

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

JUSTICE SUJOY PAUL.

Writ Petition. No. 2450/2012

Little Angels Shiksha Samiti

Vs.

State of M.P. & Ors.

.....
Shri K.N. Gupta, Sr. Advocate with Shri Sanjay Dwivedi and Shri Vishal Tripathi, Advocates for the petitioner.

Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.

Mrs. Sudha C. Sharma, Advocate for the respondent No.9.

Shri D.P.Singh, Advocate for the respondent No.10 / CBSE.

.....
Writ Petition. No. 5775/2012

Shri Laxman Education Trust

Vs.

State of M.P. & Ors.

.....
Shri Yogesh Chaturvedi, Advocate for the petitioner.

Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.

Shri R.K. Soni, Advocate for the respondent No.5.

.....
Writ Petition. No. 3707/2014

Miss Hill Education Society

Vs.

State of M.P. & Ors.

.....
Shri B.P.Singh, Advocate for the petitioner.

Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.

.....
Writ Petition. No. 4098/2014

Venus Public School & Anr.

Vs.

State of M.P. & Ors.

.....
Shri D.K. Agrawal, Advocate for the petitioners.

Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.

Writ Petition. No. 4919/2014

Sai Sakshi Shiksha Samiti, Gwalior
Vs.
State of M.P. & Ors.

.....
Shri Amit Lahoti, Advocate for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs.
Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

Writ Petition. No. 7451/2014

Bhartiyam Vidya Niketan
Vs.
State of M.P. & Ors.

.....
Shri D.K. Agrawal, Advocate for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs.
Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

Writ Petition. No. 8062/2014

Rishi Galav Public School B Block
Deendayal Nagar, Gwalior
Vs.
State of M.P. & Ors.

.....
Shri Vivek Jain, Advocate for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs.
Nidhi Patankar, Govt. Advocate for the respondents / State.
Mrs. Sudha C. Sharma, Advocate for the respondents No. 4 & 5.
.....

Writ Petition. No. 2224/2015

Gwalior Private Schools Association Samiti
Vs.
State of M.P. & Ors.

.....
Shri Vivek Jain and Shri D.K. Agrawal, Advocates for the
petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs.
Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

Writ Petition. No.2226/2015

Oxford Shiksha Samiti
Vs.
State of M.P. & Ors.

.....
Shri K.N. Gupta, Sr. Advocate with Shri Sanjay Dwivedi and Shri Vishal Tripathi, Advocates for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

Writ Petition. No.2227/2015

Devi Bai Shiksha Evam Samaj Kalyan Samiti & Anr.
Vs.
State of M.P. & Ors.

.....
Shri K.N. Gupta, Sr. Advocate with Shri Sanjay Dwivedi and Shri Vishal Tripathi, Advocates for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

Writ Petition. No. 2228/2015

Little Angels Shiksha Samiti
Vs.
State of M.P. & Ors.

.....
Shri K.N. Gupta, Sr. Advocate with Shri Sanjay Dwivedi and Shri Vishal Tripathi, Advocates for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

Writ Petition. No. 2248/2015

Sai Sakshi Shiksha Samiti, Gwalior
Vs.
State of M.P. & Ors.

.....
Shri Amit Lahoti, Advocate for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

Writ Petition. No. 2462/2015

Shyamlal Lajwanti Devi Kukreja Smriti Samiti
Vs.
State of M.P. & Ors.

.....
Shri K.N. Gupta, Sr. Advocate with Shri Sanjay Dwivedi and Shri Vishal Tripathi, Advocates for the petitioner.
Shri M.P.S. Rahuvanshi, Additional Advocate General with Mrs. Nidhi Patankar, Govt. Advocate for the respondents / State.
.....

ORDER
(13 / 05 / 2015)

In all these petitions there is a commonality of significant issue involved which basically relates to jurisdiction of Collector in taking coercive steps / coercive measures in the matter relating to school fee being charged by unaided private educational institutions in District Gwalior.

WP No. 2450/2012

2. The petitioner Little Angels Shiksha Samiti is a society registered under the Firms and Societies Act. The said society is running a school namely “ Little Angels High School Gwalior”. Admittedly, the petitioner is not getting any grant-in-aid from the Government. Thus, school is a private unaided school. The School is affiliated to Secondary Board of Secondary Education (CBSE). The petitioner in its meeting dated 14.02.2011 decided to enhance the fees for Class I to X by Rs. 600/- and for Class XI to XII Rs. 1000/- per quarter. Shri K.N. Gutpa, learned senior counsel contends that this decision of enhancement of fees was made known to the parents. The said decision of enhancement of fees was taken in the meeting of society and also in the meeting of School Management Committee (SMC). In the SMC, three parents' representative were also present. One Smt. Farzana Khan, Editor or a Newspaper, made an undated complaint to Collector which is filed as Annexure P/3. An enquiry Committee comprising of Principals of Govt. Railways Girls' Higher

Secondary School, Govt. Vidyapeeth Higher Secondary School and Govt. Girls' Higher Secondary School Gwalior was constituted to enquire into the matter. The said committee issued a notice dated 12.12.2011 and demanded certain details. The petitioner furnished the desired information by letter dated 28.12.2011. Thereafter a notice dated 12.01.2012 (Annexure P/2) was issued by Collector Gwalior informing that the report of enquiry committee aforesaid has been received by the Collector and petitioner should appear and plead his case in the office of Collector. Petitioner in obedience of said notice, appeared before the Collector through his counsel and submitted his representation dated 06.02.2012. It is common ground that Collector did not afford any opportunity to cross-examine the complainant. In turn, the impugned order dated 12.03.2012 was passed whereby the action of petitioner of enhancement of fees vide SMC meeting dated 12.02.2011 was disapproved and set aside. The petitioner was directed to adjust the enhanced fees which has been recovered in subsequent academic session of 2012-13. It is further directed that Registrar of Firms and Society should constitute a team and audit the accounts of petitioner-society of last three years.

3. Shri K.N. Gupta, senior counsel submits that under the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and as per Central Board of Secondary Education affiliation Bye-laws, the Collector has no authority, jurisdiction and competence to undertake the aforesaid exercise. He submits that the proceedings initiated by the Collector were without authority of law. There is no enabling provision which permits the Collector to decide the legality and validity of decision of petitioner relating to fee enhancement and other administrative matters. In addition, it is contended that in State of M.P. by Gazette notification 26.03.2011 the Right of Children to Free and Compulsory Education Rules, 2011 (RTE Rules) were notified. As per these Rules also the Collector of Revenue District is not competent to undertake aforesaid exercise. It is also contended that proceedings were not in consonance with principle of natural

justice. The impugned order is based on surmises and conjunctures. It is not a reasoned order and therefore, interference be made.

4. To elaborate, learned senior counsel relied on definitions of appropriate Government, capitation fee, child, child belonging to disadvantaged group, elementary education, local authority and school. It is contended that present educational institutions are covered under the definition of school and fall within the ambit of section 2(n)(iv) i.e. “ an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate government or the local authority.” It is contended that a microscopic reading of the scheme of RTE will make it clear that nature of duties and responsibilities of Government and aided schools, and private and unaided schools are totally different. He also relied on definition of “local authority” to contend that by no stretch of imagination, Collector can be treated as “ local authority: By placing reliance on Section 12(c), it is contended that petitioners have an obligation to admit in class I to the extent of at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide fee and compulsory elementary education till its completion. As per Section 12(2), it is urged that the said expenditure shall be reimbursed by the State in consonance with said provision.

5. Shri Gupta relied on Section 21 of RTE Act to contend that a school, other than a school specified in sub-clause (iv) of clause (n) of Section 2, shall constitute a School Management Committee consisting of certain representatives mentioned therein. It is common ground that section 21 has no application on unaided private institutions. Shri Gupta also relied on the definitions of District Education Officer, limit of neighbourhood, and extended limit of neighbourhood mentioned in the RTE Rules. By placing reliance on Rule 5 of said Rules, it is contended that the duty of State Government and local authority are defined, beyond which the said authorities have no element of control or power of regulation over the unaided private

institutions. He relied on Rule 11 (4) (vi) to contend that schools are only required to notify fee to be charged from the children every year in such manner as directed by Commissioner, Rajya Shiksha Kendra before the commencement of academic session. Such intimation is required to be given to District Education Officer also. He further submits that in view of recent amendment in the Rules w.e.f. 26.05.2014, the Collector has limited power to act as an appellate authority against the order of District Education Officer.

6. Shri Gupta submits that powers of District Education Officer are related to the recognition of the institution. The Collector has narrow power under the Rules to adjudicate upon the action of DEO. Shri Gupta also relied on various provisions of CBSE bye-laws. It is contended that as per said bye-laws also Collector has no power to sit over in judgment on the action of petitioner in enhancing the fees. He relied on definitions of School Management Committee, Parents Teacher Association etc.

7. Learned senior counsel for the petitioner submits that in view of judgments of Supreme Court, the petitioner has a fundamental right to run the school. This right flows from Article 19 (1) (g) of the Constitution. No doubt, reasonable restrictions can be imposed but said restrictions can be only in accordance with Article 19 (6) of the Constitution. The restriction/regulation can be by way of a 'law' and cannot be through executive instruction. He submits that Annexure R-1 is based on Zila Yojna Samiti Act. The said Adhinyam was introduced on foundation of Article 243ZD of the Constitution. As per Section 7 of Zila Yojna Samiti Act, certain powers are vested with the Committees. The question of fee regulation or implementation of RTE Act is beyond the purview of the said Committee. Hence, no delegation of power based on said Act will empower the Collector to take the impugned action. He submits that as per Section-8 of Zila Yojna Samiti Act, the Collector cannot be treated as Secretary for the purpose of the issues and subject involved. He relied on certain judgments of Supreme Court in support of his contention.

W.P.No. 5775/12

8. Shri Yogesh Chaturvedi, Advocate borrowed the arguments of learned senior counsel Shri K.N.Gupta and contended that Collector has no right to decide the aspect of fee regulation in the petitioner-institution. By drawing attention of this Court on Annexure P-2, it is contended that Collector has initiated contempt proceedings. The Collector has no competence to initiate contempt proceedings as per Contempt of Court Act. The proceedings before the Collector were not proceedings of the 'court'.

W.P.No. 4098/14, W.P.7451/14, WP.7098/14 & W.P.No.224/14.

9. Shri D.K.Agrawal, learned counsel for the petitioners in these matters relied on the basic argument of Shri K.N.Gupta, learned senior Advocate. He relied on (2004) 5 SCC 583 (*Modern School Vs. Union of India and others*) and (2004) 2 SCC 510 (*Union of India Vs. Naveen Jindal and another*) to contend that the fee charged by unaided institutions cannot be regulated. It is the absolute right of petitioner to enhance the fees. As per settled law, the regulation, if any, can be made only by way of statutory regulations and not by executive instructions. He submits that in many cases enhancement of fees by the institutions is set aside by the Collector without following the principles of natural justice and without examining the response of particular institution. He submits that Section 188 IPC has no application in the present case on the institutions. It is contended that SMC is constituted in accordance with law.

W.P. No. 2248/15 & 2249/15

10. Shri Amit Lahoti, in addition to the arguments advanced by Shri K.N.Gupta, learned senior counsel, contended that the State filed return in PIL-WP No.17943/14 before the Principal Bench and stated that State has no intention to regulate the fees of private institutions. He submits that para 16 of the return shows that respondents have stated that they have followed the principles of natural justice, whereas the impugned order dated 7.4.2015 is passed without following the principles of natural

justice.

W.P.8062/14

11. Shri Vivek Jain, Advocate added that the order dated 7.4.2015 is a blanket order. The Collector has no competence to issue the impugned order. The circular Annexure R-1 dated 30.3.1990 is ambiguous in nature and in this manner no power can be delegated.

12. Shri M.P. S.Raghuvanshi, learned Additional Advocate General supported the order and action of the Collector. He also relied on various definitions from R.T.E. Act, rules and C.B.S.E. bye-laws. He submits that the power of Collector can be traced from definition of "local authority" under the Act and from Rule 11 (4)(vi) and Rule 11(4)(c) of the rules. He submits that the Rajya Shiksha Kendra by order dated 19.2.2014 (Annexure R-2) in W.P. No. 2462/15 prescribed as to how the fee is to be charged and Nodal Officer needs to function. It is contended that the petitioners-institutions have not followed this circular. Heavy reliance is placed on Clause (6) of the C.B.S.E. bye-laws. It is contended that as per said bye-laws, Section 21 of R.T.E. Act was borrowed. Thus, SMC is required to be constituted by petitioners-institutions as per Section 21 of the R.T.E. Act. By placing reliance on document dated 7.5.2008, it is contended that Nodal Officer was appointed by District Education Officer. It is submitted that various bus agreements in W.P. 2450/12 show that these are formal arrangements because signatures of bus operators in all the agreements are same. He submits that the schools are not acting in consonance with R.T.E. Act, rules and C.B.S.E. bye-laws. Hence, they are not entitled for any relief from this Court under Article 226 of the Constitution. He relied on *AIR 1988 SC 94 (Mohammad Swalleh and others Vs. III Additional District Judge, Meerut and another)* and *(2012) 6 SCC 1 (Society for Unaided Private Schools of Rajasthan Vs. Union of India and another)*. It is contended that in the cases where great public interest is involved, even if order is passed by incompetent authority, no interference be made. He submits that the petition filed by the Association is not maintainable in view of

(1995) 1 SCC 85 (*Mahendra Kumar Gupta and others Vs. Union of India, Ministry of Petroleum and Natural Gas*). It is contended that many schools have accepted the order of Collector and did not challenge it. There is no justification in challenging the order of the Collector. He informed that the State Government has recently introduced a policy for fee regulation/fixation dated 30.4.2015. A copy of said policy is provided to the court during the course of hearing.

13. Mrs. Sudha C. Sharma, Advocate appeared for parents-Association. Appearing for the parents, she contends that schools are running to earn profit whereas imparting education is a work of charity. It cannot be done for the purpose of profiteering. Profiteering if any, needs to be used for the development of institution itself. She supported the order of the Collector. By taking this Court to Annexure R-1 in WP.2450/12, Clause (2) (xxxvii) of the C.B.S.E. guidelines, she relied on M.P. Zila Yojna Samiti Adhiniyam, 1995. It is urged that Collector being head of the administration in the District is empowered to pass the impugned order. It is contended that action was taken by the Collector based on complaint in "*Jan Sunwai*". Collector has wide powers to take cognizance on the grievance of public at large. It is submitted that petitioners have taken recognition from the State and affiliation from C.B.S.E. The affiliation of Little Angels School is provisional till date. The petitioners were required to fulfill a form which contained a condition that if any provision of the Act, rules or education code is violated, coercive action can be taken against them. She relied on various provisions of M.P. Education Code. It is contended that as per various provisions of Code, Collector has jurisdiction to deal with the question of fee hike. She submits that parent-teacher association is not constituted as per the provisions of the Act, rules and C.B.S.E. guidelines and Code. She relied on Clause-21 of C.B.S.E. regulation to bolster her submission regarding constitution of SMC. She relied on C.B.S.E. regulation for the purpose of question of determination of fees. It is urged that bus facility has also become a source of earning for the institutions.

She relied on definition of 'owner' under the Motor Vehicle Act. Lastly, she relied on a judgment of Division Bench of Punjab and Haryana High Court in W.P. No.20545/2009 (decided on 9/4/2013). Shri R.K. Soni, Advocate appeared for parent / respondent No.5 in WP No. 5775/2012. He advanced the same arguments which were advanced by Mrs. Sudha C. Sharma. In addition, Mrs. Sudha C. Sharma filed certain documents to show that in one case this Court directed the aggrieved party to avail the remedy under the RTE Act. In turn, Collector entertained the said matter in the capacity of "local authority". The said order of Collector was not challenged. However, this contention is refuted by Shri Sanjay Dwivedi by contending that said order was challenged by amending the concerned writ petition. In my view, this Court is dealing with the aspect of authority of the Collector.

14. It is common ground taken by petitioners that as per new policy dated 30.4.2015, the order of Collector for the session 2015-2016 are impliedly overruled. To elaborate, it is contended that the new policy is made effective for the educational session 2015-2016. Thus, in cases where Collector has passed the order for these years, Collector's order has to be treated as null and void. Reliance is also placed on the recent order of Indore bench passed in W.P. Nos. 2704/15 and 2705/15 (Jagran Social Welfare Society and Delhi Public School Vs. State of M.P. & ors.). Shri D.K.Agrawal contended that petitioner-association in W.P.2224/15 has filed a list of its members. As per *AIR 1962 SC 171 (All India Bank Employees' Association Vs. The National Industrial Tribunal (Bank Disputes) Bombay and others)*, the association has locus to file the petition. He relied on certain other judgments to contend that there is no valid delegation of power to Collector. He relied on *(2011) 6 SCC 508 (Noida Entrepreneurs Association Vs. Noida and others)* to contend that when order is passed in a hasty manner, it shows that it is malicious exercise of power and Rule of law is not followed.

15. Shri Amit Lahoti submits that in W.P. No.4919/13 a show cause notice was issued based on two reasons. Firstly, it was related to school welfare and secondly about the atmosphere of

the school. Petitioner submitted reply to the said show cause notice. A final order is passed which was related to fee hike for which petitioner was not put to notice.

16. It is also common ground by the petitioners that if law prescribes to do a thing in a particular manner, it has to be done in the same manner or not at all. Since RTE Act, Rules of 2011 and bye-laws provide a mechanism under which action can be taken against schools, no other action is permissible. It is stated that action of the Collector has to be judged on the basis of the reasons mentioned in the order. It cannot be judged by any other reason or by way of counter affidavit. Reliance is placed on the judgment of Supreme Court in *Mohinder Singh Gill v. Chief Election Commr.* {(1978)1 SCC 405}.

17. Shri D.P.Singh, learned counsel for the CBSE contends that affiliation by laws have statutory force. He relied on judgment of High Court (New Delhi) WP (c). 3266/2014 (Abhishek Kumar Vs. Union of India). He also relied on certain definitions of said bye-laws and clause 11(3) and 19(2) to contend that the school is required to act in consonance with relevant act of Central / State Government and affiliation norms. In addition, it is contended that as per clause 11(1) fees charged should be commensurated with the facilities provided by the institution. Fees must be under the heads prescribed by the Department of Education of State Government. In case of violation, coercive action can be taken under the bye-laws.

18. No other points are pressed by the parties.

19. I have heard the learned counsel for the parties and perused the record.

20. I deem it proper to refer the relevant definitions which are relied upon by the parties during the course of arguments. Relevant definition reads as under:-

"appropriate Government"--

- i. in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;
- ii. in relation to a school, other than the school referred to in sub-clause (i), established within the

territory of--

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

b. **"capitation fee"** means any kind of donation or contribution or payment other than the fee notified by the school;

c. **"child"** means a male or female child of the age of six to fourteen years;

d. **"child belonging to disadvantaged group"** means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

f. **"elementary education"** means the education from first class to eighth class;

h. **"local authority"** means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

(n) **"school"**

"school" means any recognised school imparting elementary education and includes--

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

Duties of local authority.- Every local authority shall--

a. provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

b. ensure availability of a neighbourhood school as specified in section 6;

c. ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

d. maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

e. ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;

f. provide infrastructure including school building, teaching staff and learning material;

g. provide special training facility specified in section 4;

h. ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

i. ensure timely prescribing of curriculum and courses of study for elementary education;

j. provide training facility for teachers;

k. ensure admission of children of migrant families;

l. monitor functioning of schools within its jurisdiction; and

m. decide the academic calendar

12. Extent of school's responsibility for free and compulsory education.- 1. For the purposes of this Act, a school,--

a. specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

b. specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

c. specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of

at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

2. The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

3. Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

18. No School to be established without obtaining certificate of recognition.-

1. No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

2. The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfills norms and standards specified under section 19.

3. On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

4. With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

5. Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

21. School Management Committee.-

1. A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

Provided that at least three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:

Provided also that fifty per cent. of Members of such Committee shall be women.

2. The School Management Committee shall perform the following functions, namely:--

- a. monitor the working of the school;
- b. prepare and recommend school development plan;
- c. monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and
- d. perform such other functions as may be prescribed :

[Provided that the School Management Committee constituted under sub-Section (1) in respect of :-

- a. a school established and administered by minority whether based on religion or language; and
- b. all other aided schools as defined in sub-clause (ii) of clause (n) of section 2,

shall performed advisory function only.]**31.**

Monitoring of child's right to education.-

1. The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of

Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:--

- a. examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- b. inquire into complaints relating to child's right to free and compulsory education; and
- c. take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

2. The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

3. Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

32. Redressal of grievances.-

1. Notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.

2. After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.

3. Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be.

4. The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be, as provided under clause (c) of sub-section (1) of section 31.

2

(g) **“District Education Officer”** means officer responsible for management of elementary education at district level;

(h) **“extended limit of neighbourhood”** means

the neighbourhood area of the limit of neighbourhood defined under clause (k);

(k) **“Limit of neighbourhood”** means, in case of classes I to V, in rural area the village and adjoining villages and adjoining wards of urban area, if any, and in urban area, the ward and adjoining wards and adjoining villages, if any, and in case of classes VI to VIII, area of 3 k.m. from this limit;

(n) **“Primary school”** means school that imparts education from classes I to V;

4. Areas or limits for the purposes of section 6 –

(1) The areas or limits of neighbourhood within a school has to be established by the State Government shall be the area or limit as defined in clause (k) of sub-rule (1) of rule 2:

Provided that if any habitation within the area of the limit of neighbourhood has no primary school facility within a radius of 1 km. and minimum 40 children of 6-11 years of age are available, the State Government shall provide primary school facility in such habitation:

Provided further that if any habitation within the area or the limit of neighbourhood has no middle school facility within a radius of 3 km. and minimum 12 children of 11-14 years of age are available, the State Government shall provide middle school facility in such a habitation.

(2) Wherever required, the State Government shall upgrade existing schools from classes I to V to include classes VI to VIII. In respect of schools which start from class VI onwards, the State Government shall endeavour to add classes I to V, wherever required.

(3) In areas with difficult terrain, risk of landslides, floods, lack of roads and in general danger for young children in the approach from their homes to the school, the State Government/local authority shall locate the school in such a manner as to avoid such dangers, by relaxing the limits specified under sub-rule (1).

(4) For children from small hamlets or any other place as identified by the State Government/local authority, where no school exists within the area or limit of neighbourhood specified under sub-rule (1) above, the State Government/local authority shall make adequate arrangements, such as free transportation, residential facilities and other facilities, for providing elementary education in a school, in relaxation of the limits specified under sub-rule (1).

(5) In areas with high population density, the

State Government/local authority may consider establishment of more than one neighbourhood school, having regard to the number of children in the age group of 6-14 years in such areas.

(6) The local authority shall identify the neighbourhood school(s) where children can be admitted and make such information public for each habitation within its jurisdiction.

(7) In respect of children with disabilities which prevent them from accessing the school, the State Government/local authority will endeavour to make appropriate and safe transportation arrangements for them to attend school and complete elementary education.

(8) The State Government/local authority shall ensure that access of children to the school is not hindered on account of social and cultural factors.

5. Duties of State Government and local authority :-

(1) For the purpose of determining and for establishing neighbourhood schools, the State Government/local Authority shall undertake school mapping, and identify all children, including children in remote areas, children with disabilities, children belonging to disadvantaged group, children belonging to weaker section and children referred to in section 4, within a period of one year from the date of publication of the rules and every year thereafter.

(2) The State Government/local authority shall ensure that no child is subjected to caste, class, religious or gender abuse in the school.

(3) For the purposes of clause (c) of section 8 and clause (c) of section 9, the State Government and the local authority shall ensure that a child belonging to a weaker section and a child belonging to disadvantaged group is not segregated or discriminated against in the classroom, during mid day meals, in the play grounds, in the use of common drinking water and toilet facilities and in the cleaning of toilets or class rooms.

(4) The State Government shall ensure that free uniform is provided to all children studying in schools established and owned or controlled by the State Government or the local authority.

11. School recognition

(3) The District Education Officer may inspect or may cause to inspect the school to verify if the school seeking recognition fulfills the norms and standards prescribed under section 19. The District Education Officer and the inspecting authority, if it is other than the District Education Officer, shall have power to seek information relevant for the grant of

the recognition and to make inspection of the records to verify the information submitted in the application form for seeking recognition.

(4) (a) The District Education Officer on being satisfied that the school fulfills the norms and standards prescribed under Section 19 shall issue the recognition certificate in Form-2 appended to these rules. The certificate shall be for a period of three years and shall be issued within 45 days from the date of making application for recognition. The certificate of recognition shall be subject to following conditions:-

(i) the school shall have to maintain norms and standards specified under Section 19;

(ii) the school shall give admission to a minimum of 25% in class I for the children of disadvantaged group and children of weaker section from the limit of neighbourhood. In case the school is aided school it shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five percent:

Provided that where a school imparts pre school education, the provision of clause (a) to (c) of sub-section (1) of section 12 shall apply for admission to pre school;

(iii) the school shall set up free extinguisher and other fire security arrangements as per norms specified under the National Building Code of India Part 4;

(iv) the school is open to inspection by an officer authorised by the State Government/local authority;

(v) the school shall furnish such reports and information as may be required by the State Government, Commissioner, Rajya Shiksha Kendra and District Education Officer from time to time and comply with such instructions of the State government/local authority as may be issued to secure the continued fulfilment of the conditions of recognition or the removal of deficiencies in working of the school to meet the revisions of the Act;

(vi) the school shall notify fee to be charged from the children every year in such manner as directed by Commissioner, Rajya Shiksha Kendra before the commencement of academic session. It will also intimate the fee to the District Education Officer before the beginning of academic sessions;

(vii) the recognition shall be withdrawn in case of violation of the terms and conditions of recognition.

(b) The school shall have to make an application for renewal of certificate of recognition at least 45 days before the expiry of period of recognition in

manner prescribed in sub-rule (1). On receipt of such application, the District Education officer may renew the school recognition for another 3 years after following the process laid down in sub-rule (2) and (3)

(C) The Collector, at any time its own motion or on the application made by the applicant school within 45 days of the decision the District Education Officer, may call for the record of the case which has been decided by the District Education Officer to examine whether the authority has acted in exercise of his / her jurisdiction illegally or with material irregularity.

In case the Collector is satisfied that the case has been decided illegally or with material irregularity it shall reverse or amend the decision of the District Education Officer:

Provided that no adverse order shall be passed by the Collector against any school before giving reasonable opportunity of being heard to the school.

(5) If a school established before the commencement of the Act does not fulfill the norms and standards specified in the Schedule of the Act, the District Education Officer shall issue a provisional certificate granting permission to run the school for a period upto three years from the date of commencement of the Act. The provisional certificate shall be issued in Form 3 appended to these rules;

Provided further that if the school does not claim further recognition within the period specified in the provisional certificate, the certificate issuing authority, on receipt of application for recognition, satisfy himself and shall issue the certificate of recognition as laid down under sub-rule (4):

Provided further that if the school does not claim further recognition within the period specified in the provisional certificate, it shall cease to be a recognised school and running of such a school shall be punishable under section 18.

(6) No new school shall be opened after the commencement of the Act without obtaining recognition certificate issued under section 18.

(7) Where a school contravenes the conditions of the recognition or any provisions of the Act, the authority issuing the certificate of recognition shall issue show cause notice to the school specifying the violations of conditions of grant of recognition. The school shall be given at least one month time to file the reply. In case the explanation is not found to be satisfactory or no explanation is received within the stipulated time period, the District Education Officer

may cause an inspection of the school, to be conducted by a committee of three to file members comprising of educationalists, civil society representatives, media and Government representatives, which shall make due enquiry and submit report, along with its recommendations for continuation of recognition or its withdrawal to the District Education Officer. On receipt of the report and recommendations of the committee the District Educational Officer may pass order for withdrawal of recognition :

Provided that no order for withdrawal of recognition shall be passed by the District Education Officer without giving the school adequate opportunity of being heard :

Provided further that no such order shall be passed by the District Education Officer without prior approval of the School Education Department of the State Government.

(8) The order of withdrawal or recognition passed by the District Education Officer shall be operative from the immediate succeeding academic year and shall specify the neighborhood schools to which the children of that school shall be admitted.

(9) Information of recognition of any school shall be sent to the local authority i.e. to the urban local body in case the school is situated in the urban area and to the Gram Panchayat and Janpad Panchayat in case the school is situated in the rural area.”

The relevant provisions of Affiliation Bye-laws are as under:-

ix) “School Management Committee” means the committee managing the school.

xxi) "Parents-Teachers Association” means an association of the parents and teachers of a particular school.

xxii) “Private Un-Aided School” means a school run by a Society/Trust /# Company registered under section 25 of the Companies Act, 1956 duly constituted and registered under the provisions of Central/State Acts not getting any regular Grant-in-Aid from any Government source(s).

20. School Managing Committee, Its Constitution, Power and Functions:

1. *Schools other than Government Schools affiliated with the Board shall have a school managing committee.*

2. *The school managing committee should consist of the following :—*

(a) *the managing committee of a recognised*

aided school shall consist of not more than fifteen members; and the managing committee of a private unaided school shall consist of not more than twenty one members;

(b) subject to the total number of members specified in clause (a), every managing committee shall include the following namely:—

(i) the Head of the school. He will be a Member Secretary of the School Managing Committee;

(ii) two parents of students in the school;

(iii) two teachers of the schools;

(iv) two other persons (of whom one shall be women); who are, or have been, teachers of any other school or of any college, to be nominated by the Trust/Society/# Company Registered under section 25 of the Companies Act, 1956 Board;

(v) two members, from out of a panel recommended by the Trust/Society/# Company Registered under section 25 of the Companies Act, 1956 to be nominated by the Board. If the Panel is not accepted fresh panel may be asked. The names recommended should not below the rank of a Principal of a Sr. Sec. School;

Rule amended in the Affiliation committee's meeting held on 16th May 2007 and approved by the Governing Body at its meeting held on 29th June 2007.

\$ Rule amended in the Affiliation committee's meeting held on 17th June 2011 and approved by the Governing Body at its meeting held on 22nd June 2011.

(vi) the remaining members to be nominated or elected as the case may be, in accordance with the rules and regulations of the society or trust or # Company Registered under section 25 of the Companies Act, 1956 by which the school is run.

(vii) Not more than two members may be nominated as per the conditions, if any, laid down in the "No Objection Certificate".

Provided further that the above provisions shall be implemented with immediate effect and those affiliated earlier and not complying with above provisions shall be required to take

remedial measures with suitable qualified substitutes within a year positively.

(viii) No Head Master/Principal shall be appointed in the school who is related to any member of the School Managing Committee.

(ix) For the purpose of this rule, the relation includes the following Brothers, Sisters, Husband, Wife, Son, Daughter, Son-in-law and Daughter-in-law.

Provided further that any violation of rules will lead to the disaffiliation of the school.

3. The term of the members of the Managing Committee shall be three years. A member can be re-nominated for another term but a member cannot remain in office for more than two consecutive terms except exofficio members and the members of the Trust/Society/# Company Registered under section 25 of the Companies Act, 1956 of the School. The duties, powers and responsibilities of the School Managing Committee shall be as follows and it shall function subject to the control and in accordance with the policy to the Society/Trust/# Company Registered under section 25 of the Companies Act, 1956.

21. Powers and Functions of the School Management Committee

1. Subject to overall control of the Society/Trust/# Company Registered under section 25 of the Companies Act, 1956 the School Managing Committee shall have the following powers/functions:

Rule amended in the Affiliation committee's meeting held on 16th May 2007 and approved by the Governing Body at its meeting held on 29th June 2007.

vi) It shall exercise financial powers beyond those delegated to the Principal within the budgetary provision of the school.

ix) It shall ensure that the norms given in the Act of the State and by the CBSE regarding terms and conditions of service and other rules governing recognition/affiliation of the school are strictly adhered to.

x) It should ensure that the school gets Furniture, Science equipment, Library

- books and other teaching aids and the requisite sports material in adequate quantity and on time.*
- xiii) *It shall ensure that no financial irregularity is committed or any irregular procedure with regard to admission/ examinations is adopted.*
- xiv) *It shall have the power to propose to the Society rates of tuition fees and other annual charges and also review the budget of the school presented by the Principal for forwarding the same to Society for approval.*
- xv) *The Managing Committee will meet at least twice in an academic session.”*

Clause 11 which deals with fees reads as under:-

11. Fees:-

1. Fees charges should be commensurate with the facilities provided by the institution. Fees should normally be charged under the heads prescribed by the Department of Education of the State / U.T. for schools of different categories. No capitation fee or voluntary donations for gaining admission in the school or for any other purpose should be charged / collected in the name of school and the school should not subject the child or his or her parents or guardians to any screening procedure. In case of such malpractices, the Board may take drastic action leading to disaffiliation of the school.

Further, any school or person violates the above provisions is liable for following :-

- (i) Receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;
 - (ii) Subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.
2. In case a student leaves the school for such compulsion as transfer of parents or for health reasons or in case of death of the student before completion of the session, prorata return of quarterly / term/ annual fees should be made.
 3. The unaided schools should consult parents through parents' representatives before revising the fees. The fee should not be revised during the mid session.

21. The pivotal question in these matters is whether Collector was competent to initiate action and pass the impugned orders

and whether institution have any unfettered right to enhance the fees. As noticed, the argument of Shri M.P.S.Raghuvanshi and Mrs. Sudha. C.Sharma is based on Annexure R-1 dated 30.3.1990 (W.P. No.2450/12). I deem it apposite to reproduce the said order in its entirety:-

**मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय
वल्लभ भवन भोपाल-462004
आदेश**

भोपाल, दिनांक 30 मार्च, 1990.

क्रमांक ई-1/52/99/1/5- जिला योजना समितियों, उनके अध्यक्षों तथा जिला कलेक्टरों को-

- (i) राज्य शासन के कामकाज को कतिपय मदों या मदों के कतिपय विषयों के आवंटन, तथा
- (ii) राज्य शासन की कतिपय शक्तियों के प्रत्यायोजन, के संदर्भ में राज्य शासन एतद्वारा राज्य के समस्त कलेक्टरों को अपने-अपने जिलों के लिये शासन के समस्त सचिवालय विभागों में पदेन उप सचिव घोषित करता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार

हस्ता /-

(के. एम. आचार्य)

सचिव

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग

22. Heavy reliance is placed on the definition of 'local authority' under the RTE Act. Learned AAG contended that in the said definition, the words "and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority" covers the Collector. It is contended that by Annexure R-1 the Collector has been appointed as Deputy Secretary in his District. Accordingly, he is equipped with the administrative control on all the departments. Putting it differently, it is argued that as per circular dated 30.3.1999 (Annexure R-1), all the Collectors in their respective districts are made Deputy Secretary. Being Deputy Secretary, they have the administrative control over all the departments.

23. A plain reading of definition of 'local authority' makes it clear that it means Municipal Corporation or Municipal Council or Zila Panchayat or Nagar Panchayat or Panchayat by whatever

name called. It, no doubt, includes such authority or body which is having administrative control over the school. This administrative control over the school must be flowing from some legal provision which is in force for the time being. The subject of order dated 30.3.1999 shows that the Chairman of Zila Yojna Samiti and District Collectors were given certain powers. The powers were delegated for the purpose of undertaking the work of Zila Yojna Samiti. Article 243ZD reads as under:-

- “243ZD. Committee for district planning- (1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.
- (2) The legislature as a State may, by law, make provision with respect to-
- (a) The composition of the District Planning Committees;
 - (b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the local number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district proportion to the ratio between the population of the rural areas and of the urban areas in the district;

- (c) the functions relating to district planning which may be assigned to such Committees;
 - (d) the manner in which the Chairpersons of such Committee be chosen.
- (3) Every District Planning Committee shall, in preparing the draft development plan,-
- (a) have regard to-
 - (i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development infrastructure and environmental conservation;
 - (ii) the extent and type of available resources whether financial or otherwise;
 - (b) consult such institutions and organizations as the Governor may, by order, specify.
 - (4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the

Government of the State.

24. On the basis of Art. 243ZD M.P. Zila Yojna Samiti Adhiniyam, 1995 (M.P.Act 19 of 1995) was enacted. The preamble of it shows that it is an act to constitute the District Planning Committees for the purpose of Article 243 ZD of the Constitution and for matters ancillary thereto. Section 7 of this Adhiniyam prescribes the functions of the Committee which reads as under:-

7. Functions of Committee – The Committee shall perform the following functions :-

(1) Identification of local needs and objectives within the frame work of national and State level objectives;

(2) Collection, compilation and updation of information relating to natural and human resources of the district to create a sound data base for decentralized planning, preparation of district and block resource profiles;

(3) Listing and mapping of amenities at village, block and district levels;

(4) Determination of policies, programmes and priorities for development of the district, in order to ensure maximum and judicious utilisation and exploitation of available natural and human resources.

(5) Formulation of draft Five-year and Annual Development plans of the district in their Socio-economic, temporal and spatial dimensions, consolidating the plans prepared by the Panchayats and Urban bodies and submission thereof to the State Government for incorporation in the State Plan;

(6) Preparation of an employment plan for the district;

(7) Estimation of financial resources for financing the district plan;

(8) Allocation of sectorial and sub-sectorial outlays within the overall framework of the district development plan;

(9) Monitoring, evaluation and review of progress under the schemes and programmes being implemented in the district under the decentralized planning framework including central sector and centrally-sponsored schemes, and the Local Area Development Schemes of Parliamentary Constituencies and Assembly Constituencies.

(10) Submission of regular progress reports to the State Government in respect of schemes included in the District Plans;

(11) Identify schemes and programmes which

require institutional finance, devising appropriate linkages with the district plans and ensuring requisite flow of such investment;

(12) Ensuring participation of voluntary organizations in the overall development process;

(13) Making suggestions to the State Government with regard to the State Sector Schemes having significant bearing on the process of development of the district;

(14) Any other functions which may be entrusted by the State Government.

25. Section 8 makes it clear that Collector of the District shall be the Secretary of the Committee, he shall be responsible for maintaining the record of the Committee, preparing the record of discussions and communication of decisions and all other incidental / ancillary matters. A bare reading of functions of the Committee shows that Collector or Committee is not equipped with the power of administrative control over the schools.

26. Apart from this, the delegation of power dated 30.3.1999 is vague. It is mentioned in Clause (i) that in 'certain heads' and in 'certain subjects', Collectors are declared as Deputy Secretary. This Court is unable to trace any source of power either from the Adhiniyam, 1995 or from order dated 30.3.1999 which gives the Collector full administrative control over the schools. Thus, I am unable to hold that Collector is covered under the definition of "local authority". The delegation aforesaid also does not provide any such administrative control over the schools to the Collector. Thus, it is clear that the Collector was not competent to proceed against the schools in the matter of fee fixation or its regulation.

27. Rule 11(4)(c) aforesaid was brought in the statute book w.e.f. 26.5.2014. A plain reading of Rule 11 make it clear that certain powers are vested with District Education Officer which includes the power of renewal of recognition of schools. The limited power given to the Collector is to call for the record of any case which has been decided by D.E.O. Collector may examine whether the D.E.O has acted in exercise of his/her jurisdiction legally or with material irregularity. This power can be exercised by Collector on the application of school or *suomotu*. Thus, Collector has been empowered for the limited purpose of

examining the orders passed by D.E.O. Under Rule 11(4)(c), the the Collector could not have undertaken the impugned exercise nor such order could have been passed in exercise of power U/R. 11(4)(c) of 2011 rules.

28. So far executive instructions mentioned in the Education Code are concerned, the same are of no assistance to the respondents. The definition of "local authority" U/RTE Act makes it clear that such authority must be having administrative control over the school as per the provisions of any law which is applicable for the time being. This cannot be done on the basis of executive instructions. More so, when RTE Act, 2009 and Rules came into being. Thus, power of Collector has to be traced from the RTE Act, Rules and C.B.S.E. bye-laws. In absence of any such provision which empowers the Collector in aforesaid provisions, I am unable to hold that the Collector was competent to undertake aforesaid exercise and pass the impugned orders. The Collector has also issued notice of contempt against the schools which is called in question in certain petitions including WP.No.5775/12. Thus, the ancillary question is whether Collector is competent to initiate contempt proceedings. This aspect is considered by Apex Court in *AIR 1956 S.C. 66 (Brajnandan Sinha Vs. Jyoti Narain)*. The Apex Court opined that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. These tests must be applied for determining what is a Court strictly so called within the connotation of the term as used in the Contempt of Courts Act.

29. The similar view is taken by a Full bench of Gujarat High Court in *1986 Cr.L.J. 1543 (Shaikh Mohammadbhikhan Hussainbhai and etc. Vs. The Manager Chandrabhanu Cinema and others etc.)*. Para 23 of the said judgment reads as under:-

"In order that an authority can be considered to be a judicial authority it should be covered within the scope

and ambit of the word 'court' as employed by the Contempt of Courts Act and for that purpose the following tests must be satisfied by such authority, (i) Nature of power exercised by the authority. The power entrusted to the authority must be judicial power of the State, meaning thereby, the authority must be enjoined to adjudicate upon the disputes between the parties. There must be a lis between the contesting parties presented before the authority for adjudication and decision, (ii) The source of the power must emanate from the statute and must not be based merely on agreement between the parties. The power must statutorily flow and must continue to inhere in the authority subject to the limitation engrafted by the statute conferring such power, (iii) The manner of exercise of power must partake of essential attributes of 'Court' though minor trappings or inconsequential attributes may be absent. These essential attributes of the court would include right of the contesting parties to represent their case not necessarily orally before the tribunal, ascertainment by the authority of the disputed question of fact posed for its consideration by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence led before the authority, if the dispute between them is a question of law, the submission of legal arguments by the parties and the power of the authority to enforce attendance of witnesses, production of documents etc. to enable the authority to effectively decide their dispute in a judicial manner. (iv) The resultant or end product of the exercise of such power by the authority must result in a binding decision between the parties concluding the lis between the parties so far as the authority is concerned. The said decision must be definitive and must have finality and authoritativeness. The decision rendered by such authority must dispose of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the fact so found, including where required a ruling upon any disputed question of law.”

30. In *AIR 2014 S.C. 3020 (Dr. Subramanian Swamy Vs. Arun Shourie)*, the Apex Court opined that the functions of the Commission appointed under the *1952 Act (The Commission of Inquiry Act, 1952)* are not like a body discharging judicial functions of judicial power. Thus, the said authority was not treated as a 'Court'.

31. In the present case, the necessary ingredients for treating

the proceeding before the Collector as 'Court' are absent. In other words, the proceeding before the Collector in the instant matter cannot be treated to be a proceeding before a 'Court'. Thus, the initiation of contempt proceeding by the Collector is without authority of law and is liable to be interfered with.

32. This Court initially in W.P.2450/12 heard the parties on the question of interim relief on 2.5.2012. A detailed interim order was passed which is running in eight pages. The respondents were directed to file para-wise reply within 15 days. It is unfortunate that despite clear order, the respondent No.2 did not care to file para-wise reply. This inaction of respondent No.2 is liable to be deprecated.

33. The Indore bench in Jagran Social Welfare Society (supra) has taken note of the fresh guidelines issued by the State dated 30.4.2015 and the petitions were disposed of with singular direction that the impugned order of Collector is set aside and the institutions and the persons shall follow the guidelines dated 30.4.2015. The State was given liberty to issue fresh orders in accordance with the provisions of law.

34. This Court, at present, is not examining the action of institutions in constituting SMCs. Fixation of fee, transportation etc. These aspects and grievance of children/parents is to be looked into by the bodies/authorities empowered under the RTE Act, Rules and C.B.S.E. bye-laws. Thus, it will be the duty of said authorities to look into the said aspects in accordance with law.

35. The order of Collector is liable to be interfered with for yet another reason. This is settled in law that if a Statute provides a methodology to do a thing in a particular manner, it has to be done in the same manner and other methods are forbidden. The control/Regulation over the private schools is to be gathered from RTE Act, Rules and CBSE Bye-laws. As noticed, under the said provisions, different authorities are equipped to take action in certain matters. The Collector does not have any such power under the said provisions. Thus, the action and order of Collector impugned herein cannot be upheld. The judgments cited by Shri

Raghuvanshi are based on the peculiar facts of the said case and have no application in the factual matrix of the present matter.

36. Learned counsel for the petitioners have strenuously argued that right to run an educational institution is a fundamental right. The respondents cannot regulate it in any manner they like. This aspect was dealt with by the Apex Court in *T.M.A. Pai Foundation vs. State of Karnataka (11 Judge)*, reported in (2002) 8 SCC 481. In para 61, the Apex Court opined that 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. 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. The Apex Court further opined that 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 student. However, in para 57, the Apex Court opined as under :-

“Yet 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. 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.”

37. In para 41 of the judgment of *Modern School v. Union of India (2004) 5 SCC 583*, the Apex Court followed the *T.M.A. Pai*

Foundation (supra) and opined that any control or regulation over educational institution must be imposed only by legislative Act and not by any executive instruction. The said view was taken by following (2004) 2 SCC 510 (*Union of India vs. Navin Jindal*). In (2012) 6 SCC 1 (*Society for Unaided Private Schools of Rajasthan vs. Union of India*), the Apex Court opined as under:-

*“29. One more aspect needs to be highlighted. It is not in dispute that education is a recognised head of “charity” (see *T.M.A. Pai Foundation v. State of Karnataka*). Therefore, even according to *T.M.A. Pai Foundation*, if an educational institution goes beyond “charity” into commercialisation, it would not be entitled to protection of Article 19(1)(g).*

38. Before parting with the matter, I deem it proper to deal with the argument of Shri D.K. Agrawal, learned counsel for the Association that institutions have full autonomy and unlimited freedom to enhance the fee. It is noteworthy that a Division Bench of Punjab & Haryana High Court passed a detailed judgment in batch of petitions (*Anti -Corruption and Crime Investigation Cell vs. State of Punjab & others*) (decided on 04.04.2013). The Hon'ble Chief Justice Shri A.K.Sikri (as His Lordship then was) has taken into account the relevant provisions and judgments on the question of fee hike. The High Court considered the judgment of *Modern School, TMA Pai Foundation (supra)*, *P.A.Inamdar vs. State of Maharashtra [(2005) 6 SCC 537]* and *Islamic Academy of Education vs. State of Karnataka (AIR 2003 SC 3724)* and *Unni Krishnan, J.P. v. State of A.P. [(2002) 8 SCC 481]* and opined that the capitation fee and profiteering is forbidden. It is further held that the fee structure must be fixed keeping in mind the infrastructure and facilities available, investigation made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees.

39. In para 62 of the judgment, the High Court opined that schools cannot indulge in commercialization of education which would mean that the fee structure has to be kept within bound so

as to avoid profiteering. "Reasonable surplus" is permissible as fund which may be required for development of various activities of the institution and for the benefit of the students themselves. The guiding principle, in the process, is "to strike a balance between autonomy of such institution and measures to be taken in avoiding commercialization of education." The autonomy of the schools can be ensured by giving first right to such schools to increase the fee. At the same time, quantum of fee to be charged by unaided schools is subject to regulation as per the enabling provision. Therefore, in the first instance, it is for the schools to fix their fee in accordance with law or increase the same but the authorities are bound to oversee it as per the provisions of RTE Act and the Rules made thereunder. The CBSE is also required to undertake the desired exercise as per the Bye-laws.

40. In *Anti-Corruption and Crime Investigation Cell (supra)*, the High Court reproduced the relevant portion of a judgment of Delhi High Court. In this judgment, Delhi High Court considered the aspect of need of Regulatory Mechanism. Delhi High Court opined as under:-

"Need of Regulatory Mechanism:

72. History of the litigation on this aspect, in this city, which has been outlined in this judgment and which was triggered by the 1st petition filed by DAM way back in 1997 amply demonstrates that adhocism in this behalf is not a suitable answer, much less a lasting solution. In DAM-1, this Court had constituted Duggal Committee. Though the said Committee undertook the task with all earnestness, sincerity and patience, for various reasons beyond the control of the Committee, it could not be completed and brought to the logical end. Further, in spite of the suggestions made by the Duggal Committee, further task in this behalf was not undertaken and no sincere efforts were made by the Government to ensure regular audit of the accounts of these schools. The result is that we are confronted with same situational and other roadblocks. Even this time, the Government chose to resort to adhocism by appointing S.L. Bansal

Committee, assigning it a task which could only take care of shorter measure and then constituting a Grievance Redressal Committee contrary to legal provisions.

73. What should be the appropriate measure required to be adopted in the scenario is the poser that states at one and all. According to us, solution lies in establishing a permanent regulatory body/mechanism.

74. Regulatory mechanism, or what is called regulatory economics is the order of the day. In last 60-70 years, economic policy of this country has travelled from *laisse faire* to mixed economy to the present era of liberal economy with regulatory regime. With the advent of mixed economy, there was mushroom of public sector and some of the key industries like Aviation, Insurance, Railways, Electricity/Power, Telecommunication, etc. were monopolized by the State. License/permit raj prevailed during this period with strict control of the Government even in respect of those industries where private sectors were allowed to operate. However, Indian economy experienced major policy changes in early 90s on LPG Model, i.e., Liberalization, Privatization and Globalization. With the onset of reforms to liberalize the Indian economy in July of 1991, a new chapter has dawned for India. This period of economic transition has had a tremendous impact on the overall economic development of almost all major sectors of the economy.

75. When we have liberal economy which is regulated by the market forces (that is why it is also termed as market economy), prices of goods and services in such an economy are determined in a free price system set up by supply and demand. This is often contrasted with a planned economy, in which a Central Government determines the price of goods and services using a fixed price system. Market economies are also contrasted with mixed economy where the price system is not entirely free but under some Government control or heavily regulated, which is sometimes

combined with State led economic planning that is not extensive enough to constitute a planned economy.

76. With the advent of globalization and liberalization, though the market economy is restored, at the same time, it is also felt that market economies should not exist in pure form. Some regulation of the various industries is required rather than allowing self-regulation by market forces. This intervention through Regulatory bodies, particularly in pricing, is considered necessary for the welfare of the society and the economists point out that such Regulatory economy does not rob the character of a market economy which still remains a market economy. Justification for Regulatory bodies even in such industries managed by private sector lies in the welfare of people. Regulatory measures are felt necessary to promote basic well-being for individuals in need. It is because of this reason that we find Regulatory bodies in all vital industries like, Insurance, Electricity & Power, Tele-communications, etc.

77. Thus, it is felt that in a any welfare economy even for private industries, there is a need for Regulatory body, such a Regulatory framework for education sector become all the more necessary. It would be more so when, unlike other industries, commercialization of education is not permitted and mandate of the Constitution of India backed by various judgments of the Apex Court is that profiteering in the education is to be avoided.

78. The concept of welfare of the Society would apply more vigorously in the field of education. Even otherwise for economist, education as an economic activity, favourably compared to those of other economic concerns like agriculture and industry, has its own inputs and outputs; and is thus analyzed in terms of the basic economic tools like the laws of return, principle of equimarginal utility and the public finance. Guided by these principles, the State is supposed to invest in education upto a point where the socio-economic returns to education equal to those from other State expenditures,

whereas the individual is guided in his decision to pay for a type of education by the possibility of returns accruable to him. All these considerations make out a case for setting up of a stable Regulatory mechanism.

79. The case at hand, however, demonstrates that because of the adhocism, we have not found a permanent solution. Result is that both the sides, viz., schools on the one hand and parents on the other hand are unhappy with the prevailing situation. Whereas some of the schools feel that they have not been allowed to increase the fee substantially to cover even the expenses, parents bodies on the other hand, have the grievance that hike of fee in certain schools is much more than justified. Such a problem would not arise if provisions of the School Education Act as well as the Rules are strictly adhered to by the schools, particularly, relating to the preparation of accounts, etc. and the increase in fee, if at all, based on the financial health of the schools. It would not arise if the DoE along with Comptroller and Auditor General discharge their duties sincerely undertaking the scrutiny of accounts and records to find out as to whether increase in fees is justified or not. Whether it is because of the reason that it is huge and onerous task for which DoE has no appropriate infrastructure and for any other reasons, fact remains that the DoE has not performed its task quite well giving rise to such situations. If a Regulatory body is established either by appropriate amendments in the Delhi School Education Act or by making a separate legislation or by administrative orders issued under the existing provisions, if so permissible, that may solve the problem once for all.

80. We, therefore, recommend that the Government should consider this aspect. If necessary, an expert Committee be constituted which can go into feasibility of establishing a Regulatory body for unaided/aided and recognized private schools in Delhi and

recommend the changes that are required to be made in the existing law or to suggest separate legislation if that is required.

81. The Central Government may even consider the feasibility of formulating "National Policy on Fee"."

41. After taking stock of various judgments, the Punjab & Haryana High Court opined that the profit/surplus funds cannot be diverted for any other use or purpose and cannot be used for personal gains or in business or enterprise. In para 82 of the judgment, the High Court opined that it is the duty of the official respondents to ensure that increase in the fees undertaken by a particular school is justified and necessitated by other circumstances like increase in expenditure or because of development activities needed and does not result into profiteering. It is also to be ensured that the funds are not diverted elsewhere. The High Court opined that the State should provide some permanent regulatory bodies/mechanism, which would go into this aspect on regular basis. Till the aforesaid is done, the Court itself appointed a committee headed by a Former Judge of the High Court.

42. A simple reading of judgments of Supreme Court which were considered by the Delhi and Punjab and Harayana High Courts make it clear that argument of institution that they have absolute and unlimited power of fee hike cannot be accepted. The power of fee hike is subject to RTE Act and Rules and CBSE bye-laws. In addition, the State has power to regulate the fee hike in accordance with law. However, I find force in the argument of petitioners that such regulation must have statutory backing. This cannot be done by executive fiat.

43. In the aforesaid factual backdrop, it is clear that educational institutions on the one hand are aggrieved with the action of respondents in regulating the fees and taking coercive steps, whereas the parents / students on the other hand feel that hike of fee of any institution is unjustifiable. This aspect needs serious consideration. No doubt, as a thumb rule it cannot be

said that in no circumstances fees can be enhanced but at the same time the enhancement of fees should be reasonable, justifiable and on the basis of parameters laid down by the Apex Court. In this view of the matter, I am in respectful agreement with the judgments of said High Courts wherein they have emphasized the need for introducing proper regulatory mechanism and appointment of expert committee etc.

44. While dealing with a writ petition under Article 226 of the Constitution, this court is exercising plenary jurisdiction. In *AIR 1966 SC 81(Dwarka Nath Vs. Income-tax Officer, Special Circle, D Ward, Kanpur and another)*, K. Subba Rao. J. speaking for the bench opined as under :-

“ This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power , the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression “nature”, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart. High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirement of this country. Any attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

45. In 1985 (*Supp*) SCC 476 (*I.T.C. Ltd. and Ors. Vs. State of Karnataka and Others*) the Apex Court opined as under :-

“Having found that basically and essentially the fee was unjustified on the theory of quid pro quo, the High Court was entitled to give positive directions in the manner the money should be spent. The directions were within the competence of the High Court while dealing with grievances made under Article 226 to ensure that appropriate statutory authorities acted according to law

after properly ascertaining the facts and for the purpose of rendering full justice to the parties.

The Court can mould its directions in order to give relief in a particular situation. Courts of today cannot and do not any longer remain passive with the negative attitude, merely striking down a law or preventing something being done. The new attitude is towards positive affirmative actions, directing people or authorities concerned that “ thou shall do't” in this manner. While it is true that if a law is bad, the Court must strike it down. But if the law by and large and in its true perspective of a social purpose if implemented in a particular manner could be valid, then the Court can and should ensure that implementation should be done in such particular manner and give directions to that effect.”

46. In (1995) 6 SCC 749 (*B.C. Chaturvedi Vs. Union of India*), the Apex Court opined that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material. The High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. Power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like High Court. The Apex Court considered the judgments of *Dwarika Nath* and *B.C. Chaturvedi* (Supra) again in (*Badri Nath Vs. Govt. of T.N.*) reported in 2000 (8) SCC 395 and opined as under :-

“88. We may, however, point out that it is not as if there are no exceptions to this general principle. The occasions where the Court issued a writ of certiorari and quashed an Order and had also issued a mandamus at the same time to the State or public authority could be very rare but we might emphasise that the power of this Court to mould the relief in the interests of justice in extraordinary cases cannot be doubted. In *Comptroller & Auditor General of India v. K.S. Jagannathan*²⁵ such a power on the part of this Court was accepted by a three-Judge Bench. Madon, J. referred to the observations of Subba Rao, J. (as he then was) in *Dwarka Nath v. ITO*²⁶ wherein the learned Judge explained that our Constitution designedly used wide language in Article 226 to enable the Courts to “reach justice wherever found necessary” and “to mould the reliefs to meet peculiar and complicated requirements of this country”. Justice Madon also referred to *Rochester*

*Corpn. v. R.*²⁷, *R. v. Revising Barrister for the Borough of Hanley*²⁸, *Padfield v. Minister of Agriculture Fisheries and Food*²⁹ and to a passage from *Halsbury's Laws of England*, 4th Edn. Vol. 1, p. 59. Finally Madon, J. observed: (SCC pp. 692-93, para 20)

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court *may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.*”

(emphasis supplied)

47. The Division Bench of Calcutta High Court presided by the Hon'ble Chief Justice Shri S.S. Nijjar and Justice Shri Pinaki Chandra Ghose (as their lordships then was) in *Association for Protection of Democratic Rights Vs. The State of West Bengal and Ors* (A.S.T. No. 205/2007) followed the aforesaid judgments of Supreme Court and opined that the High Court in exercise of power under Article 226 of the Constitution can do complete justice between the parties.

48. In the peculiar facts of this case and in order to do complete justice between the parties, I deem it proper to issue certain directions to strike a balance in the matter. In other words, if a regulatory mechanism is directed to be established, it will address the grievance of both the parties i.e. institutions and parents / students. It will not be out of place to mention that education has a very important role in building of nation.

Considering this aspect, the Apex Court opined that the basic purpose of establishing educational institutions is to do charity. If educational institutions are permitted to be reduced as money minting machines and they are permitted to be engaged in uncontrolled and unlimited profiteering, the very purpose of imparting education will be defeated. The holy and good academic atmosphere will gradually vanish in thin air. In Indian circumstances this cannot be permitted. The question regarding role of education in building responsible citizens and strong nation is like questioning relevance of sun to the solar system. The solar system cannot exist without the Sun. We cannot conceive a strong and modern nation without a proper education system. The education has been called technique of transmitting the civilization. For playing this role, the education has to perform two main functions :-

(i) it must enlighten the understanding and it must enrich the character. Enriching the character is the need of the hour. What we need today more than anything else is moral leadership / citizen enriched with intellectual integrity and sense of value. This cannot be achieved when educational institutions run with the aim of making profit. This can be achieved when education system is based on a duty towards nation and charity towards pupil. Aristotle said "Educating the mind without educating the heart is no education at all". Eminent educationist, philosopher and former President of India Dr. Sarvapalli Radha Krishnan opined that education should be imparted with a view to the type of society that we wish to build. We are working for a modern democracy built on the values of human dignity and equality. These are only ideals : we should make them living forces. Our vision of the future should include these great principles.

49. On the basis of foregoing analysis, it is apt to summarize the conclusions :-

(i) The impugned action and orders of Collector in the

present matters are without authority of law. Collector had no authority and Jurisdiction under the RTE Act and Rules and CBSE bye-laws to take the impugned action.

(ii) The proceedings before the Collector in the present matter were not proceedings before a “ Court” within the meaning of Contempt of Court Act. Hence, the notices issues by the Collector under the said Act are null and void.

(iii) In setting up a reasonable fee structure element of profiteering is not acceptable.

(iv) Fee structure must take into consideration the need to generate fund to be utilized for the betterment and growth of educational institutions, the betterment of education in that institution and to provide facilities necessary for the benefit of students. It needs no emphasis that fee hike must be based on actual need and should not be outcome of profiteering and greed.

(v) The occupation of education is regarded as charitable, the Government can provide regulation for forbidding the charges of capitation fees and profiteering by the institutions.

(vi) In the establishment of educational institution, the object should not be to make profit, in as much as education is essentially charitable in nature.

(vi) The reasonable revenue surplus, generated by the institution must be used for the purpose of development of education and expansion of the institution. “Reasonable surplus” can be used for development of various activities of the institution and for the betterment of students themselves

(vii) If education institution goes beyond “ charity” into commercialization, it would not be entitled to protection of Article 19(1)(g).

(viii) The fee structure must be fixed keeping in mind the infrastructure and facilities available, salaries paid to the teachers and staff, future plans for expansion and /

or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees.

(ix) The guiding principle in such matters is to strike a balance between autonomy of institution and measures to be taken in avoiding commercialization of education.

(x) To strike such balance, solution lies in establishing a permanent regulatory body / mechanism.

(xi) Such regulation is need of the hour. The question of fee hike cannot be totally left on the mercy of the market forces. Some regulation is required through Regulatory bodies in the matter of fee hike.

(xii) Regulatory frame work for eduction sector is extremely essential. The concept of welfare of the society would apply more vigorously in the field of education.

(xiii) The proper academic atmosphere will help in developing good citizens which will ultimately strengthen the nation.

(xiv) The pious atmosphere with charity will give a moral boost and training to the pupil. On the contrary, if educational institutions are permitted to function as profit making factory, it will vitiate the academic atmosphere which will ultimately cause harm to the educational environment.

(xv) The competent authorities under the RTE Act, Rules and CBSE bye-laws are bound to ensure that relevant provisions are directly implemented.

50. As analyzed above, the impugned orders of Collector in the present matters are set aside. Notice of contempt issued by the Collector are also quashed. Since commonality of issues are decided by this common order, if any other peculiar aspect involved in any writ petition is left out, it will be open to the said writ petitioner to challenge it in separate appropriate proceedings. In view of similarity of WPs, question of maintainability of WP by Association is left open. In the light of what has been analyzed

hereinabove, it is directed that the Government should consider the aspect of regulation of fees and other relevant issues. The Government may appoint an expert committee which can go into feasibility of establishing a regulatory body for institutions and recommend the changes that are required to be made in the existing law or to suggest separate legislation (if required).

51. It is also relevant to mention that the use of “reasonable surplus” and question of profiteering needs to be examined by financial experts. Thus, Government is required to apply its mind on this aspect also. This direction for consideration is all the more necessary because in *Modern School Vs. Union of India* (Supra) the Apex Court opined that any control or regulation over an educational institution must be done only by legislation Act and not by any executive instruction. Government needs to consider this aspect as well. The Regulatory body must have statutory backing.

52. In view of aforesaid, Government may also examine whether its recent policy dated 30.04.2015 will serve the aforesaid purpose or not. Government shall consider these aspects in the context of aforesaid findings and take appropriate decision. This exercise must be completed within six months from today.

53. Petitions are disposed of. No costs.

54. The Registry is directed to keep a true copy of this order in all the connected writ petitions.

(Sujoy Paul)
Judge