohan, Abhinav Ramanand Counsel for the petitioners; Sri Dhyan Chinnappa, learned Additional Advocate General and Smt. Pramodhini Kishan,

learned Additional Government Advocate for the respondent-State.

Submission on behalf of Petitioners:

5. Sri Madhusudan R. Naik, learned Senior Counsel appearing for unaided private minority educational institutions, argued on following points:

(i) The Karnataka Education Act, 1983 received the Assent of the President on the 27th October, 1993 and was published in the Karnataka Gazette on 20th January, 1995. However, subsequent amendments are made without the Presidential Assent and therefore, incorporating Sections 5-A and 48 in the Act, so also, penalties for violations thereof, are contrary to Articles 14, 19(1)(g) and 30 of the Constitution of India.

(ii) Article 30 of the Constitution of India guarantees all minorities, whether based on religion or language, shall have the right to establish and administer educational institution of their choice and therefore, interference made by the State Government through impugned amendments to the Act entails

the management of affairs of such institutions and therefore, the impugned Rules (as amended), thus puts a complete and total restriction on the autonomy of educational institutions established by minority community and thereby violate fundamental rights guaranteed under Articles 29 and 30 of the Constitution of India.

iii) Referring to the judgment of the Hon'ble Apex Court in the case of T.M.A. PAI FOUNDATION, learned Senior Counsel submitted that impugned amendment to the Act and Rules thereunder are in violation of the spirit of the questions answered by the Hon'ble Supreme Court in the said case.

iv) Learned Senior Counsel referred to the judgment of the Hon'ble Apex Court in the case of ISLAMIC ACADEMY v. STATE OF KARNATAKA reported in (2003)6 SCC 687 and submitted that fee structure of private institutions cannot be interfered with by the Government. Emphasising on these aspects, learned Senior Counsel submitted that there has to be difference in the administration of private unaided educational institutions and Government or aided institutions. Insofar as Government or

aided educational institutions are concerned, the Government would have a say inter alia in fixing of the fees. But, in the case of private unaided educational institutions, maximum autonomy in the day-to-day administration has to vest with the private unaided educational institutions itself. Referring to impugned amendment/notification/Rules, learned Senior Counsel argued that, the same would undermine the independence of the private unaided educational institutions.

v) Sri Madhusudan R. Naik, invited the attention of the Court to Rule 10(3)(c) of Rules 1995 and Rule 4 of Rules 1999, and argued that the impugned Amendment/Notification/Rules are ultra vires, as they are in the teeth of the law declared in T.M.A. PAI FOUNDATION case. Learned Senior Counsel also referred to the law declared by the Hon'ble Apex Court in the case of PRAMATI EDUCATIONAL AND CULTURAL TRUST (REGD.) AND OTHERS v. UNION OF INDIA AND OTHERS reported in (2014)8 SCC 1 and in the case of SOCIETY FOR UNAIDED PRIVATE SCHOOLS OF RAJASTHAN v. UNION OF INDIA AND ANOTHER reported in (2012)6 SCC 1, and argued that the State

Government ought to have excluded the private unaided educational institutions, particularly minority educational institutions, from the purview of the Act, insofar as fixing fee and accordingly, sought for interference of this Court.

6. Nextly, Sri S. Basavaraju, learned Senior Counsel appearing for petitioner-Schools affiliated to CBSE/ICSE syllabus, argued that, fee structure can be fixed by the management, based on the quality and standard of education imparted by such educational institutions, subject to the condition that there is no profiteering or charging of capitation fee as per the dictum in the case of T.M.A. PAI FOUNDATION. Referring to the bye-laws of both CBSE/ICSE Boards, learned Senior Counsel submitted that these schools can charge fee independently, which are commensurate with the facilities provided by them and for imparting quality education and therefore, such fee cannot be termed as capitation fee.

7. Sri Basavaraju, learned Senior Counsel, further invited the attention of the Court to Section 145 of the Act which provides for framing of Rules by the State Government and also

the judgment of the Division Bench of this Court in Writ Petition No.27432 of 1995 and connected petitions in KARNATAKA UNAIDED SCHOOLS MANAGEMENTS' ASSOCIATION v. STATE OF KARNATAKA AND OTHERS decided on 01st December, 2022, and contended that the impugned provisions in the said petitions having been struck down as unconstitutional taking into consideration the law declared in T.M.A. PAI FOUNDATION case similarly, the provisions of the Act impugned in the present writ petitions are also liable to be held as ultra vires of the Constitution of India, taking into consideration the grievance of the private unaided educational institutions, particularly, of the schools that are affiliated to CBSE/ICSE syllabus and governed by the bye-laws of the respective Boards which are autonomous in the sphere of admissions, appointments, etc and as such, argued for allowing of writ petitions.

8. Sri M.P. Srikanth, learned counsel appearing for the private unaided educational institutions, while referring to Sections 2(11-A) and 124-A of the Act, argued that the State Government has to be model to others and to encourage the

establishment of private Schools. The impugned provisions would violate the opportunities which are extended to the private managements to fix the fee structure as per the standards of education imparted by such institutions. The impugned Act and Rules provide rigid formulae which are contrary to the law declared by the Hon'ble Apex Court in T.M.A. PAI FOUNDATION case. He further contended that, Section 2(11-A) of the Act provides unfettered power to the administrative authorities to interfere with the functioning of private management. He submitted that, imposition of Rs.10.00 lakh as penalty under the Act is exorbitant and no guiding principles are laid down in that regard, and the role of Executive to interfere with the right of fixation of fee is unfettered and same is contrary to the observation made at paragraph 55 of the judgment of the Hon'ble Supreme Court in T.M.A. PAI FOUNDATION case. Referring to Section 2(11-A) of the Act, Sri Srikanth submitted that an "authority" would be constituted under the Chairmanship of the Deputy Commissioner of the District and the said "authority" cannot be formed by way of delegated legislation. He further argued that, what needs to be stated is that, such

"authorities" should be authorised to determine violation of fee structure as prescribed under Section 48 of the Act and thereafter, imposition of fine would arise and therefore, sought for interference of this Court.

9. Sri G.R. Mohan, learned counsel appearing for the petitioner in writ petition No.33161 of 2017 argued on similar lines of learned Senior Counsel Sri Madhusudan Naik. He invited the attention of the Court to Section 5-A of the Act and submitted that there is no yardstick that provides for maintaining safety and security of the students and there is no procedure provided under the Act or Rules to impose penalty, collection of fine or to collect fee, etc. from the students. He also referred to the provisions under the RTE Act and submitted that, as these educational institutions are admitting students under the RTE Act, the State Government ought not to have interfered with the fee structure of the private educational institutions and as such, sought for interference of this Court. He further argued that Sections 5-A and 112-A of the Act are

overlapping with each other and are contrary to other provisions of the Act. Accordingly, he sought for interference of this Court.

10. Sri Abhinav Ramanand, learned counsel appearing for the petitioner in writ petition No.5072 of 2019 argued that the amended Rules stipulating the fee, not exceeding 10% of the tuition fee, can be collected as a term fee under Rule 10(3)(a)(i) of Rules 1995, is contrary to the dictum of the Hon'ble Apex Court in the case of T.M.A. PAI FOUNDATION, as the said Schools are not receiving fees for students from L.K.G. to 5th standard and there is no rationale or legal basis for excluding the above classes and disabling the Schools from collecting the term fee. He further argued that the private unaided educational institutions are providing various facilities in the growth of education and training, newer facilities of infrastructure which incur huge capital expenditure and therefore, the unaided private educational institutions should have their own fee structure, however, same should not be unreasonable and as such, he argued that the impugned Rule 10(3)(a)(i) of the Rules 1995 is arbitrary.

Submission on behalf of respondent-Government

11. On the other hand, learned Additional Advocate General Sri Dhyan Chinnappa, invited the attention of the Court to the Statement of Objects and Reasons of the Act and argued that it is necessary to provide for the planned development of educational institutions, maintenance and improvement in the standards of education. He further argued that the impugned Rules 1995 and Rules 1999 provide for maintaining discipline amongst the private unaided educational institutions and same cannot be construed as a control by the State Government. Sri Dhyan Chinnappa, invited the attention of the Court to paragraph 69 of the judgment in the case of T.M.A. PAI FOUNDATION and argued that the imposition of penalty, safety measures and the impugned Rules are reasonable to promote rational fee structure to be adopted by the private managements. It is the submission of the learned Additional Advocate General that impugned notification/Amendment/Rules are devised to check the charging of exorbitant fees by the private educational institutions and as such, he submitted that

these Notifications have been issued to ensure that there is no capitation fee/no profiteering/no commercialisation of Education amongst the private educational institutions and they have to run on 'no profit no loss' principle. In this regard, learned Additional Advocate General referred to the decision of the Hon'ble Supreme Court in the case of MODERN DENTAL COLLEGE AND RESEARCH CENTRE AND OTHERS v. STATE OF MADHYA PRADESH AND OTHERS reported in (2016)7 SCC 353, and argued that the State Government, in exercise of the limitations provided under the Constitution of India, shall interfere with such institutions which charge fees unreasonably and therefore, the impugned notification providing restriction to fixation of fee is not violative of Articles 14 and 19(1)(g) of the Constitution of India. Learned Additional Advocate General also referred to the recent judgment of the Hon'ble Apex Court in the case of INDIAN SCHOOL, JODHPUR AND ANOTHER v. STATE OF RAJASTHAN AND OTHERS reported in (2021)10 SCC 517 and argued that, Hon'ble Supreme Court has accepted the Rules made by the State of Rajasthan interfering with the fixation of fee by the private unaided educational institutions under similar

circumstances, and therefore, the same yardstick be made applicable through the impugned Notification/Amendment/Rules and as such, sought for dismissing the petitions. He also produced the copy of the letter dated 04th June, 2021 addressed by the Central Board of Secondary Education, clarifying regarding regulation of fee structure and argued that Chapter VII of the CBSE Affiliation Bye-laws have to be regulated by the State Government to fix the fee structure in CBSE affiliated Schools in the State and accordingly, sought for dismissal of the petitions.

Finding:

12. In the light of the submissions advanced by the learned counsel appearing for the parties, I have given my anxious consideration to the validity of the Notification/Amendment/Rules in writ petitions. The core question to be answered in these writ petitions is, whether the impugned Notification/Amendment/Rules 1995 and Rules 1999, are made applicable to private unaided educational institutions and Minority Institutions.

13. At this stage, it is appropriate to mention the recent judgment of the Division Bench of this Court in Writ Petition No.27432 of 1995 and connected petitions decided on 01st December, 2022, wherein this Court had an occasion to test the legality of certain provisions under the Act and while upholding the order of the learned Single Judge, quashed the provisions of the Act and Rules made thereunder as ultra vires of the Constitution of India as the same is contrary to law declared by Hon'ble Supreme Court in T.M.A. PAI FOUNDATION case.

14. Before adverting to analyse the validity of the impugned provisions, it is convenient to deduce the relevant provisions of the Act. Section 29 of the Act, which provides for classification of Educational Institutions in State of Karnataka, reads thus:

> "***Section 29: Classification of educational institutions.*** *- The educational institutions shall be classified as follows:-*
>
> *(a) state institutions, that is to say, educational institutions established or maintained and administered by State Government;*

(b) local authority institutions, that is to say, educational institutions established or maintained and administered by a local authority, and

(c) private educational institutions, that is to say,. educational institutions established or maintained and administered by any person or body of persons registered in the manner prescribed."

15. Section 1(3)(iii-a) of the Act reads as under:

"***1. Short title, extent, application and commencement.*** *- (1) Act may be called the Karnataka Education Act, 1983.*

(2) xxx xxx xxx

(3) It applies to all educational institutions and tutorial institutions in the State except,-

(i) to (iii) xxx xxx xxx

(iiia) Educational Institutions affiliated to or recognized by the Council of Indian School Certificate Examination or Central Board of Secondary Education respectively but subject to condition that the provisions of section 5A, 48, 112A and 124A of this Act shall continue to apply to these institutions."

16. Section 2(11-A) of the Act reads as under:

"*District Education Regulatory Authority means, an authority constituted under the Chairmanship of the Deputy Commissioner of a District with*

composition, roll, functions and powers as may be prescribed by Rules."

17. It is also useful to Extract Sections 5-A, 48, 112-A and 124-A of the Act. The same read as under:

*"**Section 5-A. Safety and security of students:-***

Every educational institution and an employee of such educational institutions shall take such measures to ensure safety and security of students including protection from sexual offences, in the manner as may be prescribed."

Section 48. Fees.-

(1) Subject to any other law for the time being in force, no Governing Council of a recognised educational institution shall levy or collect any fees or charges or donations or other payments, by whatever name called, save such and at such rate and in such manner as may be prescribed.

(2) The amounts levied or collected under sub-section (1) shall be utilised by the educational institution in accordance with such rules as may be prescribed.

Section 112-A: Penalty for contravention of Section 5-A:

(1) Any employee or member of the management of an educational institution who contravenes

Section 5-A shall on conviction, be punished with imprisonment for a minimum term of six months and with a fine which may extend to one lakh rupees.

(2) Whenever any educational institution is found to be in contravention of Section 5-A in an enquiry conducted, after giving an opportunity of being heard, by the District Education Regulatory Authority, it shall impose a penalty which may extend to ten lakh rupees.

(3) The District Education Regulatory Authority after such enquiry has found that any educational institution has contravened the provisions of Section-5A shall also recommend to the Competent Authority or concerned authority for withdrawal of recognition or affiliation to such institution.

Section 124-A: Penalty for contravention of Section 48:-

Any educational institution is found guilty of contravention of provisions of Section 48 in an enquiry conducted, after providing an opportunity of being heard, by the District Education Regulatory Authority, it shall impose a penalty which may extend to ten lakh rupees and also direct for refund of amount so collected by the institution in excess of the amount prescribed under Section.48."

18. Before appreciating the submission of the learned counsel for the parties, it is relevant to put forth the dictum of the Hon'ble Supreme Court relating to the challenge made to the

validity of the Act and the Rules made thereunder. In the case of MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION AND ANOTHER v. PARITOSH BHUPESH KURMARSHETH, ETC. ETC. reported in AIR 1984 SC 1543, Hon'ble Supreme Court has observed that *"it is a common legislative practice that the legislature may choose to lay down only the general policy and leave to its delegate into effect the said policy and effectuate the purposes of the Statute by framing rules/regulations which are in the nature of subordinate legislation."*

19. In the case of M/S. TATA IRON AND STEEL CO. LTD. v. WORKMEN OF M/S. TATA IRON AND STEEL CO. LTD. AND OHTERS reported in AIR 1972 SCC 1917, the Hon'ble Supreme Court in the course of judgment observed that, "*…the increasing complexity of modern administration and the need for flexibility capable of rapid re-adjustment to meet changing circumstances have rendered it convenient and practical, nay necessary, for the Legislatures to have frequent resort to the practice of delegating subsidiary or ancillary powers to delegates of their choice. The*

delegation of legislative power is however, permissible only when the legislative policy and principle is adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the Legislature."

20. The Constitution Bench of Hon'ble Supreme Court in the case of EXPRESS NEWSPAPER (PRIVATE) LTD. AND ANOTHER v. THE UNION OF INDIA AND OTHERS reported in AIR 1958 SC 578 at paragraphs 168 to 170 and at paragraph 211 of the judgment, observed thus:

> *"168. In Chintaman Rao v. The State of Madhya Pradesh ([1950] S.C.R. 759, 763) Mahajan J. (as he then was) observed at p.763 :-*
>
> > *"The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g), and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality." [cited with approval in Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh.*

([1954] S.C.R. 803, 811) and in Ch. Tika Ramji v. State of Uttar Pradesh and Ors. ([1956] S.C.R. 393, 446)].

169. The State of Madras v. V.G. Rao ([1952] S.C.R. 597, 606, 607) was the next case in which this phrase came to be considered by this Court and Patanjali Sastri C.J. observed:-

> *"This Court had occasion in Dr. Khare's case ([1950] S.C.R. 519) to define the scope of the judicial review under clause of (5) of Article 19 where the phrase "imposing reasonable restriction on the exercise of the right" also occurs and four of the five judges participating in the decision expressed the view (the other judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness : that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, where-ever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."*

170. This criterion was approved of in State of West Bengal v. Subodh Gopal Bose & Others ([1954] S.C.R. 587, 626) where the present Chief Justice further

expressed his opinion that the fact of the statute being given retrospective operation may also be properly taken into consideration in determining the reasonableness of the restriction imposed in the interest of the general public [see also a recent decision of this Court in Virendra v. State of Punjab.

171 to 210 xxx xxx xxx

211. The principle underlying the enactment of Article 14 has been the subject-matter of various decisions of this Court and it is only necessary to set out the summary thereof given by Das J. (as he then was) in Budhan Choudhry & Others v. The State of Bihar:-

> *"The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chranjit Lal Chowdhuri v. The Union of India [1950] S.C.R. 869) The State of Bombay v. F.N. Balsara ([1951] S.C.R. 682), The State of West Bengal v. Anwar Ali Sarkar ([1952] S.C.R. 284), Kathi Raning Rawat v. The State of Saurashtra ([1952] S.C.R. 435), Lachmandas Kewalaram Ahuja v. The State of Bombay ([1952] S.C.R. 710), Quasim Razvi v. The State of Hyderabad ([1953] S.C.R. 581), and Habeeb Mohamad v. The State of Hyderabad ([1953] S.C.R. 661). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which*

distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

It is the light of these observations that we shall now proceed to consider whether the impugned Act violates the fundamental right of the petitioners guaranteed under Article 14 of the Constitution."

21. In the case of M/S. HOECHST PHARMACEUTICALS LTD. AND OTHERS v. STATE OF BIHAR AND OTHERS reported in (1983)4 SCC 45, the Hon'ble Supreme Court observed that, *"It is a well established rule of construction that the entries in the three lists must be read in a broad and liberal sense and must be given the widest scope which their meaning is fairly capable of because they set up a machinery of Government."*

22. The Hon'ble Supreme Court in the case of INDIAN EXPRESS NEWSPAPERS (BOMBAY) PRIVATE LTD. AND OTHERS

v. UNION OF INDIA AND OTHERS reported in (1985)1 SCC 641 at paragraphs 75 to 78 of the judgment, observed thus:

> *"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires" The present position of law bearing on the above point is stated by Diplock, L.J. in Mixnam Properties Ltd. v. Chertsey U.D.C.(1) thus:*
>
> > *'The various grounds upon which subordinate legislation has sometimes been said to be void -...-- can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid must be shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalid dates a by-law is not the antonym of 'reasonableness' in the sense of which that*

expression is used in the common law, but such mainfest arbitrariness, injustice or partiality that a court would say: 'Parliament never intended to give authority to make such rules: they are unreasonable and ultra vires.. -' If the courts can declare subordinate legislation to be invalid for 'uncertainty,' as distinct from unenforceable-this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain."

76. Prof. Alan Wharam in his Article entitled 'Judicial Control of Delegated Legislation: The Test of Resonableness' in 36 modern Law Review 611 at pages 622-23 has summarised the present position in England as follows:

"(i) It is possible that the courts might invalidate statutory instrument on the grounds of unreasonableness or uncertainty, vagueness or arbitrariness; but the writer's (1) [1964] 1 Q.B.. 214. view is that for all practical purposes such instruments must be read as forming part of the parent statute, subject only to the ultra vires test.

(ii) The courts are prepared to invalidate by- laws, or any other form of legislation, emanating from an elected, representative authority, on the grounds of unreasonableness uncertainty or repugnance to the ordinary law; but they are reluctant to do so and will exercise their power only in clear cases.

(iii) The courts may be readier to invalidate by-laws passed by commercial undertakings under statutory power, although cases reported during the present century suggest that the distinction between elected

authorities and commercial undertakings, as explained in Kruse v. Johnson, might not now be applied so stringently.

(iv) As far as subordinate legislation of non-statutory origin is concerned, this is virtually obsolete, but it is clear from In re French Protestant Hospital [1951] ch. 567 that it would be subject to strict control." (See also H.W.R. Wade: Administrative Law (5th Edn.) pp. 747-748).

77. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

78. That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in The Tulsipur Sugar Co. Ltd. V. The Notified Area Committee, Tulsipur, Rameshchandra Kachardas Porwal v. State of Maharashtra and in Bates v. Lord Hailsham of St. Marylebone. A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into

and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc. etc. On the facts and circumstances of a case, a subordinate legislation be may struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) or of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken n into account relevant circumstances which the Court considers relevant."

23. The Hon'ble Supreme Court, in the case of SHASHIKANT LAXMAN KALE AND ANOTHER v. UNION OF INDIA AND ANOTHER reported in (1990)4 SCC 366, at paragraphs 8 and 14 to 18, it is observed thus:

"*8. The main question for decision is the discrimination alleged by the petitioners. The principles of valid classification are long settled by a catena of*

decisions of this Court but their application to a given case is quite often a vexed question. The problem is more vexed in cases falling within the grey zone. The principles are that those grouped together in one class must possess a common characteristic which distinguishes them from those excluded from the group; and this characteristic or intelligible differentia must have a rational nexus with the object sought to be achieved by the enactment. It is sufficient to cite the decision in In Re the Special Courts Bill, 1978-and to refer to the propositions quoted at p. 534-537 therein. Some of the propositions are stated thus:

> *"2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.*
>
> *3. The Constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.*
>
> *4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the*

Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

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6. *The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.*

7. *The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be rounded on' an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.*

8. *The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon person arbitrarily selected out of a large number of other*

persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

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11. Classification necessarily implied the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality, in no manner determines the matter of constitutionality."

14. We must, therefore, look beyond the ostensible. classification and to the purpose of the law and apply the test of 'palpable arbitrariness' in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of the classification. It is clear that the role of public sector in the sphere of promoting the national economy and the context of felt needs of the times and societal exigencies informed by experience gained from its functioning till the enactment are of significance. There is no dispute that the impugned provision includes all employees of the public sector and none not in the public sector. The question is whether those left out are similarly situated for the purpose of the enactment to render the classification palpably arbitrary.

It is only if this test of palpable arbitrariness applied in this manner is satisfied, that the provision can be faulted as discriminatory but not otherwise. Unless such a defect can be found, the further question of construing the provision in such a manner as to include all employees and not merely employees of public sector companies, does not arise.

15. It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differntia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In Francis Bennion's Statutory Interpretation, 1984 edition, the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised at p. 237 as under:

> *"The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."*

16. There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification,

the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the materi- al which can be used for this exercise.

17. For determining the purpose or object of the legislation, it is permissible to look into the circumstances which. prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In A. Thangal Kunju Musaliar v. M. Venkitachalam Potti & Anr., [1955] 2 S.C.R. 1196, the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law" was relied on. It was reiterated in State of West Bengal v. Union of India, that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for 'the limited purpose of under- standing the

background and the antecedent state of affairs leading up to the legislation.' Similarly, in Pannalal Binjraj v. Union of India, a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income Tax Act.

18. Not only this, to sustain the presumption of constitutionality, consideration may be had even to matters of common knowledge; the history of the times; and every conceivable state of facts existing at the time of legislation which can be assumed. Even though for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasise the availability of larger material to the Court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision."

24. In the case of OM PRAKASH AND OTHERS v. STATE OF UTTAR PRADESH AND OTHERS reported in (2004)3 SCC 402 at paragraphs 32 and 33, the Hon'ble Supreme Court, observed thus:

"32. The concept of 'reasonableness' defies definition. Abstract definition like 'choice of a course which reason dictates' as propounded in the earliest case of this Court in Chintaman Rao (Supra) is elastic. In the subsequent case of V.G. Row (supra), therefore, this Court has observed that 'no abstract standard or general pattern' of reasonableness can be laid down as applicable to all cases. Legal Author Friedmann in his book 'Legal Theory, 4th Ed., at pages 83-85', comments that reasonableness is an expression used to convey basically the Natural Law ideal of 'justice between man and man'. The concept of 'reasonable man' is also an application of the principles of natural justice to the standard of behaviour expected of the citizen. The functional and conceptual implication of the term 'reasonableness' is that it is essentially another word used for public policy. It means the application of the underlying principles of social policy and morality to an individual case. Friedmann further observes that the 'test of reasonableness is nothing substantially different from 'social engineering', 'balancing of interests', or any of the other formulas which modern sociological theories suggest as an answer to the problem of the judicial function'.

33. The term 'reasonable restriction' as used in Articled 19(6) is highly flexible and relative term which draws its colour from the context. One of the sources to understand it is natural law and in the sense of ideal,

just, fair, moral or conscionable to the facts and circumstances brought before the Court."

25. In the case of STATE OF TAMILNADU AND OTHERS v. NATIONAL SOUTH-INDIAN RIVER INTERLINKING AGRICULTURIST ASSOCIATION reported in 2021 SCC ONLINE SC 1114, at paragraphs 28, 31 and 32 of the judgment, it is observed thus:

"*28. The determination of whether the classification is under-inclusive is closely related to the test that is undertaken by the Court while determining the relationship of the means to the end. This Court follows the two-pronged test to determine if there has been a violation of Article 14. The test requires the court to determine if there is a rational nexus with the object sought to be achieved. Justice P.N. Bhagwati (as the learned Chief Justice then was) in EP Royappa v. State of Tamil Nadu held that arbitrariness of State action is sufficient to constitute a violation of Article 14. Thus, it came to be recognized that the equality doctrine as envisaged in the Constitution not only guarantees against comparative unreasonableness but also non-comparative unreasonableness. This Court in Modern Dental College and Research Centre v. State of MP, invoked the proportionality test while testing the validity of the statute and rules that sought to regulate admission, fees*

and provided reservations for postgraduate courses in private educational institutions. In Subramanian Swamy v. Union of India, the Court used the proportionality test to determine if the offence of criminal defamation prescribed under Sections 499 and 500 of the IPC violates the freedom of speech and expression under Section 19(1)(a). In Justice Puttaswamy (Retd.) v. Union of India, a nine judge Bench of this Court held that the right to privacy is a fundamental right. The proportionality standard was used in the context of determining the limits that could be imposed on the right to privacy. The Constitution Bench then dealt with the proportionality test in Justice Puttaswamy (Retd.) v. Union of India, to determine if the Aadhar scheme violated the right to privacy of an individual. Our Courts have used the proportionality standard to determine non-classificatory arbitrariness, and have used the twin test to determine if the classification is arbitrary.

31. While non-classification arbitrariness is tested based on the proportionality test, where the means are required to be proportional to the object, classification arbitrariness is tested on the rational nexus test, where it is sufficient if the means the judgment of this Court on whether the law is under-inclusive or over-inclusive. A statute is 'under-inclusive' if it fails to regulate all actors who are part of the problem. It is 'over-inclusive' if it regulates actors who are not a part of the problem that the statute seeks to address. The determination of under-

inclusiveness and over-inclusiveness, and degree of deference to it is dependent on the relationship prong ('rational nexus' or 'proportional') of the test.

32 The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a 'rational nexus' to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied. A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision. The Indian Courts do not apply the proportionality standard to classificatory provisions. Though the two-judge Bench in Anuj Garg (supra) articulated the proportionality standard for protective discrimination on the grounds in Article 15; and Justice Malhotra in Navtej Singh Johar (supra) held that less deference must be allowed when the classification is based on the 'innate and core trait' of an individual, this is not the case to delve into it. Since the classification in the impugned scheme is based neither on the grounds in Article 15 nor on the 'innate and core trait' of an individual, it cannot be struck down on the alleged grounds of under-inclusiveness and over-inclusiveness."

26. It is well established principle in law by the Constitution Bench of the Hon'ble Supreme Court in the case of RAMAKRISHNA DALMIA v. JUSTICE TENDOLKAR reported in AIR 1958 SC 588, that there is always a presumption in favour of the Constitutionality of an enactment and the duty lies on the petitioner, who is challenging the said enactment that the impugned enactment is beyond the competence of the Legislature or contrary to constitutional principles. It is also equally important that while analysing the legislative competence or validity of an enactment/Rule, it is the duty of the Court to see the nature and character of the impugned legislation/Rule. In such investigation, the courts do examine the effect of the legislation and take into consideration its object, purpose or design for the purpose of ascertaining its true character, i.e. pith and substance of the Act, to determine what prompted the Legislature/subordinate legislature to make such legislation/Rule. Having taken note of the aforementioned principles enunciated by the Hon'ble Supreme Court in a catena of decisions referred to above, I have given my anxious consideration on the Statement of Objects and Reasons of the

Act, which provide for better organisation, development, discipline and control of the educational institutions in the State. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court in the case of SECURITY ASSOCIATION OF INDIA AND ANOTHER v. UNION OF INDIA AND OTHERS reported in AIR 2014 SC 3812, wherein at paragraphs 44 to 47 of the judgment, it is held thus:

> *"44. Article 246 of the Constitution does not provide for the competence of Parliament or the State Legislatures as commonly perceived but merely provides for their respective fields. Article 246 only empowers the Parliament to legislate on the entries mentioned in List-I and List-III of the Seventh Schedule and that in case of a conflict between a State Law and a Parliamentary Law under the entries mentioned in List-III, the Parliamentary law will prevail. It does not follow that the Parliament has a blanket power to legislate on entries mentioned in List-II as well. Thus, the argument of the appellants that the Parliament has supreme right to legislate over any area as per Article 246(1) is misplaced. Furthermore, this Court in Welfare Association, A.R.P., Maharashtra & Anr. vs. Ranjit P. Gohil & Ors., also held that:*
>
> > *"The fountain source of legislative power exercised by Parliament or the State Legislatures is not Schedule 7; the fountain source is Article 246*

and other provisions of the Constitution. The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power."

45. It has become a well-established principle that there is a presumption towards the constitutionality of a statute and the courts should proceed to construe a statute with a view to uphold its constitutionality. (See: State of Andhra Pradesh vs. K. Purushottam Reddy & Ors.[41], State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors. (supra), (paras 20 and 70, State of MP vs. Rakesh Kohli & Anr.)

46. In light of the above, we will answer the question of repugnancy of the State Act with respect to the Central Act. The question of repugnancy arises only in connection with the subjects enumerated in the Concurrent List (List –III), on which both the Union and the State Legislatures have concurrent powers to legislate on the same subject i.e. when a Stale Law and Central Law pertain to the same entry in the Concurrent List. Article 254(1) provides that if a State law relating to a concurrent subject is 'repugnant' to a Union law then irrespective of the Union law being enacted prior to or later in time, the Union law will prevail over the State law. Thus, prior to determining whether there is any repugnancy or not, it has to be determined that the State Act and the Central act both relate to the same entry in List-III and there is a 'direct' and irreconcilable' conflict

between the two. i.e. both the provisions cannot stand together.

47. Article 254 of the Constitution is only applicable when the State Law is in its 'pith and substance' a law relating to an entry of the Concurrent List on which the Parliament has legislated. It has been well established that to determine the validity of a statute with reference to the entries in the various lists,, it is necessary to examine the pith and substance of the Act and to find out if the matter comes within an entry in List-III. The Court while examining the pith and substance of a statute must examine the whole enactment, its objects, scope and effect of its provision. Only if it is found that the two enactments cover the same matter substantially and that there is a direct and irreconcilable conflict between the two, the issue of repugnancy arises. (See: State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors. (supra), Offshore Holding Pvt. Ltd. vs. Bangalore Development Authority & Ors. (supra), State of West Bengal vs. Kesoram Industries & Ors."

27. I have taken note of the principles laid down by the Hon'ble Apex Court in the aforementioned cases. It is no doubt true that Article 14 of the Constitution of India guarantees not only equality before law, but also confers equal protection of laws and prohibits the State from denying the person an equal

treatment, provided they are equals and are similarly situated. Article 14 also seeks to prevent arbitrariness. It is well established principle in law that Article 14 forbids class legislation in the sense of making improper discrimination by conferring privileges upon persons arbitrarily selected. Article 14 forbids class legislation but does not forbid reasonable classification for the purposes of legislation. The Constitution of Bench of the Hon'ble Supreme Court in the case of CONFEDERATION OF EX-SERVICEMEN ASSOCIATION AND OTHERS V. UNION OF INDIA AND OTHERS reported in AIR 2006 SC 2945, at paragraphs 29 to 35 has observed thus:

> *"29. The principle laid down in Anwar Ali Sarkar and Budhan Choudhry has been consistently followed and reiterated by this Court in several subsequent cases. Ram Krishna Dalmia v. Justice Tendolkar, 1959 SCR 279 : AIR 1958 SC 538; V.C. Shukla v. State (Delhi Administration); 1980 Supp. SCC 249 : AIR 1980 SC 1382; Special Courts Bill, Re, (1979) 1 SCC 380 : AIR 1979 SC 478 : (1979) 2 SCR 476; R.K. Garg v. Union of India, (1981) 4 SCC 675 : AIR 1981 SC 2138; State of A.P. & Ors. v. Nallamilli Rami Reddi & Ors., (2001) 7 SCC 708 : AIR 2001 SC 3616; M.P. Rural Agriculture Extension*

Officers Association v. State of M.P. & Anr., (2004) 4 SCC 646 : AIR 2004 SC 2020].

30. In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfil the twin-test, namely;

> *(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and*
>
> *(ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question.*

31. In our considered opinion, classification between in-service employees and retirees is legal, valid and reasonable classification and if certain benefits are provided to in-service employees and those benefits have not been extended to retired employees, it cannot be successfully contended that there is discrimination which is hit by Article 14 of the Constitution. To us, two categories of employees are different. They form different classes and cannot be said to be similarly situated. There is, therefore, no violation of Article 14 if they are treated differently.

32. Likewise, a classification between defence personnel and other than defence personnel is also reasonable and valid classification. Moreover, it is clarified by the respondents in the counter-affidavit that for medical facilities provided to retired civil servants, there

is also a scheme known as the Central Government Health Scheme (CGHS), which is again contributory. Retired Central Government Servants who are members of the scheme are covered by the said scheme and they are provided medical services on payment of specified amount under the scheme. We, therefore, see no substance in the argument of the petitioners that the impugned action in not providing full and free medical facilities to retired defence personnel infringes Article 14 of the Constitution.

33. We are also not impressed by the argument that all medical benefits and facilities must be provided to ex- servicemen under the doctrine of 'legitimate expectation'. The doctrine of 'legitimate expectation' is a 'latest recruit' to a long list of concepts fashioned by Courts for review of administrative actions. No doubt, the doctrine has an important place in the development of Administrative Law and particularly law relating to 'judicial review'. Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise

either from the express promise or from consistent practice which the applicant may reasonably expect to continue.

34. The expression 'legitimate expectation' appears to have been originated by Lord Denning, M.R. in the leading decision of Schmidt v. Secretary of State, [(1969) 1 All ER 904 : (1969) 2 WLR 337 : (1969) 2 Ch D 149]. In Attorney General of Hong Kong v. Ng Yuen Shiu, [(1983) 2 All ER 346 : (1983) 2 AC 629], Lord Fraser referring to Schmidt stated;

> *"The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.*

35. In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised."

28. In the case of INDEPENDENT THOUGHT v. UNION OF INDIA AND ANOTHER reported in (2017)10 SCC 800, where the

constitutional validity thereto was challenged, the Hon'ble Supreme Court had an occasion to elucidate the power of the Courts to interfere with the legislation/Rule. At paragraphs 161 to 175 of the judgment, it is observed thus:

"POWER OF THE COURT TO INTERFERE

161. It is a well settled principle of law that when the constitutional validity of the law enacted by the legislature is under challenge and there is no challenge to the legislative competence, the Court will always raise a presumption of the constitutionality of the legislation. The courts are reluctant to strike down laws as unconstitutional unless it is shown that the law clearly violates the constitutional provisions or the fundamental rights of the citizens. The Courts must show due deference to the legislative process.

162. There can be no dispute with the proposition that Courts must draw a presumption of constitutionality in favour of laws enacted by the legislature. In Sub-Divisional Magistrate v. Ram Kali, this Court observed as follows:

> *".....The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, and its laws are directed to problems made*

manifest by experience and its discriminations are based on adequate grounds."

163. Thereafter, in Pathumma & Ors. v. State of Kerala and Ors., this Court held that the Court would interfere only when the statute clearly violates the rights of the citizens provided under Part III of the Constitution or where the Act is beyond the legislative competence or such similar grounds. The relevant observations are as follows:

> *"6. It is obvious that the Legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weaker sections of the society and for the improvement of the lot of poor people. The Court will, therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. It is for this reason that the Courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same..."*

164. In Government of A.P. v. P. Laxmi Devi, this Court held thus:

> *"66. As observed by the Privy Council in Shell Co. of Australia v. Federal Commr. of Taxation [1931 AC 275:1930 All ER Rep 671 (PC)] (All ER p. 680 G-H)*

"...unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will..."

67. Hence if two views are possible, one making the provision in the statute constitutional, and the other making it unconstitutional, the former should be preferred vide Kedar Nath Singh v. State of Bihar [AIR 1962 SC 955]. Also, if it is necessary to uphold the constitutionality of a statute to construe its general words narrowly or widely, the court should do so vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 497....."

165. In Subramanian Swamy v. Director, CBI, a Constitution Bench of this Court laid down the following principle:

*"**Court's approach***

49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now

well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders – if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is."

166. I am conscious of the self imposed limitations laid down by this Court while deciding the issue whether a law is constitutional or not. However, if the law is discriminatory, arbitrary or violative of the fundamental rights or is beyond the legislative competence of the legislature then the Court is duty bound to invalidate such a law.

167. Justice H.R. Khanna in the case of State of Punjab v Khan Chand held that when Courts strike down laws they are only doing their duty and no element 50 (1974) 1 SCC 549 W.P. (C) No. 382 of 2013 Page 105 of judicial arrogance should be attributed to the Courts when they do their duty under the Constitution and determine whether the law made by the legislature is in conformity with the provisions of the Constitution or not. The relevant observations are as follows:

"12. It would be wrong to assume that there is an element of judicial arrogance in the act of the Courts in striking down an enactment. The Constitution has assigned to the Courts the function of determining as to whether the laws made by the Legislature are in conformity with the provisions of the Constitution. In adjudicating the constitutional validity of statutes, the Courts discharge an obligation which has been imposed upon them by the Constitution. The Courts would be shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional, even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 226 are an integral part of the Constitution and provide remedies for enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the Courts to declare the provisions of an enactment to be unconstitutional, even though they are found to infringe the Constitution because of any notion of judicial humility would in a large number of cases have the effect of taking away or in any case eroding the remedy provided to the aggrieved parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It is as much the duty of the Courts to declare a provision of an enactment to be unconstitutional if it contravenes any Article of the Constitution as it is theirs to uphold its validity in case it is found to suffer from no such infirmity."

168. Therefore, the principle is that normally the Courts should raise a presumption in favour of the impugned law; however, if the law under challenge violates the fundamental rights of the citizens, the law is arbitrary, or is discriminatory, the Courts can either hold

the law to be totally unconstitutional and strike down the law or the Court may read down the law in such a manner that the W.P. (C) No. 382 of 2013 Page 106 law when read down does not violate the Constitution. While the Courts must show restraint while dealing with such issues, the Court cannot shut its eyes to the violations of the fundamental rights of the citizens. Therefore, if the legislature enacts a law which is violative of the fundamental rights of the citizens, is arbitrary and discriminatory, then the Court would be failing in its duty if it does not either strike down the law or read down the law in such a manner that it falls within the four corners of the Constitution.

169. It is not the job of the Court to decide whether a law is good or bad. Policy matters fall within the realm of legislature and not of the Courts. The Court, however, is empowered and has the jurisdiction to decide whether a law is unconstitutional or not.

170. "The law is an ass" said Mr. Bumble. That may be so. The law, however, cannot be arbitrary or discriminatory. Merely because a law is asinine, it cannot be set aside. However, if the law is arbitrary, discriminatory and violates the fundamental rights guaranteed to the citizens of the country, then the law can either be struck down or can be read down to make it in consonance with the Constitution of India.

WHETHER EXCEPTION 2 TO SECTION 375 IPC IS ARBITRARY?

171. Before dealing with this issue, it would be necessary to point out that earlier there was divergence of opinion as to whether a law could be struck down only on the ground that it was arbitrary. In Indira Nehru Gandhi v. Raj Narain the Court struck down clauses 4 and 5 of Article 329A of the Constitution on the ground of arbitrariness. Reliance was placed on the celebrated judgment of this Court passed in the case of Keshavannda Bharati v. State of Kerala. In Para 681 of Raj Narain (supra), Chandrachud J., held as follows:

> *"681. It follows that clauses (4) and (5) of Article 329A are arbitrary and are calculated to damage or destroy the rule of law. Imperfections of language hinder a precise definition of the rule of law as of the definition of 'law' itself. And the Constitutional Law of 1975 has undergone many changes since A.V. Dicey, the great expounder of the rule of law, delivered his lectures as Vinerian Professor of English Law at Oxford, which were published in 1885 under the title, "Introduction to the Study of the Law of the Constitution". But so much, I suppose, can be said with reasonable certainty that the rule of law means that the exercise of powers of government shall be conditioned by law and that subject to the exceptions to the doctrine of equality, no one shall be exposed to the arbitrary will of the Government. Dicey gave three meanings to rule of law: Absence of arbitrary power, equality before the law or the equal subjection of all classes to the ordinary law of the land administered by ordinary law courts and that the Constitution is not the source but the consequence of the rights of individuals, as defined and enforced by the courts……."*

172. The aforesaid case was one of the first cases in which a law was set aside on the ground of being arbitrary. In E.P. Royappa v. State of Tamil Nadu the doctrine of arbitrariness was further expanded. Bhagwati, J., eruditely explained the principle in the following terms.

> *"85.....From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."*

173. The doctrine developed in Royappa's case (supra) was further advanced in the case of Maneka Gandhi v. Union of India. In this case, the test of reasonableness was introduced and it was held that a law

which is not "right, just and fair" is arbitrary. The following observations are apposite:-

> *"7.....The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness 54 (1974) 4 SCC 3 55 (1978) 1 SCC 248 W.P. (C) No. 382 of 2013 Page 109 pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."*

174. This principle was followed in the cases of A.L. Kalra v. Project and Equipment Corpn., Babita Prasad v. State of Bihar, Ajay Hasia v. Khalid Mujib Sehravardi and Dr. K.R. Lakshmanan v. State of Tamil Nadu. In the case of Ajay Hasia (supra), a Constitution Bench of this Court held as follows:

> *"16.....Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an 'authority' under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."*

175. In State of A.P. v. McDowell & Co., a three-Judge Bench of this Court struck a discordant note and rejected the plea of the Amending Act being arbitrary. The Court held that an enactment could be struck down if

it is being challenged as violative of Article 14 only if it is found that it is violative of equality clause, equal protection clause or violative of fundamental rights. The Court went on to hold 56 (1984) 3 SCC 316, 57 1993 Supp (3) SCC 268 58 (1981) 1 SCC 722 59 (1996) 2 SCC 226 60 (1996) 3 SCC 709 W.P. (C) No. 382 of 2013 Page 110 that an enactment cannot be stuck down only on the ground that the Court thinks that it is unjustified. This judgment need not detain us for long because in Shayara Bano v. Union of India & Ors. popularly known as the "Triple Talaq case", this Court held that this judgment did not take note of binding judgments of this Court passed by a Constitution Bench, in the case of Ajay Hasia (supra) and a three-Judge Bench in the case of Dr.K.R. Lakshmanan (supra). After discussing the entire law on the subject, Nariman, J., in his judgment held as follows:

> *"82. It is, therefore, clear from a reading of even the aforesaid two Constitution Bench judgments that Article 14 has been referred to in the context of the constitutional invalidity of statutory law to show that such statutory law will be struck down if it is found to be "arbitrary".*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx*
>
> *"101……The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when*

something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

Therefore, there can be no dispute that a law can be struck down if the Court find it is arbitrary and falls foul of Article 14 and other fundamental rights."

29. Recently, Hon'ble Supreme Court, in the case of UNION OF INDIA AND ANOTHER v. M/S. GANPATI DEALCOM PVT. LTD. reported in AIR 2022 SC 4558, had an occasion to test the legality of the provisions under the prohibition of Benami Property Transaction Act (45 of 1988), wherein at paragraphs 15.6 to 15.10, observed thus:

"15.6. Without burdening this judgment with a series of precedents laid down by this Court, we may refer only to the majority opinion in K. Puttaswamy v. Union of India, (2017) 10 SCC 1, wherein the law has been settled by a Nine Judge Bench of this Court in the following manner:

"294. The Court, in the exercise of its power of judicial review, is unquestionably vested with the constitutional power to adjudicate upon the validity of a law. When the validity of a law is questioned on the ground that it violates a guarantee contained in Article 21, the scope of the challenge

is not confined only to whether the procedure for the deprivation of life or personal liberty is fair, just and reasonable. Substantive challenges to the validity of laws encroaching upon the right to life or personal liberty has been considered and dealt with in varying contexts, such as the death penalty (Bchan Singh v. State of Punjab, (1980) 2 SCC 684:1980 SCC (Cri) 580]) and mandatory death sentence (Mithu v. State of Punjab, (1983) 2 SCC 277 : 1983 SCC (Cri) 405]), among other cases. A person cannot be deprived of life or personal liberty except in accordance with the procedure established by law. Article 14, as a guarantee against arbitrariness, infuses the entirety of Article 21. The interrelationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multifaceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression "law". A law within the meaning of Article 21 must be consistent with the norms of fairness which originate in Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well.

295. Above all, it must be recognised that judicial review is a powerful guarantee against legislative encroachments on life and personal liberty. To cede this right would dilute the importance of the protection granted to life and personal liberty by the Constitution. Hence, while judicial review in constitutional challenges to the validity of legislation is exercised with a conscious regard for the presumption of constitutionality and for the separation of powers between the legislative, executive and judicial institutions, the constitutional power which is vested in the Court must be retained as a vibrant means of protecting the lives and freedoms of individuals.

296. The danger of construing this as an exercise of "substantive due process" is that it results in the incorporation of a concept from the American Constitution which was consciously not accepted when the Constitution was framed. Moreover, even in the country of its origin, substantive due process has led to vagaries of judicial interpretation. Particularly having regard to the constitutional history surrounding the deletion of that phrase in our Constitution, it would be inappropriate to equate the jurisdiction of a constitutional court in India to entertain a substantive challenge to the validity of a law with the exercise of substantive due process under the US Constitution. Reference to substantive due process in some of the judgments is essentially a reference to a substantive challenge to the validity of a law on the ground that its substantive (as distinct from procedural) provisions violate the Constitution."

15.7. The law with respect to testing the unconstitutionality of a statutory instrument can be summarized as under:

a. Constitutional Courts can test constitutionality of legislative instruments (statute and delegated legislations);

b. The Courts are empowered to test both on procedure as well as substantive nature of these instruments. c. The test should be based on a combined reading of Articles 14, 19 and 21 of the Constitution.

15.8. One of the offshoots of this test under Part III of the Constitution is the development of the doctrine of manifest arbitrariness. A doctrinal study of the development of this area may not be warranted herein. It is well traced in Shayara Bano v. Union of India, (2017)9

SCC 1. We may only state that the development of jurisprudence has come full circle from an overly formalistic test of classification to include the test of manifest arbitrariness. A broad formulation of the test was noted in the aforesaid case as under:

> *"95. On a reading of this judgment in Natural Resources Allocation case [Natural Resources Allocation, In re, SCC 1], it is clear that this Court did not read State of A.P. v. McDowell and Co., (1996) 3 SCC 709] as being an authority for the proposition that legislation can never be struck down as being arbitrary. Indeed the Court, after referring to all the earlier judgments, and Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722] in particular, which stated that legislation can be struck down on the ground that it is "arbitrary" under Article 14, went on to conclude that "arbitrariness" when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is "manifestly arbitrary" i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc."*

15.9. In Joseph Shine v. Union of India, (2019) 3 SCC 39, this Court was concerned with the constitutionality of Section 497 of the IPC relating to the provision of adultery. While declaring the aforesaid provision as

unconstitutional on the aspect of it being manifestly arbitrary, this Court reiterated the test as under:

> *"...The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation Under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well Under Article 14."*

15.10. In Hindustan Construction Co. Ltd. V. Union of India, (2020) 17 SCC 324, this Court struck down Section 87 of the Arbitration Act on the ground of manifest arbitrariness as the Parliament chose to ignore the judgment of this Court, without removing the basis of the same or identifying a principle for militating against the same."

30. In the backdrop of the aforementioned dictum of the Hon'ble Supreme Court, it is useful to refer to the Statement of Objects and Reasons of the Act, which reads as under:

> "*Whereas it is considered necessary to provide for the planned development of educational institutions, inculcation of healthy educational practice, maintenance*

and improvement in the standards of educational and better organisation, discipline and control over educational institutions in the State with a view to fastening the harmonious development of the mental and physical faculties or students and cultivating a scientific and secular outlook through education."

(emphasis supplied)

31. In view of the 42nd Amendment Act, 1976 to the Constitution of India, "Education" had been included in Entry 25 of List III of Seventh Schedule. The Act received the Assent of the President on the 27th day of October, 1993 and published in the Karnataka Gazette on 20th January, 1995. Section 1(3)(iii-a) of the Act was incorporated by Act No.25 of 2017 bringing the educational institutions affiliated to ICSE/CBSE under Sections 5-A, 48, 112-A and 124-A of the Act. This Court, in the case of AIRFORCE SCHOOL PARENTS WELFARE ASSOCIATION, BENGALURU (supra), held that Amendment Act 8 of 1998, inserting Section 1(3)(iii-a) in the Act is violative of Article 14 of the Constitution of India. At paragraphs 20 to 22, it is observed thus:

"20. Keeping the law laid down by the Apex Court in the decisions referred to supra, it is necessary to examine the fact situation in the present case. The Education Act came into effect on 20-1-1995. Section 1 of the Act reads as under:

> *"1. Short title, extent, application commencement.- (1) This Act may be called the Karnataka Education Act, 1983.*
>
> *(2) It extends to the whole of the State of Karnataka. and*
>
> *(3) It applies to all educational institutions and tutorial institutions in the State except.-*
>
> *(i) to (iii) ……"*

At the commencement in 1995 the Education Act was made applicable to all the educational institutions including the private unaided schools affiliated to ICSE and CBSE syllabus in the State of Karnataka as specified in Section 1 of the Act. By Act 8 of 1998. clause (iii-a) was inserted in Section 1 and the same reads as:

> *(iii-a) Educational Institutions affiliated to or recognised by the Council of Indian School Certificate Examination or Central Board of Secondary Education respectively.*

By this amendment to Section 1 the schools affiliated to ICSE and CBSE syllabus are excluded from the purview of Education Act.

21. The private unaided educational Institutions affiliated to the State Syllabus are governed by the

provisions of Education Act. But the private unaided schools affiliated to ICSE or CBSE syllabus are excluded from the application of the provisions of Education Act. ICSE is an autonomous self-financing body and CBSE is a registered society. Both ICSE and CBSE are not established or constituted by any Act. Both these schools are private unaided schools and they are deriving various concessions and exemptions from the State Government. Merely because the respondent-Schools are affiliated to the ICSE or CBSE syllabus they are excluded form the application of provisions of Education Act by amendment Act of 1998. This differentia between private unaided educational institution affiliated to the State Syllabus and respondent-Schools affiliated to ICSE or CBSE syllabus has no rational nexus. On the basis of affiliation to a particular syllabus the said school do not become different class from others. Therefore, the impugned amendment is violative of Article 14 of the Constitution.

22. The statement of objects and reasons of Education Act states that It is considered necessary to provide for the planned development of educational institution, inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organisation discipline and control over educational institution is the State with a view to fostering the harmonious development of the mental and physical facilities of students and cultivating a scientific and secular outlook through education'. Under the

impugned Act 8 of 1998 the schools affiliated to ICSE or CBSE syllabus are excluded from the purview of Education Act. By this exclusion the State Government cannot regulate the admission of students, fee structure, service condition of the employees etc., in the schools affiliated to ICSE or CBSE syllabus. There is no Central Act or any other statutory body to regulate these schools. Thus these schools are autonomous institutions. But these institutions are enjoying various concessions and exemptions from the State Government. Thus the impugned amendment Act 8 of 1998 is contrary to the objects sought to be achieved under the Education Act. Therefore, the impugned insertion of Section 1(3)(iii-a) in the Education Act is violative of Article 14 of the Constitution of India."

32. The aforesaid view was affirmed by the Division Bench of this Court in the case of GOVINDAGIRI (supra). At paragraphs 8 and 9 of the judgment, it is observed thus:

"*8. It emerges from the material available on record that, the Department of Public Instructions has constituted a Committee called Karnataka State Vidhyarthi Kreeda Nidhi, pursuant to which, bye-laws are framed for regulating the constitution and functioning of the said committee and bye-law No. 4 deals with the purpose and objects of the said Nidhi. The main object of the said committee is to conduct sports meets for schools*

which comes within the purview and jurisdiction of the Department of Public Instruction. Each student coming within the control and jurisdiction of the Department of Public Instructions, who are studying in 5th to 10th standard is required to pay a prescribed fee as contribution to the 'Kreeda Nidhi'. The contribution is compulsorily payable and the authorities are enjoined with duties and obligations to collect this amount. The schools which fail to collect the amount from the students and to pay the same to the authorities are to face several coercive and penal consequences including withholding of recognition and such other measures. The sports meet is to be conducted by the authorities of the Department who constitute the Committees at different levels starting from the Block Level to the State Level Further, it is not in dispute that the ICSE and CBSE schools do not fall within the jurisdiction, control and ambit of these authorities and no direction can be issued to these schools nor any coercive or penal action can be taken against them if they fail to pay the contribution towards the 'Kreeda Nidhi'. In fact, the concept of the 'Kreeda Nidhi' and the Sports meet to be conducted by the various Committees from the Block level to the State level is confined only to the schools coming under the purview and control of the Department of Public Instructions. It is significant to note that, as one of its objective in imparting training in physical education, the machinery provided under the Education Act is arranging these meets and competitions. The children studying in ICSE and CBSE schools cannot as

of right claim that the competition shall be thrown open for them also. They cannot contend that their fundamental rights are violated by denying them an opportunity to participate in these Sports Meet because, they do not fall in the same class of students controlled by the Department. It is pertinent to note that, the ICSE and CBSE schools are controlled by independent/autonomous bodies after obtaining recognition from their respective boards and they will not come within the purview, aim and object of the Karnataka Education Act, 1983. Learned Single Judge, after critical evaluation of the oral and documentary evidence, after going through the aim and object of the Kreeda Nidhi, the purpose for which it has been established i.e., to conduct the sports meet for the students, has come to the conclusion that, the students who are studying in ICSE and CBSE will not come under the purview and jurisdiction of the Karnataka Education Act nor the authorities of the Department of Public Instructions can take any action against such schools. The learned Single Judge in para 12 of the order has considered in detail with regard to the submission of the learned Counsel for the appellants about the discrimination made in the impugned circular stating that it is in violation of the fundamental rights under Article 14 of the Constitution of India and rejected the said submission holding that the students who are studying in ICSE and CBSE cannot claim similar treatment in the matter of conduct of the Sports Meet and Competitions by the Department at various levels.

9. Further it emerges from the record as rightly pointed by the learned Additional Government Advocate for respondents and as rightly held by the learned Single Judge that, the students who are prosecuting their studies in ICSE and CBSE syllabus are entitled to represent the State in these competitions through the Table Tennis Federation of India, the Ali India Lawn Tennis Association and the Swimming Federation of India, which are also the recognised institutions mentioned in Schedule II to the Rules framed by the State Government known as the Karnataka Selection of Candidates for Admission to Professional Institutions Rules, 2004, whereunder, provisions are made for Sports Quota in favour of the students who have participated in different meets or competitions conducted by the National Schools Federation of India and other Associations. The above three Federations are also enlisted as Associations through which the students can represent the State. In fact, some of the children of the appellants have admittedly represented the State through these Federations in the past. Therefore, the learned Single Judge is right in holding that, the representation through the 'Kreeda Nidhi' committee and in the sports meets and competitions arranged by the Department of Public Instructions is not the only mode or avenue for the students studying in ICSE and CBSE syllabus to take part and to represent the State. Therefore, it cannot be said that these students are deprived of all opportunities to

represent the State in different sports Meets and competitions. Hence, the contention of the learned Counsel for the appellants that the children of the appellants are totally deprived of the benefit of reservations towards sports quota cannot be sustained and it has been rightly rejected by the learned Single Judge."

33. In the meanwhile, Eleven Judges Bench of the Hon'ble Supreme Court in the case of T.M.A. PAI FOUNDATION, considered various questions posed relating to expressions "Education" and "Education Institutions" and its right to establish and administer education institutions guaranteed under the Constitution of India. Entire details relating to functioning of an educational institution was considered threadbare vis-à-vis relevant provisions under the Constitution of India. In the context of the present case, the observation made by the Hon'ble Supreme Court at paragraphs 48 to 66 in the case of T.M.A. PAI FOUNDATION, are relevant and same is extracted below:

"***Private Unaided Non-Minority Educational Institutions***:

48. Private education is one of the most dynamic and fastest growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher education and the inability or unwillingness of government to provide the necessary support has brought private higher education to the forefront. Private institutions, with a long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector.

49. Not only has demand overwhelmed the ability of the governments to provide education, there has also been a significant change in the way that higher education is perceived. The idea of an academic degree as a "private good" that benefits the individual rather than a "public good" for society 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 establishing of private institutions where none or very few existed before.

50. The right to establish and administer broadly comprises of the following rights:-

(a) to admit students:

(b) to set up a reasonable fee structure:

(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.

51. A University Education Commission was appointed on 4th November, 1948, having Dr. S. Radhakrishnan as its Chairman and nine other renowned educationists as its members. The terms of reference, inter alia, included matters relating to means and objects of university education and research in India and maintenance of higher standards of teaching and examining in universities and colleges under their control. In the report submitted by this Commission, in paras 29 and 31, it referred to autonomy in education which reads as follows:-

> *"University Autonomy. -- Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their populations and supply then with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.*
>
> *Higher educational is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The*

pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe: "More light," or that Ajax in the mist "Light, though I perish in the light.

xxx xxx xxx

The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities should be released from the control of politics.

Liberal Education. -- All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education."

52. There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the governmental domination of the educational process must be resisted. Another pithy observation of the Commission was that state aid was not to be confused with state control over academic policies and practices. The observations referred to hereinabove clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free from unnecessary governmental controls.

53. With regard to the core components of the rights under Article 19 and 26(a), it must be held that while the state has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must 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. In any event, a private institution will have the right to constitute its own governing body, for which qualifications may be prescribed by the state or the concerned university. It will, however, be objectionable if the state retains the power to nominate specific individuals on governing bodies. Nomination by the state, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an

unreasonable restrictions on the attorney of the private unaided educational institution.

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in Unni Krishnan's case, the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the

excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, 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. While 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 its loans or borrowings, it is 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.

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that 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 students has various options open to him/her where, therefore, 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****.*

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can

provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. 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.

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

60. Education is taught at different levels from primary to professional. It is, therefore, obvious that government regulations for all levels or types of educational institutions cannot be identical; so also, the extent of control or regulation could be greater vis-a-vis aided institutions.

61. ***In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged.*** *At the school level, it is not possible to grant admission on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact*

that state-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtaining the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the state has to provide the difference which, therefore, brings us back in a vicious circle to the original problem, viz., the lack of state funds. The solution would appear to lie 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. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations.

62. There is a need for private enterprise in non-professional college education as well. At present,

insufficient number of undergraduate colleges are being and have been established, one of the inhibiting factors being that there is a lack of autonomy due to government regulations. It will not be wrong to presume that the numbers of professional colleges are growing at a faster rate than the number of undergraduate and non-professional colleges. While it is desirable that there should be a sufficient number of professional colleges, it should also be possible for private unaided undergraduate colleges that are non-technical in nature to have maximum autonomy similar to a school.

63. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the government or the university are clearly loaded against the Management. It was submitted that in some cases, the rules require the prior permission of the governmental authorities before the intimation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in the case of proven misconduct. While

emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the Management in the event of some punishment being imposed, it was submitted that there should be no role for the government or the university to play in relation to the imposition of any penalty on the employee.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster-parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing

misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriately relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State -- the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie

before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.

65. ***The reputation of an educational institution is established by the qualify of its faculty and students, and the educational and other facilities that the colleges has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies****. If is for this reason that in the St. Stephen's College case, this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified*

according to say their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.

66. ***In the case of private unaided educational institution, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation; these conditions must pertain broadly to academic and educational matters and welfare of students and teachers - but how the private unaided institutions are to run is a matter of administration to be taken care of by the Management of those institutions****."*

(emphasis supplied)

34. Subsequent to the judgment of the Hon'ble Apex Court in the case of T.M.A. PAI FOUNDATION, Civil Appeals No.366-368 of 2004 and connected appeals which were filed by the managements of various Educational institutions questioning

the validity of the Act, came up for hearing and the Hon'ble Apex Court, by order dated 26th February, 2004 held as follows:

"***ORDER***

Having looked at the Karnataka Education Act, 1983, it prima facie appears to us that the Government requires to reconsider various provisions of the Act in the light of the judgment of this Court in the case of TMA PAI Education V. state of Karnataka reported in (2002)8 SCC 481. The Government is directed to do so within a period of four months from today. The appellants are at liberty to make their suggestions to the Government. We are sure that the Government, in taking a decision, will keep those suggestions in mind."

(emphasis supplied)

35. In the light of the observation made by the Hon'ble Apex Court in the aforesaid Civil Appeals, it is relevant to consider the judgment dated 01st December, 2022 rendered by the Division Bench of this Court in Writ Petition No.27432 of 1995 and connected writ petitions, whereby the validity of Sections 3(2)(a to h), 7(1)(a to i), 38, 41(2)(b)(iii), 41(5), 42, 43, 44, 48, 67, 128, and 145 of the Act and also the relevant Rules made under Rules 1995; Rules 1999; and Rules 2005,

were questioned. This Court, after considering the material on record, has quashed some of the provisions of the Act read with the relevant Rules. The operative portion of the judgment, reads as under:

> *"28. In view of preceding analysis, it is held as follows:*
>
> *(i) Section 5, Section 7(5)(b), Section 7(1)(e) and Section 38(1)(a) of the Karnataka Education Act, 1983, Rule 18(2), 18(3) and Rule 19(3) of Karnataka Educational Institution (Classification, Regulation and Prescription of Curricula etc.) Rules, 1995 and Rule 4 of the Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999, are ultra vires.*
>
> *(ii) Sections 7(1)(f) and 41(3) of the Karnataka Education Act, 1983 does not apply to private educational institutions.*
>
> *(iii) Rule 10(3)(c)(ii) and Rule 10(3)(a) of Karnataka Educational Institution (Classification, Regulation and Prescription of Curricula etc.) Rules, 1995 and Rule 4(4) of the Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999 insofar as it pertain to*

private unaided educational institutions are struck down.

(iv) Rule 3(b) of the Karnataka Educational Institutions (Certain Terms and Conditions of Service of Employees in Private Unaided Primary and Secondary and Pre-University Educational Institutions, Rules 2005 is struck down."

36. In the backdrop of these aspects, I have gone through the law declared by the Hon'ble Apex Court in the case of P.A. INAMDAR v. STATE OF MAHARASHTRA AND OTHERS reported in AIR 2005 SC 3226, wherein it is held that, Institution is free to device its own fee structure, subject to limitation that there can be no profiteering and no charging of captivation fee in respect of the minority educational institutions and therefore, the Act cannot be extended in respect of an institution, which is a minority private unaided educational institution.

37. In MODERN DENTAL COLLEGE AND RESEARCH CENTRE (supra), at paragraphs 65, 71 to 75 of the judgment, it is held thus:

"65. We may unhesitatingly remark that this Doctrine of Proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in plethora of judgments has held that the expression 'reasonable restriction' seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression 'reasonable' connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object. At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations. In M.R.F. Ltd. v. Inspector Kerala Govt., this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:

(1) The Directive Principles of State Policy.

(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).

(5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.

(6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour the constitutionality of the Act will naturally arise.

71. We may again remind ourselves that though right to establish and manage educational institution is treated as a right to carry on 'occupation', which is the fundamental right under Article 19(1)(g), the Court in T.M.A. Pai Foundation had also cautioned such educational institution not to indulge in profiteering or commercialisation. That judgment also completely bars these educational institutions from charging capitation fee. This is considered by the appellants themselves that commercialisation and exploitation is not permissible and

the educational institutions are supposed to run on 'no profit, no loss basis'. No doubt, it was also recognised that cost of education may vary from institution to institution and in this respect many variable factors may have to be taken into account while fixing the fee. It is also recognized that the educational institutions may charge the fee that would take care of various expenses incurred by these educational institutions plus provision for the expansion of education for future generation. At the same time, unreasonable demand cannot be made from the present students and their parents. For this purpose, only a 'reasonable surplus' can be generated.

72. Thus, in T.M.A. Pai Foundation, P.A. Inamdar and Unni Krishnan, profiteering and commercialisation of education has been abhorred. The basic thread of reasoning in the above judgments is that educational activity is essentially charitable in nature and that commercialisation or profiteering through it is impermissible. The said activity subserves the looming larger public interest of ensuring that the nation develops and progresses on the strength of its highly educated citizenry. As such, this Court has been of the view that while balancing the fundamental rights of both minority and non-minority institutions, it is imperative that high standard of education is available to all meritorious candidates. It has also been felt that the only way to achieve this goal, recognising the private participation in this welfare goal, is to ensure that there is no

commercialisation or profiteering by educational institutions.

73. In view of the said objectives, this Court had devised the means of setting up regulatory committees to oversee the process of admissions and fee regulations in the case of Islamic Academy of Education. However, while indirectly approving the concept of regulatory bodies, this Court in P.A. Inamdar was of the view that the scheme should not be directed by this Court exercising its powers under Article 142 of the Constitution, but must be statutorily regulated by the Center or the State laws.

74. The principles enunciated in T.M.A. Pai Foundation and P.A. Inamdar were applied in the case of Islamic Academy of Education where a challenge was mounted against the directions issued by the Director of Education to the recognised unaided schools under Section 24(3) read with Section 18(4) and 18(5) of the Delhi School Education Act, 1973 inter alia directing that no fees/funds collected from parents/students would be transferred from the Recognised Unaided School Fund to a Society or Trust or any other institution. After examining the directions and the accounting principles in detail, this Court upheld the said directions on the ground that it was open to the State to regulate the fee in such a manner so as to ensure that no profiteering or commercialisation of education takes place.

75. To put it in a nutshell, though the fee can be fixed by the educational institutions and it may vary from institution to institution depending upon the quality of education provided by each of such institution, commercialisation is not permissible. In order to see that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing vital and pivotal role to spread education and not to make money. So much so, the Court was categorical in holding that when it comes to the notice of the Government that a particular institution was charging fee or other charges which are excessive, it has a right to issue directions to such an institution to reduce the same."

38. At this juncture, it is also relevant to consider the dictum of the Hon'ble Apex Court in the case of INDIAN SCHOOLS, JODHPUR (supra) wherein validity of Rajasthan Schools (Regulation of Fee) Act, 2016, in particular, Sections 3, 4, 6 to 11, 15 and 16 of the said Act and the Rules framed thereunder titled as Rajasthan Schools (Regulation of Fee) Rules, 2017, was challenged; and the Hon'ble Apex Court, at paragraphs 49, 54, 55 and 65 of the judgment, observed thus:

"49. As regards challenge to Section 8 of the Act of 2016, the usage of expression "determination", in our opinion, does not take away the autonomy of the school Management in determining its own fee structure. This provision is only an indicator as to what factors should be reckoned for determination of fee and on that scale the SLFC as well as the Statutory Regulatory Committees will be in a position to analyse the claim of the school Management. This provision, in fact, sets forth objective parameters as to what would be the reasonable fee structure—not resulting in profiteering and commercialisation by the school Management. As aforesaid, this provision will have to be read along with Rule 10 of the Rules of 2017 which provides for additional factors to be borne in mind while examining the question regarding reasonableness of the fee structure proposed by the school Management.

54. The procedure to be followed by the Revision Committee is specified in Section 11 of the Act of 2016, which provision makes it amply clear that the decision of the Revision Committee shall be final and conclusive and shall be binding on the parties for three academic years. Setting up of an independent final adjudicatory authority especially created for considering the question as to whether the fee structure proposed by the school Management results in profiteering or otherwise, it does not impinge upon the fundamental right of the school

Management guaranteed under Article 19(1)(g) of the Constitution

55. Even the challenge to the validity of Sections 15 and 16 of the Act of 2016 is devoid of merit. Section 15 deals with consequences of contravention of the provisions of the Act of 2016 or the Rules made thereunder by an individual. Whereas, Section 16 deals with consequences of violation by a management and persons responsible therefor. It is unfathomable as to how these provisions can have the propensity to violate the fundamental right of the school Management under Article 19(1)(g) of the Constitution especially when violation or the mandate of certain compliances under the Act of 2016 and Rules framed thereunder has been made an offence and persons responsible for committing such violation can be proceeded with on that count.

65. The last assail was on the argument that the field regarding (school) fee, in particular capitation fee is already covered by the law enacted by the Parliament being RTE Act and for that reason, it was not open to the State to enact law on the same subject such as the impugned Act of 2016. This argument is completely misplaced and tenuous. For, the purpose for which the RTE Act has been enacted by the Parliament is qualitatively different. It is to provide for free and compulsory education to all children of the age of 6 to 14

years, which is markedly different from the purpose for which the Act of 2016 has been enacted by the State legislature. Merely because the Central Act refers to the expression "capitation fee" as defined in Section 2(b) and also in Section 13 of the RTE Act — mandating that no school or person shall, while admitting a child, collect any capitation fee, does not mean that the Central Act deals with the mechanism needed for regulating fee structure to ensure that the schools do not collect fees resulting in profiteering and commercialisation. By its very definition, the capitation fee under the Central Act means any kind of donation or contribution or payment other than the fee notified by the school. On the other hand, fee to be notified by the school is to be done under the impugned Act of 2016 after it is so determined by the school Management and approved by the SLFC or by the Statutory Regulatory Authorities, as the case may be. Suffice it to observe that the field occupied by the Central Act is entirely different than the field occupied by the State legislation under the impugned Act of 2016. The impugned Act of 2016 deals specifically with the subject of regulating fee structure propounded by the private unaided school management. Hence, there is no substance in this challenge."

39. In the touchstone of the aforesaid rulings of the Hon'ble Supreme Court, I have carefully examined the validity of the impugned Notification/Amendment/Rules. The impugned

Notification/Amendment/Rules do not have a rider, similar to the one, provided under the Rajasthan Schools (Regulation of Fee) Rules, 2017 and therefore, the judgments referred to by the learned Additional Advocate General cannot be accepted. It is to be noted that, recently, the Division Bench of this Court held that Sections 5, 7(5)(b), 7(1)(e) and 38(1)(a) of the Act and Rule 18(2 & 3), Rule 19(3) of the Rules 1995, and Rule 4 of Rules 1999 as ultra vires the Constitution of India and contrary to the decision of Hon'ble Supreme Court in the case of T.M.A. PAI FOUNDATION, the same is binding on the petitioners, for in some of these writ petitions those provisions are impugned, and same have to be disposed of in terms of the judgment of the Division Bench in Writ Petition No.27432 of 1995 and connected writ petitions decided on 01st December, 2022. In that view of the matter, the submission made by the learned counsel appearing for the petitioners that the ruling of the Division Bench that Sections 7(1)(f) and 41(3) of the Act do not apply to private unaided educational institutions, is accepted. That apart, it is also relevant to mention that the Division Bench of this Court has struck down Rules 10(3)(c)(ii) and 10(3)(a) of Rules 1995

and Rule 4(4) of the Rules 1999 insofar as private unaided educational institutions are concerned, and same is made applicable to the petitioners in present petitions. Having taken note of the fact that Section 7(1)(f) of the Act is struck down insofar as private unaided educational institutions are concerned, I am of the view that Rule 4 of Rules 1999, impliedly, requires to be struck down in these writ petitions following the dictum of the Hon'ble Supreme Court in the case of T.M.A. PAI FOUNDATION. I have also noticed that Section 48 of the Act provides for Fees and Donations; and Section 51 of the Act provides for Monies Received from sources other than grant shall be accounted. These two provisions run contrary to each other, as Section 51 of the Act provides for money received by way of voluntary donations and same shall be intimated to the competent authority by the governing council of the private unaided educational institutions and therefore, the right to levy, collect and charge fees, donations and other payments as provided under Section 48 of the Act, is to be held unconstitutional, as there is direct interference of the Government authorities with the administration of the private unaided educational institutions

and in view of the declaration of law by the Hon'ble Apex Court in the case of T.M.A. PAI FOUNDATION, I am of the view that Section 48 of the Act is ultra vires the Constitution of India in respect of private unaided educational institutions. Having come to the conclusion that Section 48 of the Act is ultra vires the Constitution of India, the corresponding penal provisions made under Section 124-A of the Act providing penalty for contravention of Section 48 of the Act, would render ultra vires insofar as the private unaided educational institutions are concerned, as the same is contrary to Articles 14 and 19(1)(g) of the Constitution of India. When enabling provisions itself are unconstitutional and ultra vires, the penal provision flowing therefrom for violation of provisions, cannot be sustained. In that view of the matter, amending provision, i.e. Section 1(2)(iii-a) of the Act, extending the Act to the schools affiliated to CBSE/ICSE, is beyond the competence of the Act. It is also to be noted that though Section 124-A provides for penalty for contravention of Section 48 of the Act, however, there is no relevant Rules nor the Act which provide for conducting investigation, extending opportunity to the erring private

unaided educational institutions, before taking action under Section 48 following Section 124-A of the Act, and on this count alone, these two provisions, i.e. Sections 48 and 124-A of the Act, violate principles of natural justice enunciated under Article 14 of the Constitution of India and therefore, same are held to be invalidated. Though Sri Dhyan Chinnappa, learned Additional Advocate General argued in support of these provisions placing reliance on the judgment of the Apex Court in INDIAN SCHOOL JODHPUR; and in the case of MODERN DENTAL COLLEGE (supra), however, similar provisions providing for details and procedure of collection of fee or penalty clause under Rajasthan Education Act, are not framed by the State Legislature or through delegated legislation in the State of Karnataka and in that view of the matter, I am of the view that the submission made by the learned Additional Advocate General, cannot be accepted. It is aiso evident that the decision of the Larger Bench of the Hon'ble Supreme Court in the case of T.M.A. PAI FOUNDATION, holds the field regarding fixation of fee by the private unaided educational institutions and therefore, there is no merit in the submission made on behalf of the respondent-

State. Though learned Additional Advocate General invited attention of the Court to the letters dated 04th June, 2021 and 17th April 2020 by the CBSE regarding payment of fee, however, on careful consideration of the said letter as well as the clarification sought by the State Government by its letter dated 12th March, 2021, it is categorically stated in the said letter that the writ petitions are pending before this Court relating to the applicability of the Act to the CBSC and therefore, I am of the view that those correspondence between the CBSE and the respondent-Government cannot be a basis to arrive at the conclusion that the management of the schools affiliated to CBSE is within the purview of the Act.

40. In the case of PRAMATI EDUCATIONAL AND CULTURAL TRUST (REGD.) AND OTHERS (supra), the question before the Hon'ble Supreme Court relates to the challenge made to Articles 15(5) and 21-A of the Constitution of India. Hon'ble Supreme Court, at paragraph 47 of the judgment, held as follows:

> *"47. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution."*
>
> (emphasis supplied)

41. In respect of the submission made by the learned counsel for the petitioners that impugned amendment Act has not secured the Assent of the President as it covers the field under concurrent list is concerned, it is relevant to deduce the declaration of law in the case of K.A. ANNAMMA v. SECRETARY, COCHIN CO-OPERATIVE HOSPITAL SOCIETY LTD. reported in AIR 2018 SC 422 wherein at paragraphs 94 to 97, it is observed thus:

> *"94. That apart, the amending KCS Act (1 of 2000) having received the Assent of the Governor did not bring about any inconsistency or repugnancy with the*

provisions of the ID Act. In any event, in the absence of the Assent of the President to the amending KCS Act 1/2000, even if any inconsistency or repugnancy exists between the provisions of the KCS Act and the ID Act, it is the ID Act which will prevail over the KCS Act by virtue of Article 254(1) of the Constitution but not vice-a-versa.

95. The law in relation to Article 254 of the Constitution and how it is applied in a particular case is fairly well settled by the series of decisions of this Court. This Article is attracted in cases where the law is enacted by the Parliament and the State Legislature on the same subject, which falls in List III - Concurrent list.

96. In such a situation arising in any case, if any inconsistency or/and repugnancy is noticed between the provisions of the Central and the State Act, which has resulted in their direct head on collusion with each other which made it impossible to reconcile both the provisions to remain in operation inasmuch as if one provision is obeyed, the other would be disobeyed, the State Act, if it has received the Assent of the President will prevail over the Central Act in the concerned State by virtue of Article 254(2) of the Constitution.

97. A fortiori, in such a situation, if the State Act has received the Assent of the Governor then the Central Act would prevail over the State Act by virtue of Article 254(1) of the Constitution."

42. Having taken note of the law declared by the Hon'ble Supreme Court in the aforementioned case and having applied the same analogy to the case on hand, where the Karnataka Education Act, 1983, having obtained the Assent of the President on 27th October, 1993 and further as the subject "Education" is within the purview of Entry 25 of List III of Seventh Schedule of the Constitution of India, any such amendment made subsequent to the Act, should also have, necessarily, secured the Assent of the President. Articles 200 and 201 of the Constitution of India, provide for Assent to Bills and Bills reserved for consideration, respectively. Hon'ble Supreme Court in the case of BHARAT SEVASHRAM SANGH AND OTHERS v. STATE OF GUJARAT AND OTHERS reported in (1986)4 SCC 51, at paragraph 6 of the judgment, discussed about the Assent by the President in respect of an enactment, which has to satisfy the Court by production of records by the respondent-State. The Hon'ble Apex Court, after looking into the records, arrived at a conclusion that the President had given Assent to the Act and same was published in the official Gazette containing the recital that the said Act had received the Assent of the President on 28th

September, 1973, while dealing with the constitutional validity of the Gujarat Secondary Education Act, 1972 (Gujarat Act 18 of 1973), which has been enacted to provide for the regulation of secondary education in the State of Gujarat and to establish a Board for that purpose. Applying the aforementioned principle to the facts of the present case, the respondent-Government, has not produced any document to satisfy the Court that the impugned Notification/Amendment/Rules made to the Education Act, was Assented by the President and the said Notification/Amendment/Rules was assented by the Governor. In the absence of the same, as rightly contended by the learned Senior counsel appearing for the petitioners, I am of the opinion that any such amendment made to the Act without obtaining the Assent of the President in a field occupied by both the levels of the Government (concurrent list), amounts to procedural illegality and therefore, such amendment made to the Act requires to be held as unconstitutional on the question of competency. In that view of the matter, I am of the view that the impugned Notification/Amendment/Rules were gazetted without the Assent of the President, and same are

unconstitutional and therefore, I find force in the submission made by the learned counsel appearing for the petitioners.

43. Insofar as challenge made to Sections 5-A and 112-A of the Act is concerned, no material has been produced by the respondent-Government to frame rules under the aforementioned provisions and that apart, the respondent-State Government has not framed Rules nor implemented the guidelines issued by the Hon'ble Supreme Court in the case of AVINASH MEHROTRA v. UNION OF INDIA reported in (2009)6 SCC 398 in respect of safety standards in schools and related requirements. At this juncture, it has to be held that the provision under Section 5-A of the Act does not provide for adequate safety to the children in the schools. In this regard, the State Government shall frame an independent rule governing the safety standards to be maintained, not only in private schools, but also, in strict sense, implement the same in Government Schools (paragraph 47 of the judgment in the case of AVINASH MEHROTRA) and as such, I am of the view that Section 5-A of the Act suffers from infirmity under Article 14 of the Constitution of India. In view of the fact that Section 5-A is

contrary to Article 14 of the Constitution of India, hence the corresponding penal provision provided under Section 112-A of the Act, is also unconstitutional and is liable to be set aside.

44. Insofar as challenge made to Section 48 of the Act is concerned, in view of the dictum of the Hon'ble Supreme Court in the case of T.M.A. PAI FOUNDATION, the Hon'ble Supreme Court, in categorical terms, at paragraph 55 of the judgment, held that the decision on the fee structure must, necessarily be left to the private unaided educational institutions, as those educational institutions do not seek or are not dependent upon any funds from the Government, that means, private unaided educational institutions, should not be under the control of the respondent-Government insofar as fixing the fee is concerned, however, conform to the dictum of the Hon'ble Apex Court as held in T.M.A. PAI FOUNDATION; MODERN DENTAL COLLEGE; and INDIAN SCHOOL, JODHPUR (supra), that the charging of fee should not amount to capitation fee or profiteering or unreasonable and same must conform to the constitutional provisions. In addition to this, I find force in the submission

made by Sri G.R. Mohan, learned counsel appearing for the petitioner Writ Petition No.33161 of 2017, that the private unaided educational institutions are also giving admissions to students through RTE and therefore, same will have financial implication on the affairs of the private unaided educational institutions and any interference with such matters by the State Government is unjust and contrary to Article 14 of the Constitution of India. In that view of the matter, any interference by the respondent-State insofar as fixing of fee by the private unaided educational institutions, amounts to violation of the law declared by the Hon'ble Apex Court in the case of T.M.A. PAI FOUNDATION and therefore, Section 48 of the Act is not applicable to the private unaided educational institutions. In that view of the matter, Sections 5-A and 48 of the Act are liable to be struck down under Article 14 of the Constitution of India as it confers unguided and unfettered power to the respondent-Government to interfere with the affairs of the private unaided educational institutions and necessary Rules have not been framed by the respondent-State in this regard. Therefore, I find force in the submission made by the learned Counsel for the

petitioners that Sections 5-A and 48 of the Act require to be invalidated on the ground of unreasonableness, uncertainty, and vagueness in respect of application to private unaided Institutions. In view of the observation made above that excluding the private unaided educational institution from the purview of Section 48 of the Act is invalid, any corresponding penal provision provided under Section 124-A of the Act is unconstitutional insofar as private unaided educational institutions. Upon reading the language employed in Section 48 of the Act, it is to be noted that such power has been conferred to the respondent-Authorities, which is of uncontrolled or unguided power which is vested with the administrative authorities without any reasonable and proper standards being laid down in the enactment, makes the discrimination evident. Recently, the Hon'ble Supreme Court in the case of SECURITIES AND EXCHANGE BOARD OF INDIA v. NATIONAL STOCK EXCHANGE MEMBERS ASSOCIATION AND ANOTHER reported in AIR 2022 SC 5213, while interpreting the true intention of the Legislature in respect of the provisions under Securities and

Exchange Board of India Act, 1992, at paragraph 43 of the judgment, has held thus:

> *"43. When the law has to be applied in a given case, it is for the Court to ascertain the facts and then interpret the law to apply on such facts. Interpretation, indeed, cannot be in a vacuum or in relation to hypothetical facts. It is always the function of the legislature to say what shall be the law and it is only the Court to say what the law is and this Court applied the principle of purposive construction while interpreting the law to apply such facts. A statue has to be construed according to the intent that makes it and it is always the duty of the Court to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, it is always desirable of the Court to choose the interpretation which represents the true intention of the legislature. It is also well-settled that to arrive at the intention of the legislation, it is always depending on the objects for which the enactment is made, the Court can resort to historical contextual and purposive interpretation leaving textual interpretation aside. Thus, while interpreting the statutory provisions, the Court is always supposed to keep in mind the object or purpose for which the statute has been enacted."*

45. At this juncture, it is relevant to cite the judgment of this Court in the case of MS. BUSHRA ABDUL ALEEM v.

GOVERNMENT OF KARNATAKA, DEPARTMENT OF HEALTH AND FAMILY WELFARE AND OTHERS reported in ILR 2020 KAR 963, wherein in the course of observation made at paragraph 33 of the judgment, it is held thus:

> "*33.* ***Impugned Act, whether creates criminal liability****?*
>
> *(i) and (ii) xxx xxx xxx*
>
> *(iii) There is no provision in the impugned Act even remotely suggesting that the act of a medical graduate in denying or delaying his service to the public is an 'offence' required to be investigated into by the police, or tried by the criminal court; the object of the Act is to secure medical candidates for serving in Govt. hospitals; if the legislature intended to prosecute these persons, it would have made the act of escaping from public service a punishable offence by appropriate text; God forbid such a law being made; the Act does not intend to drive the unscrupulous doctors to prosecution lest it should waste medical resources meant for the public at large; thus, the impugned law which does not create a criminal liability cannot be classified as penal law, some coercive elements present therein notwithstanding; this apart, if a genuine doubt arises in the mind of the Court as to whether the statute creates a criminal liability or a civil obligation, it is prudent to resolve the same by leaning towards the latter.*
>
> *(iv) How the legislature intends to treat the violators of the impugned Act is expressed by the following text of Sec.6:*

"6. Penalty:- Whoever contravenes any of the provisions specified in this Act shall be punished with a fine not less than rupees fifteen lakhs but may extend upto rupees thirty lakhs".

The Apex Court in Sukhpal Singh Bal supra observed:

"penalty is a slippery word and it has to be understood in the context in which it is used in a given statute. A penalty may be the subject matter of a breach of statutory duty or it may be the subject matter of a complaint. In ordinary parlance, the proceedings may cover penalties for avoidance of civil liabilities which do not constitute offences against the State. This distinction is responsible for any enactment intended to protect public revenue. Thus, all penalties do not flow from an offence as is commonly understood but all offences lead to a penalty. Whereas, the former is a penalty which flows from a disregard of statutory provisions, the latter is entailed where there is mens rea and is made the subject matter of adjudication....."

(v) The absence of the ingredient of a traditional crime namely mens rea such as guilty mind, culpable negligence or the like is yet another factor that strengthens the view that the Act is not a penal legislation; the malus in se and malus prohibita which traditionally inhere in criminal legislations are conspicuous by their absence in this Act; added to this, the text of the impugned Act is distinct from the standard penal legislations such as Indian Penal Code or the like; the hugeness of penalty ranging between Rs.15,00,000/- and Rs.30,00,000/- goes to show that the same is not punitive but is in the nature of recompense; this is the written stand of the State in its Memo dated 13.08.2019 which inter alia reads: " ....."fine" to be clarified as compensation." May be that with the amount of penalty/fine, the Govt. may hire the

services of willing doctors who otherwise are not covered by the Act; this penalty itself has some punitive elements may be true; but it is only for ensuring that the candidates are deterred from fleeing away from the public duty and nothing beyond; such deterrence in varying degrees lies in several laws fastening civil obligations, is undeniable; therefore, the attack on the Act founded on the ground of ex post facto, criminal law, fails."

46. Having come to the conclusion that the private unaided educational institutions are outside the purview of Section 48 of the Act, any such proceedings conducted by the District Education Regulatory Authority under Section 2(11-A) of the Act, is not applicable to the private unaided educational institutions in respect of the proceedings that fall under Section 48 of the Act.

47. It is also to be noted that, the Division Bench of this Court in Writ petition No.27432 of 1995 and connected petitions, arrived at the conclusion that Rule 4 of the Rules 1999 are ultra vires and therefore, following the dictum of the Division Bench, challenge made to the said Rule in the present writ petitions, governs the dictum of the Division Bench. It is to be noted that by virtue of impugned Notification dated 08th March, 2018, Rule

4 of Rules 1999 was substituted and in view of the fact that the Division Bench of this Court has held that Section 7(1)(f) of the Act is unconstitutional in respect of the private unaided educational institutions, suffice to say that as Rule 4 of the Rules 1999 relates to Section 7(1)(f) of the Act and therefore, Rule 4 of Rules 1999, independently, cannot sustain and there is no nexus between the impugned provisions vis-à-vis the object to be achieved by the respondent-Government, as the object of the private unaided educational institutions is to inculcate newer dimension to the educational prospects to the students from the inception level itself. Considering the need and demand for quality education, inter alia, enhancing the personal development of the students in the school requires to be considered whiie fixing the fee by the private unaided educational institutions. However, the private unaided educational institutions, so also, the respondent-Government shall not ignore the dictum of the Hon'ble Supreme Court in the case of T.M.A. PAI FOUNDATION. Constitution of India limits these private unaided educational institutions and the respondent-Government; and they shall not cross the *Lakshman*

Rekha as laid down under T.M.A. PAI FOUNDATION case. The cardinal rule would be to act just, fair and reasonable while formulating the fee structure, so that, no child would be deprived of elementary education in this welfare State, to fulfil the dreams of founding fathers of the Constitution of India. Dreams of children shall run in reality of their blood and heart. Therefore, Rule 4 of the Rules 1999 ought to be held unconstitutional and contrary to Article 14 of the Constitution of India. At this juncture, I have carefully noted the reasons assigned by the Division Bench of this Court in the aforementioned writ petitions and having come to the conclusion that the respondent-State Government has no role to interfere with the fee fixed under Section 48 of the Act in respect of the private unaided educational institutions, Rule 7 of the Rules 1999 which provides for fine for violation; and Rule 10 of Rules 1995 which provides for collection of fees, are liable to be struck down as unconstitutional and outside the purview of Article 14 of the Constitution of India, in respect of private unaided educational institutions.

In the result, I pass the following:

O R D E R

(i) Writ petitions are allowed;

(ii) Sections 2(11-A), 48, and 124-A of the Karnataka Education Act, 1983 are contrary to Article 14 of the Constitution of India and are held to be unconstitutional insofar as private unaided educational institutions;

(iii) Sections 5-A and 112-A of the Karnataka Education Act, 1983 are contrary to Articles 14 and 19(1)(g) of the Constitution of India as well as the law declared by the Hon'ble Apex Court in the case of AVNIASH MEHROTRA [(2009)6 SCC 398];

(iv) Any such notification issued by the respondent-State in connection with Sections 2(11-A), 48 and 124-A of the Act is held to be

ultra vires in respect of the private unaided educational institutions;

(v) Any such notification issued by the respondent-State in furtherance of Sections 5-A and 112-A of the Act, is held to be unconstitutional in view of declaration of Sections 5-A and 112-A of the Act as ultra vires the Constitution of India and contrary to law declared by the Hon'ble Apex Court in the case of AVINASH MEHROTRA [(2009)6 SCC 398];

(vi) Rule 10(3)(a)(i) and 10(3)(c) of the Karnataka Educational Institutions (Classification, Regulation, Prescription of Curricula etc.) Rules, 1995; and Rule 4, and 7 of the Karnataka Educational Institutions (Regulation of certain Fees and Donations) Rules, 1999, are not applicable to the private unaided educational institutions;

(vii) Any such proceedings initiated by the respondent-authorities under the aforementioned provisions against such private unaided educational institutions which are held to be unconstitutional in the present writ petitions, stand terminated in view of the observation made in these writ petitions.

SD/-
JUDGE

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