IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 9th April, 2013

1. **Civil Writ Petition No.20545 of 2009** (O&M)

Anti-Corruption and Crime Investigation Cell

…..Petitioner

Versus

State of Punjab and others

.....Respondents

2. **Civil Writ Petition No.3834 of 2010** (O&M)

All India Crime Preventing Society Regd**.**

…..Petitioner

Versus

State of Punjab and others

.....Respondents

3. **Civil Writ Petition No.5587 of 2010** (O&M)

Pranav Goyal & Others

…..Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE A.K. SIKRI, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Raman Sharma, Advocate for the petitioner in CWP No. 20545 of 2009.

Mr. G.S.Punia, Advocate, for the petitioner in CWP No. 3834 of 2010

Mr. Pawan Kumar, Sr. Advocate with

Mr. Anshuman Mandhar, Advocate, for the petitioners in
CWP No. 5587 of 2010.

Dr. B.M. Singh, Advocate for respondent No.1 (in Civil Writ Petition No. 20545 of 2009) and respondent No.4 (in Civil Writ Petition No. 3834 of 2010).

Mr. J.S. Puri, Addl. Advocate General, Punjab

Mr. Harsh Aggarwal, Advocate for CBSE.

Mr. Anshul Joy, Advocate for PSEB.

Mr. Pradip Bhandari, Advocate for ICSC Board i.e. respondent No. 5

Mr. KVS Kang, Advocate, for respondents No. 5,6,7 and 18 in
CWP No. 3834 of 2010.

Mr. Amit Rawal, Sr. Advocate with
Mr. Deepak Jain, Advocate, for respondent No. 8
(in CWP No. 3834 of 2010).

Mr. G.S.Bhatia, Advocate, for respondents No. 4 and 5 in
CWP No. 5587 of 2010.

Mr. Gaurav Goel, Advocate, for respondent No. 16
In CWP No. 3834 of 2010.

Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate for applicant in
CM Nos.11121 to 11123 of 2012

Mr. A.K. Chopra, Senior Advocate with
Mr. Ashish Chopra, Advocate for applicant in
CM Nos.13319-13320 of 2012

Mr. H.L. Tikku, Senior Advocate with
Mr. Sumeet Goel and Ms.Yashmeet, Advocates for
applicant in CM Nos.12148 and 12208 of 2012

……

A.K. SIKRI, CHIEF JUSTICE

1. In all these writ petitions, there is a commonality of significant issue involved which relates to the school fee being charged by the unaided private educational institutions in the States of Punjab, Haryana and the Union Territory of Chandigarh for the students in their schools, their right to hike the fee from time to

time and the nature of control which the Government can exercise in regulating such fee structure.

2. The issue got triggered with the filing of CWP No.20545 of 2009 which is treated as lead matter filed by Anti Corruption & Crime Investigation Cell, which is a registered Body. In this writ petition, the petitioner has alleged that the private educational institutions within Ludhiana and entire State of Punjab are taking the parents to ransom by whimsically enhancing the school fees on the one hand and the respondents which include the State of Punjab, Department of Education as well all Directorate of Education and Central Board of Secondary Education have not come forward to check the same and thereby they have failed to perform their legal and constitutional obligations. The petitioner states that Article 41 of the Constitution lays down that the State shall make effective provision for securing right to education. Article 41 relating to the Directive Principles of State Policy is reproduced as under:

> "41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want."

3. It has been held by the Supreme Court in case reported as **Samir Vs. State, AIR 1982 SC 66** that the duty of the State under this directive is not only to establish educational institutions but also to effectively secure the right to education. It is pointed out that the Parliament has enacted Delhi School Education Act, 1973. The provisions of Delhi School Education Act, 1973 and Rules framed thereunder were under the scrutiny of Supreme Court while action of the Government to regulate fee by unaided private schools was challenged in case reported as **Modern School Vs. Union of India, AIR 2004 SC 2236** and review decided in case of **Action Committee, Unaided Pvt. Schools & Ors. Vs.**

Director of Education, Delhi & Ors. 2009 (11) SCALE 7, on 07.8.2009 in which the Apex Court considered the issue of enhancement of fees by the private schools besides delving into the issue of autonomy of the institution, transparency and accountability etc. and held that the schools shall not increase the rates of tuition fees without the prior sanction of the Directorate of Education and shall follow the provisions of the Delhi School Education Act/Rules, 1973 and other instructions.

4. Similarly, the Government of Haryana has also enacted Haryana Education Act, 1995 and Haryana School Education Rules, 2003 for regulating education. But, in the State of Punjab, there is no such legislation. However, the schools are affiliated either with the CBSE or with the Punjab School Education Board (PSEB). It was submitted that no private school can afford to offer education without being affiliated with any of the Education Boards. Chapter 2 of CBSE Bye Laws contains norms for affiliation of the schools. Regarding financial resources of the school, it is provided that the school must have sufficient financial resources to guarantee its continued existence. The source must be permanent in nature which should cater to maintain a reasonable standard of efficiency, payment of salary to teachers and other staff at par with the corresponding categories in the State Government schools and to undertake development of the school facilities. No part of the income of the institution can be diverted to any individual and savings, if any, shall be further utilized for promoting the school. The accounts are required to be audited by a Chartered Accountant and proper statements of accounts are required to be maintained and submitted to the Board every year. The fees charged should be in commensurate with the facilities provided by the institution and under the 'heads' prescribed by the Education Department of the State. No capitation fee/donations for getting admission in schools can be charged

which is a malpractice. No fees enhancement can be effected without consultation with parent's representatives.

5. The PSEB has also framed Regulations for affiliation of institutions under the Punjab School Education Board Act, 1969 known as "The Punjab School Education Board Regulations for Affiliation of Institutions, 1988". As per these Regulations, the fees charged from the students should be approved by the Board from time to time. However, an institution providing extra facilities which augments the cause of education may charge extra fees with the permission of Board. The Regulations further provide that the institution must have sufficient resources to maintain and run the institution efficiently. The entire income from the institution shall be utilized only for the welfare of the students, teachers and the institution. Students' funds will be kept in a separate account and utilized by the Principal for the purpose for which they are collected. The Board can inspect the account of the institution from time to time. It has also been provided that every institution affiliated to the Board shall furnish such reports and information as may be required by the Board from time to time. The affiliated institution shall submit the return (Annual Progress Report) by September 15 each year and if the Board finds that the institution is not functioning properly, the institution shall be asked to improve its functioning within a specified period. If the affiliated institution fails to comply with the instructions, the matter shall be reported to the Academic Council for further action, which may lead to suspension or withdrawal of affiliation or any other action which the Council may deem fit.

6. On the allegation of whimsical increase in fees by the schools and upon representations being made, the Deputy Commissioner, Ludhiana got an inquiry conducted by Addl. Deputy Commissioner and a detailed report was submitted on 21.4.2009. It has been concluded in the said report that the schools

are increasing the fees every year which is against the public policy and the instructions of the CBSE. It has been observed that a uniform policy is required to be framed once whereas all the schools are charging admission fees on re-admission every year which is against public policy. Most of the schools are getting building funds and dilapidated funds from the students whereas both the heads are same. This component is charged on quarterly basis which can easily be charged every month reducing burden on the parents. Most of the schools are involved in sale of books, bags and uniforms either by themselves or through any specific agency. The grant of recognition to the private schools depends upon fulfillment of various requirements including financial status and infrastructure, these aspects could not be made an excuse to increase the fees structure since education is not a business and as such there cannot be any profiteering. The private schools, however, are involved in profiteering and are charging fee on various aspects which are illegal and contrary to public policy. Since the recognition granted to the private schools is conditional, the State Government and Education Boards would be well within their right to regulate the charging fees. The private schools cannot fleece the parents by raising fee unreasonably and by refusing to honour all the rules of law. Representations are being made to the Government to restrain the private recognized schools from enhancing the school fees as per their choice but the official respondents have failed to do so and as such the petitioners have been forced to knock at the door of this Court by means of the present petitions.

7. The petitioner has also referred to the various judgments of the Supreme Court where directions are given from time to time for constituting a Committee to go into the issue as to whether the fees hike as per school is justified or not. Reference in this connection is made to the judgments in the case of

T.M.A. Pai Vs. State of Karnataka, AIR 2003 SC 353 and **P.A. Inamdar Vs. State of Maharashtra, AIR 2005 SC 3226**. The grievance is that in spite of the directions contained in the aforesaid judgments, no such Committee has reliably been constituted in Punjab and fees is hiked in every school and is unchecked and whimsical. It is also the grievance of the petitioner that despite the fact that detailed enquiry has been held by the Addl. Deputy Commissioner, Ludhiana, into the aspect of charging fees by the private recognized schools/educational institutions in Ludhiana, no further action has been taken at the Government level to ensure that these schools do not whimsically increase the fees. School Education Boards have also failed in their duty to regulate the fees of the schools, though it is a condition of their recognition, without which the schools cannot run their classes. Not only this, the Government has the policy of allotting land to the schools at concessional rates so that the object enshrined under Article 41 of the Constitution of India is fulfilled and the education is not turned into a business but preserved as an occupation. Not only schools of Ludhiana but private recognized schools throughout the State of Punjab are involved in following amongst other irregularities:

(i) Charging admission fees from the students every year at the time of admission to higher class even though the student is of the same very school;

(ii) Charging various funds twice over, i.e., building fund and dilapidated funds are collected even though the building is already complete whereas only fund for maintenance could at best be charged;

(iii) Advance fees is charged invariably for three months whereas fees should be collected every month;

(iv) Either the schools are having their own shops or tie-ups with shops for sale of school books, stationery, school bags and uniforms. The parents are coerced to purchase these items from these shops whereby the schools are earning huge profits either by direct sale or by getting commission.

8. Taking cognizance of this Civil Writ Petition No. 20545 of 2009, notice of motion was issued on 24.12.2009. Thereafter, vide orders dated 04.3.2010 I.C.S.E. Board was also impleaded as a respondent. All these respondents were directed to file their replies to which the petitioners filed the replications; whereafter matter was taken up for hearing on 08.3.2011. By that time, CWP No.383 of 2010 and CWP No.5587 of 2010 were also filed raising the same issue, which were clubbed along with the lead case. On that date, the counsel for the petitioner in the lead case sought impleadment of schools as well, as directions against them are sought in this petition and the case had to be adjourned for that purpose. At the same time, the Division Bench took cognizance of the prayer made by the counsel for the petitioner in CWP No.5587/2010 pleading that the respondent No.4 in the petitioner, viz., Sita Grammar School (Sr. Sec.) had abnormally hiked the fees structure commencing from the academic year 2010 and there was proposal for further hike in the next academic year commencing from April, 2011. This plea was controverted by the counsel for the school and the Court after considering the matter found that the enhancement of fees as sought to be done by the said school for the academic year commencing from April, 2011 was not enhanceable. However, at the same time, it was directed that this school should confine the enhancement to the amounts indicated in the writ petition for the academic year commencing from April, 2011, meaning thereby there would not be further enhancement in that academic year in tuition fees.

9. When the matter came up for hearing thereafter on 05.3.2012 and the next academic session was commencing from 01.4.2012, the Court passed the following order:

> "Learned counsel for the respondents in CWP No.5587 of 2010 will inform the court on the next date fixed the fee structure prevailing in the school (all classes) during the current year and the hike, if any, proposed for the next academic session commencing from 1st April, 2012. This will be done on or before the next date fixed.
>
> List on 01.05.2012.
>
> Similarly, other schools who are represented in the present proceedings in connected writ petitions shall place before the court the details that have been recorded in respect of respondent No.4 in CWP No.5587 of 2010.
>
> A photocopy of this order be placed on the files of connected writ petitions."

10. On 01.5.2012, these three writ petitions came up for hearing again and in the order passed on that day the CBSE, PSEB and ISCE were directed to supply the list of schools affiliated to them and situated within the territorial jurisdiction of this Court. The Court also directed to file separate detailed affidavits on the following four aspects:

(i) Whether the schools affiliated to them have submitted the annual profit and loss accounts to them during the last five years, and if not, what action has been taken by them against the defaulting schools?

(ii) Whether the schools affiliated to them have followed the mandatory requirement of the Right to Education Act, 2010, i.e. giving admission to 25% students of weaker section of the society and have supplied books and addresses as per the

requirement, and if not, what steps have been taken by them in this regard?

(iii) Whether the salaries paid to the teachers and other employees, by the schools affiliated to them, are in accordance with the rules and guidelines framed by them or the State Government?

(iv) Whether the schools affiliated to them are prescribing the books of private publishers, if yes, what steps have been taken by them for directing the schools to prescribe the books published by NCERT?

11. The Division Bench also passed directions prohibiting the schools from enhancing fees and other charges. Precisely, the order is in the following terms:

> "In the meanwhile, no fee and other charges shall be enhanced by any school situated within the territorial jurisdiction of this Court and affiliated to the Central Board of Secondary Education, New Delhi; the Punjab School Education Board, SAS Nagar Mohali; and the Indian Council for Indian School Certificate Education, New Delhi, without the prior approval of the respective Boards/Council."

12. On 21.5.2012, while granting further time to the aforesaid Bodies to file their affidavits on the queries raised on May 01, 2012, the Court directed the State of Punjab to also submit the compliance report with regard to Section 18 of the Right to Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the RTE Act, 2009'). Since the orders passed on the next date, i.e., 10.7.2012 are also of some significance insofar as these orders are concerned, we would like to reproduce the same:

> "Vide order dated 1.5.2012, Central Board of Secondary Education, New Delhi, Punjab Education Board, S.A.S. Nagar (Mohali) and Indian Council for Indian School Certificate Education, New Delhi, were directed to supply a list of Schools affiliated to

them situated within the territorial jurisdiction of this Court. It was further directed that affidavits be filed giving details regarding the aspects (i) to (iv) articulated I the above order, on or before 31.5.2012. The requisite affidavits were not filed by that date and further time sought to do the needful was granted by this Court and the matter was adjourned for today.

We have gone through the affidavit filed by Court today by respondent No.5-Chief Executive & Secretary of the Council for the Indian School Certificate Examinations at New Delhi. Reply given to aspect No.(i) in this Court's order dated 01.5.2012 is incomplete. Except saying that the Schools are under an obligation to furnish their annual accounts before the Education Departments of their respective States, nothing more has been stated.

In reply to aspect No.(ii) in the order stated above, no detail has been given as to how many Schools are following the various provisions of the Right to Children to Free and Compulsory Education Act, 2009. Regarding aspect No.(iii), answer has not been given.

The above respondent is directed to lay before this Court the information (i) as to how many Schools have complied with the above said condition regarding furnishing of accounts and what actin is being taken against those who have fielded to furnish the accounts to the authorities of the States, (ii) as to what action is being taken against the violators of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and (iii) whether salaries to the teachers working in such Schools are being paid in accordance with Rules & Conditions furnished by them or the State Governments. Necessary affidavit be filed before the next date of hearing.

Counsel appearing for the Central Board of Secondary Education, New Delhi and Punjab State Education Board, S.A.S. Nagar (Mohali) have placed before us their respective affidavits. Perusal thereof indicates that the same are vague and no information has been supplied in terms of the order passed by this Court on 1.5.2012. Let affidavits answering all the four aspects articulated in the order dated 1.5.2012 be filed before the next date of hearing, failing which Secretaries of Central Board of Secondary

> Education, New Delhi and Punjab State Education Board, S.A.S. Nagar (Mohali) are directed to come present in the Court on the date fixed.
>
> On request, adjourned to 25.7.2012.
>
> A photocopy of this order be placed in the file of each connected case.
>
> A copy of this order, under the signatures of the Court Secretary of this Court, be furnished to counsel appearing on behalf of the Central Board of Secondary Education, New Delhi, Punjab State Education Board, S.A.S. Nagar (Mohali) and Indian Council for Indian School Certificate Education, New Delhi, for onward transmission and compliance."

13. It would be pertinent to note here that after the passing of orders dated 01.5.2012, many schools/associations of schools came forward and filed application for the vacation of the said Stay order. Other petitions also came to be filed by the schools. This is how all these petitions are heard together, as the issue involved in all the petitions remains the same which has been delineated in the beginning of the present judgment.

14. As pointed out above, on 21.5.2012, this Court had directed the State of Punjab to submit the compliance report with regard to Section 18 of the RTE Act, 2009. In response, the affidavit dated 07.10.2012 was filed by the Secretary, Government of Punjab, Department of Education. It is disclosed in the said affidavit that the State of Punjab, exercising its powers conferred under Section 38 of the RTE Act, 2009 for carrying out the provisions of the said Act, has notified Rules, viz., "Punjab Right to Children to Free and Compulsory Education Rules, 2011. Rule 11 of the said Rules corresponds to Section 18 of the RTE Act, 2009. Under these Rules, a period of three months from the commencement of Rules, was initially prescribed for the purpose of making a self-declaration by every

school other than a school established, owned or controlled by the State Government or the Local Authority to get recognition from the State. The deponent further states that initially, 935 schools out of total 9301 such identified schools could submit self-declaration to get recognition within prescribed period of three months that expired on 10.1.2012. However, in order to enable the remaining schools to submit self declaration for getting recognition, a period of one year instead of three months, has now been provided. Necessary amendments in Rules 11, in this behalf, have been notified on 18.9.2012. As per the amended provision, the last date for submitting such application would be 10.10.2012.

15. The legal framework which prevails in the State of Punjab, Haryana and the UT of Chandigarh may also be taken note of at this stage. As far as State of Haryana is concerned, Haryana School Education Act, 1995 holds the field. Under this Act, Rules of 2003 have also been framed. State of Haryana has also framed the Rules under RTE Act.

Insofar as State of Punjab is concerned, there is no statutory regime. However, since all the schools are to be affiliated to the PSEB, CBSE or ICSE, regulations framed by these Bodies are governing the functioning of the schools inasmuch as schools which do not adhere to the provisions made in these Regulations can be de-affiliated.

Insofar the UT of Chandigarh is concerned, it also does not have enactment and unaided recognized schools, which are affiliated to CBSE are governed by the CBSE Rules & Regulations.

16. For better understating of the matter, we would like to refer to some of the important provisions of all the enactment and the Regulations:

Haryana School Education Act, 1995:

"2. **Definitions.—**In this Act, unless the context otherwise requires,—

(a) ***"affiliation"*** means formal enrolment of a school among the list of approved schools of a Board or Council for Indian School Certificate Examinations, following prescribed/approved courses of studies up to class VIII, X and XII as well as those preparing students according to prescribed courses for the Board's examinations or Council for Indian School Certificate Examinations;

xxx xxx xxx

(q) ***"recognition"*** means formal certification granted by an appropriate authority to a privately managed educational institution that the institution conforms to the standards and conditions laid down by the appropriate authority;

xxx xxx xxx

Chapter-II
ESTABLISHMENT, RECOGNITION, MANAGEMENT AND AID TO SCHOOLS

3. **Power of Government to regulate education in schools.—**(1) The Government may regulate education in all schools in the State in accordance with the provisions of this Act and the rules made thereunder.

(2) The Government may establish and maintain any school in the State or may permit any person or local authority to establish and maintain any school in the State, subject to the provisions of this Act and rules made thereunder.

xxx xxx xxx

4. **Recognition of schools.—**(1) The appropriate authority may, on an application made to it in the prescribed form and in the prescribed manner, recognise any private school:

Provided that *no school shall be recognised unless—*

(a) it has adequate funds to ensure its financial stability and regular payment of salary and allowance to its employees;
(b) it has a duly approved scheme of management as required under section 5 of this Act;
(c) it has suitable or adequate accommodation and sanitary facilities having regards, among other factors, to the number, age and sex of the pupils attending it;
(d) it provides for approved courses of study and efficient instructions;
(e) it has teachers with prescribed qualifications; and
(f) it has the prescribed facilities for physical education, library service, laboratory works,
workshop practice and co-curricular activities.

(2) Every application for recognition of a school shall be entertained and considered by appropriate authority and the decision thereon shall be communicated to the applicant within a period of six months from the date of receipt of the application and where recognition is not granted, the reasons for not granting such

recognition shall be communicated to the applicant within the said period.

xxx xxx xxx

(6) Every existing recognised school or schools which are already affiliated with Boards or Council for Indian School Certificate Examinations other than Board of School Education, Haryana, after obtaining 'No Objection Certificate' from the Government, shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder :

Provided that *where any such school does not satisfy any of the conditions specified in the proviso to sub-section (1), the prescribed authority may require, the school to satisfy such conditions within a specified period and if any such condition is not satisfied, the recognition may be withdrawn from such school.*

xxx xxx xxx

Chapter-V

PROVISIONS APPLICABLE TO UN-AIDED MINORITY SCHOOLS

12. **Power to prescribe minimum qualifications for recruitment.—**The Government may make rules regulating the minimum qualifications for and method of recruitment of, employees of unaided minority schools, provided that no qualification shall be varied to the disadvantage of an existing employee of such schools.

13. **Power to prescribe code of conduct.—**Every employee of un-aided minority schools shall be governed by such code of conduct as may be prescribed.

14. **Contract of service.—**The managing committee of every un-aided minority school shall enter into a written contract of service with every employee of such school under section 20 of this Act.

xxx xxx xxx

Chapter-VI

ADMISSION TO SCHOOLS AND FEES

15. xxx xxx xxx

16. **Fees and other charges.—**(1) No aided school shall levy fee or collect any other charge or receive any other payment except those specified by the Director.

(2) Every aided school having different rates of fees or other charges or different funds shall obtain prior approval of the prescribed authority before levying such fees or collecting such charges or creating such funds.

(3) The Manager of every recognised school shall, before the commencement of each academic session, file with the Director a full statement of the fees to be levied by such school during the ensuing academic session, and except with the prior approval of the Director no such school shall charge, during the academic session, any fee in excess of the fee specified by its Manager in the

> said statement. Such fee should commensurate with the facilities provided by such school.
> (4) No other charges shall be taken from the children except those approved by the Director.
> (5) Receipt shall be issued for every fee and charges taken from the children."

Haryana School Education Rules, 2003 & Circulars:

17. Rule 30 of these Rules stipulates the conditions for recognition and states that no private school shall be recognized, or continued to be recognized by the appropriate authority unless the school fulfils the specific conditions prescribed in sub-Clause (a) sub-Rule (1) of Rule 30. These conditions, *inter alia*¸ include the employments of teachers who are suitably trained with minimum qualifications, following approved courses of instructions as provided in these Rules; fulfilling minimum norms for land and building in which the school is carried on; an appropriate school building with amenities as prescribed specifically in the Rules including that of adequate and suitable furniture and equipments; sanitary arrangements; drinking water arrangement; provision for electricity fittings and fans; computer facilities with internet connectivity and proper salaries to the staff as per the norms fixed.

Rule 43 deals with suspension or withdrawal of recognition under certain circumstances.

Chapter V of these Rules containing Rules 128 & 129 relates to provisions applicable to the minority schools.

Central Board of Secondary Education Affiliation Bye-Laws:

18. It is well known that the Central Board of Secondary Education is meant for conducting the Board Examinations. The students of a school can appear in the examination conducted by the CBSE only if the school is affiliated

with the CBSE. The Bye-Laws are framed providing norms for affiliation and other related matters. As per Bye-Law 3 (1), the Board is empowered to affiliate several categories of schools all over India and abroad. Clause (3) of Bye-Laws 3 lays down the initial conditions which an educational institution is supposed to fulfill before it applies to the Board for affiliation. These relate to the minimum infrastructure, which a school must have and also mandate appointment of teaching and non-teaching staff on prescribed pay-scales. Other relevant Bye-Laws No. 7, 11, 14 and 17 read as under:

> "**7. FINANCIAL RESOURCES**
>
> 1. The school must have sufficient financial resources to guarantee its continued existence. It should have permanent source of income to meet the running expenses of the school so as to maintain it at a reasonable standard of efficiency, to pay salaries to teachers and other categories of staff regularly at least at par with the corresponding categories in the State Government Schools and to undertake improvement of school facilities. In case of Institutions which are in the receipt of grant in aid from the State Government/U.T., the permanent source of income shall include amount of grant-in aid also.
> 2. No part of income from the institution shall be diverted to any individual in the Trust/Society/School Management Committee or to any other person. The savings, if any, after meeting the recurring and non-recurring expenditure and contributions to development, depreciation and contingency funds may be further utilized for promoting the school. The accounts should be audited and certified by a Chartered Accountant and proper accounts statements should be prepared as per Rules. A copy of each Statement of Accounts should be sent to the Board every year.
> 3. The channeling of funds by the management to person (a) or enterprise other than furthering education in the school with contravene the rules governing affiliation and call for appropriate action by the Board.
>
> xxx xxx xxx

11. FEES

1. Fee 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 for 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 the school. In case of such malpractices, the Board may take drastic action leading to disaffiliation of the school.
2. In case a student leaves the school for such compulsion as transfer of parents or for health reason 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.

xxx xxx xxx

14. RESERVE FUND

1. The school shall maintain reserve fund to the extent indicated below:

Upto 500	Rs.60,000/-
From 501 to 750	Rs.80,000/-
From 751 to 1000	Rs.100,000/-
Above 1000	Rs.100/- per student rounded to the nearest thousand.

2. Reserve Fund shall be maintained in the joint names of the Manager of the school concerned and the Secretary of the Board in a scheduled Bank. In case of institution – receiving grant-in-aid or in case the School Education Act of the State/UT so prescribes, the Reserve Fund shall be maintained in the joint names of the Manager of the school and the Director of Education of the State/Union Territory concerned. The interest accruing out of the deposit of Reserve Fund made by the institution at the time of affiliation/extension of affiliation be not withdrawn by the Management under any circumstances whatsoever."

17. Withdrawal of Affiliation Provisionally Affiliated Schools

1.Affiliation may be withdrawn by the Board either in a particular subject or in all subjects. Institution may be disaffiliated if the Board is satisfied that the school concerned is not fit to enjoy continuing affiliation to the Board.

2 a. Proceedings for withdrawal of affiliation may be initiated by the Board in case the schools are found guilty of following after reasonable notices :-

i)Not paying salaries and allowances to teachers and other employees, at least at par with those obtaining in State/Union Territory institutions; default or delay in payment of salaries and allowances.

ii) Financial irregularities including channeling of funds for purposes other than those provided for in these Bye-laws.

iii) Engagement in activities prejudicial to the interest of the State, inculcating or promoting feelings of disloyalty or disaffection against the Government established by law.

iv) Encouraging or tolerating disharmony/hatred between different sections of the Society.

v)Non-fulfillments of conditions laid down regarding deficiencies to be removed, even after due notice.

vi) Disregard of rules and conditions of affiliation even after receiving warning letters.

vii) Hindrance in the smooth functioning of the school on account of dispute between rivalries within the school management.

viii) Absence of approved terms and conditions of service, or frequent dismissal of teachers from service.

ix) Poor academic performance of the school for three consecutive years in not being able to keep at least 50 per cent of passes of the general pass percentage.

x)Non-availability of proper equipment/space/staff for teaching a particular subject.

xi) Any other misconduct in connection with the admissions/examinations/any other area which in the opinion of the Board warrants immediate disaffiliation of the school.

xii) In case of transfer of property/sale of school by one Society/Management/Trust to another

Society/Management/Trust through agreement/Sale deed.

(xiii) Any violation of the norms that have been prescribed by the Hon'ble Supreme Court of India in the writ petition (Criminal) nos. 666-70 of 1992 Vishaka and others V /s State of Rajasthan and others delivered on 13-8-1997 for protection of women from sexual harassment at the work place if established would attract strict action against the institution which may even lead to disaffiliation.

(xiv) Violation of provision of sub-clause 3.3 (f) of Chapter II.

(xv) Violation of Item 20.2 (vii) of Chapter VI.

b."Once Provisional/Regular/Permanent Affiliation granted to the school is withdrawn by the Board on establishment of serious irregularities which amount to cheating the Board/causing embarrassment to it, the Board may Black List such a school to debar it from seeking reaffiliation in future.

3.The Board shall provide adequate time and opportunity to the Management of the school served with a 'Show Cause Notice', upto a maximum of one year for adequate compliance/ removal of defects failing which the Board may declare the institution disaffiliated. Such decision by the Board shall be final and binding. The maximum period of 'Show Cause Notice' due to clause 17(2)(xi) may not exceed one month

4.In case a school seeks legal redressal from the Court against the decision of .the Board, the jurisdiction of the court of Law shall be Union Territory of Delhi only and not any other place."

Punjab School Education Board Regulations:

19. These regulations are framed in exercise of powers conferred by Section 24 of the PSEB Act and are called "The Punjab School Education Board Regulations for Affiliation of Institutions, 1988 as amended in 1993 and thereafter in 1988 & 2004". As is clear from the nomenclature, these regulations are also important for affiliation of the institutions by the Board which conducts examination on the line of PSEB, *albeit,* for the State of Punjab. Regulation 7

specifies the conditions which an institution has to fulfill in order to become eligible to apply for affiliation to the Board. For our purpose, Conditions (vi) and (xv) are important, which read as under:

> "(vi) The fees charged from the students should be approved by the Board from time to time. However, an institution providing extra facilities which augment the cause of education may charge extra fee with the permission of the Board.
>
> xxx xxx xxx
>
> (xv) The institution must have sufficient resources to maintain and run the institution efficiently. The entire income from the institution shall be utilized only for the welfare of the students, teachers and the institution. Student's fund will be kept in a separate account and utilized by the Principal for the purpose for which they are collected. The Board can inspect the account of the institution from time to time."

20. The other regulation, viz., 18 reads as under:

> "18. The affiliated institution shall submit the return (Annual Progress Report) by September 15 each year and if the Board finds that the institution is not functioning properly the institution shall be asked to improve its functioning within a specified period. If the affiliated institution fails to comply with the instructions, the matter shall be reported to the Academic Council for further action, which may lead to suspension or withdrawal of affiliation or any other action which the Council may deem fit."

I.C.S.E.

21. The ICSE has also its Memorandum of Association, which, *inter alia*, provides for similar type of conditions for the affiliation. More relevant, for our purpose, are the following:

> "**6. FEES**
>
> (a) The fees charged by the School should be commensurate with the facilities provided. The tuition fees and other charges may be charged on a monthly, quarterly or annual basis. Other fees may be levied in accordance with the requirements of the students.
>
> (b) No school is allowed to charge capitation fees in any form or to accept donations for the purpose of admission of pupils.

VI. Withdrawal of Affiliation

Power to Withdraw

1. The Council shall have the power to withdraw the affiliation of a School or temporarily suspend affiliation, i.e., delist the School, if the Council is satisfied that the School concerned is not fit to continue as an affiliated School.
2. The Chief Executive and Secretary shall initiate disaffiliation proceedings against a School for all or any of the following reasons:
   (a) Non-fulfillment of assurances given by the School with regard to deficiencies to be removed within a specified period even after having been given due notice.
   (b) If it is reported that the school is indulging in any kind of malpractice.
   (c) Failure on the part of the School to conform to the requirements of the Council as laid down in the Regulations and Syllabuses or for not abiding by any other decision of the Council.
   (d) Failure on the part of School to fulfill the requirements laid down by the Council for proper arrangements and fair conduct of its examinations.
   (e) Disregard on the part of the School of the rules and conditions on the basis of which affiliation has been granted to the School after having been given due notice by the Chief Executive and Secretary.
   (f) If the school does not carry out the notified decisions of the Council to the satisfaction of the Chief Executive and Secretary.
   (g) On non-implementation of a directive issued by the office of the Council.
   (h) On the consideration that the school is not providing amenities and facilities as prescribed by the Council from time to time.
   (i) If it is established that the school has in contravention of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 denied admission to a child because of disability.
   (j) Non compliance of the applicable Rules, Regulations, Byelaws, Directives and Guidelines of the State/Central

Government and Courts in respect to all matters concerning the administration and running of the school.

(k) Financial irregularities, engaging in activities prejudicial to the interest of the Council and/or any other misconduct relating to admissions, examinations, etc.

(l) Any other matter which the Council considers sufficiently serious for disaffiliation/delisting."

22. A common thread which follows from the reading of the legal provisions of the statute, rules or bye-laws framed by the various Bodies, that is clearly discernible is that in order to get recognition and affiliation, private schools, even though unaided, are supposed to fulfill minimum required infrastructure which includes land of a particular size on which such an educational institution is to be established; proper building thereupon; other infrastructure in the form of class rooms, library, laboratories, etc. It is also the requirement that such schools not only recruit properly trained and qualified teachers, but even pay them the salaries as prescribed, which should be the same as paid to the Government/aided school teachers. In order to take care of the future expansion, these schools have also to make provisions for development funds.

23. Though minimum standard qua each of the aforesaid needs are prescribed which the schools are required to fulfill, in order to impart better and quality educations, many schools are having much better facilities than the minimum prescribed qualifications and these schools are known for their high standards. Since such schools are unaided, the main source of generating the funds to cater to the aforesaid is the tuition fees to be charged from the students. Therefore, some amount of autonomy is conferred upon these institutions. At the same time, as would be seen from the following discussions based on the various judgments of the Supreme Court, the education institutions cannot be allowed to use the education as business ventures indulging in profiteering. In nutshell, while

examining whether the fees structure, including tuition fees, to be charged from the students is appropriate or not, the aforesaid facts are to be kept in mind. The gist of the principle stated above is culled out from the catena of judgments which we would take note of now.

24. We would state at the outset that it is not even necessary to revisit the case law inasmuch as this exercise has already been undertaken by a Division Bench of the High Court of Delhi in its judgment dated 12.8.2011 in a batch of writ petitions where similar issues had arisen in **Delhi Abhibhavak Mahasangh and Ors. Vs. Govt. of NCT of Delhi and Ors.** authored by one of us (A.K. Sikri, J.). Our task, therefore, has become easier by reproducing the discussion therefrom. Before extracting the relevant passage, we would like to point out that though the said judgment was on the context of Delhi School Act, provisions which were noted are *pari-materia to* Haryana School Education Act and Bye-laws/Regulations framed by the Education Board noted above. Moreover, general principles laid down in the judgments of the Supreme Court, which would be applicable across the board can easily be traced out.

25. A reading of the said judgment would show that in 1998, the private unaided schools had hiked the fees pursuant to implementation of the pay as recommended by the Vth Pay Commission. Delhi Abhibhavak Mahansangh ("DAM-1" for brevity) had filed Writ Petition (C) No.2723/1997 questioning the said increase. Schools, on the other hand, had argued that the increase in fees was justified as the schools had to pay substantial enhanced pay to the teachers and staff in the revised pay-scale. Matter was discussed in its all length and breadth taking note of various gamuts of the issue and was decided by a Division Bench of the High Court. That judgment is reported as **Delhi Abibhavak Mahasangh Vs. Union of India and Ors.**, **AIR 1999 Delhi 124**.

26. This judgment was taken in appeal before the Supreme Court which affirmed the said judgment. In 2008, similar situation arose on the implementation of VIth Pay Commission's recommendation with retrospective effect from 01.1.2006. This time, however, Government of NCT of Delhi took immediate step and issued Notification dated 17.10.2008 appointing a Committee under the Chairmanship of Shri S.L. Bansal (a retired IAS officer). Based on the recommendations submitted by the said Committee, orders dated 11.2.2009 were passed by the Govt. of NCT OF Delhi permitting the unaided recognized schools to hike the tuition and development fees with retrospective effect, i.e., 01.01.2006 in the manner prescribed therein. Parents were not happy with this hike. Even schools did not accept the quantum of hike mentioned therein as according to them, financial burden of implementation of VIth Central Pay Commission was much higher. Number of writ petitions were filed, which were all decided with the lead case ***Delhi Abhibhavak Mahansangh (supra)*** [hereinafter referred to as DAM-2] on 12.8.2011. In this judgment, history of DAM-1 and its ratio and decision of the Supreme Court there against as well as subsequent judgments on the issue were all dealt with. We would, therefore, like to reproduce the discussion there from which brings out the law on the point with historical background.

27. A minute and in-depth analysis of the DAM-1 would bring forth the following pertinent aspect:

> (i) Section 17 of the Act which deals with fee and charges gives different treatment to aided schools on the one hand and unaided recognized schools on the other hand. Whereas sub-sections (1) and (2) of Section 17 do not allow the aided schools to collect any other charge or receive any other payment except those specified by the Director, this embargo was not applicable to those recognized private schools, which are unaided. The only duty cast by sub-section (3) of Section 17 of the Act is that such schools ARE required, before the commencement of each academic session, to

file with the Director a full statement of the fees to be levied by such schools during the ensuing academic session and thereafter not to charge any fee in excess of the fee specified in that statement during the academic session, without prior approval of the Director. Thus, the Court held that there was no requirement that the unaided schools seek approval or subsequent approval of Director of Education for enhancement of tuition fee and other charges.

Rationale is simple. These unaided private schools are required to generate their own funds and to meet the cost of education, and therefore, need to be given free hand, as the main source can only be the funds collected from students which is the concept of „self-financing education institution", and „cost based educational institution".

(ii) At the same time, it is also to be borne in mind that under the garb of increasing fee, these schools do not indulge in commercialization. This was conceded by the schools themselves, viz., **commercialization and exploitation was not permissible**. No doubt, it was recognized that the cost of education may vary from institution to institution and in this respect, many variable factors may have to be taken into account, **educational institutions were supposed to run on „no profit, no loss basis".**

(iii) Thus, while giving leverage to the schools to fix the fees and charges payable by the students coupled with the duty that increase is not such which is exploitative in nature and travels into the arena of commercialization, the Court further held that the **Government is equipped with necessary powers to take regulatory measures and check commercialization**. The Court referred to Rules 172 to 177 and in particular Rule 177 which prescribes the method and manner in which fees realized by unaided recognized schools are to be utilized. The Court also took into consideration provisions of Section 4 of the 1973 Act dealing with grant of recognition by the Government, Section 3 of the Act which empowers the administration to regulate education in all the schools in Delhi in accordance with the provisions of this Act and the rules made thereunder as well as Section 24 of 1973 Act which deals with inspection of schools.

(iv) On the conjoint reading of these provisions, the Court was categorical that the **Government had a requisite power to resort to regulatory measures and control the activities of such**

institutions to ensure that these education institutions keep playing vital and pivotal role to spread education and not to make money. In this behalf, the Court went to the extent of observing that **if it comes to its notice that fee and other charges are excessive, the Government can issue directions to the schools to reduce the same and if such direction is not complied with, other steps like withdrawal of recognition or takeover of the school can be taken**. However, before resorting to these extreme steps, the Government could issue directions to the schools to roll back if it was found that the fee and other charges are only unreasonable and exorbitant and amount to commercialization. After referring to the principle laid down in various judgments of the Supreme Court on the interpretation of statute, the legal position contained in Section 17 of 1973 Act was some which reads as under:

"42……**When these basic principles are kept in view as also the object of the Act there is no difficulty in concluding that despite the fact that Section 17(1) & (2) of the Act is not applicable to the private recognized unaided schools the government under the Act and the Rules has ample power to regulate fee and other charges to prevent commercialization and exploitation**, before considering to take the extreme step of withdrawal of recognition and other harsh steps.

43. The cardinal principle of law is that every law is designated to further ends of justice. The said purpose cannot be frustrated on mere technologies while interpreting a Statute. Its purpose and spirit as gathered from the intendment has to be borne in mind. These aspects are to be kept in mind for the correct interpretation of the Statute and the adjudication of rival submissions…….. (emphasis supplied)"

xxx xxx xxx

44. **In view of the aforesaid legal positions we have no difficulty in rejecting the extreme proposition that Directorate of Education has no power to regulate the fee and other charges levied by private recognized unaided schools.** 45. ……..**We are also unable to accept the contention that diversion of funds as being objected by petitioners and the**

administration, would adversely affect the expansion of the education or that the opening of the new schools would be jeopardised. In our view, higher amount of fee and charges cannot be levied on the ground of so called expansion requiring creation of funds. **If any amount is to be generated for such a purpose it has to be under a separate head and not compulsive and involuntary payment under the garb of increase in the fee and other charges. Further, nobody stops the Society of the Trust which may have set up the school to generate its own funds needed for expansion for opening of new schools.**

…….(emphasis supplied)"

(v) While holding so, the Court specifically rejected the contention of these schools that the stipulation in the Circular issued by the Government to the effect that the first accumulated amount shall be exhausted to meet the additional burden as a result of revising the pay structure, was illegal. It was also held that such stipulation did not amount to diversion of funds for some other purpose or that the expansion of education would be adversely affected and opening of new schools will be jeopardized. The Court also specifically rejected the contention that provisions of statute and Rules provided for a limited scope of regulating and interfering with the use of amounts collected by the schools. In the process, it was also held that the **Government can ensure that there is no transfer of amounts from the schools to the society in view of the provisions of Rules and if any new schools are to be opened by the society or educational institute exploited the collection of money had to be in the nature of voluntary donation and for the expansion of education for future generation, unreasonable demand cannot be made from the present students and their parents.**

(vi) The autonomy of the schools on the one hand and regulatory power of the Act on the other hand not to permit commercialization of education, is beautifully summarized in para 48 of the judgment, which reads as under:

"48. We have also no difficulty in accepting the proposition that the expenses may have to differ from school to school depending upon the nature of activities in the schools. **It is not being suggested that if for legitimate and reasonable activities to be provided to the students, higher expenses are to be incurred**

the burden of it cannot be placed on the students. Our approach in no manner adversely affects the autonomy of unaided schools. We agree that autonomy of such schools has to be respected. But under the garb of autonomy the commercialization of education cannot be permitted. It cannot be said that because of the autonomy of limit on charging any sum from students can be fixed under any head despite the expenditure under that head. (emphasis supplied)"

(vii) In such scenario, the next question which automatically arose for consideration related to the manner and nature of regulation in a particular case. It is re-emphasized that the Court accepted the fact that different schools may have to increase the fee with different proposition depending upon the financial burden on those schools and the actual cost of education which these schools require to bear. It was also emphasized that the quantum increase would depend upon the funds already available with these schools which were to be first utilized to meet the additional financial burden created as a result of revision in pay scale. The Court was, thus, conscious of the fact that there was need to increase the fee, but at the same time whether the parent bodies were justified in their grievance that on the pretext of revision in pay scale, the fee had been increased abnormally. This dichotomy noticed in Para 50 of the judgment is as under:

"50. There can be no doubt that the substantial increase in the fee and charges leads to considerable amount of discontentment amongst a substantial number of parents as it affects their pockets in these days of high inflation. The argument of **high inflation is also applicable to schools who have to incur expenses**. It cannot be ignored that to meet the increased in the expenses, the schools have necessarily to generate funds by increasing the amount of fee and charges. The present problem has arisen on account of payments to be made as a result of acceptance of the Vth Pay Commission. The increased salaries to the school staff had to be paid. According to schools the fee and charges were increased to meet this additional burden. According to the Parents' Association, however, the schools had huge accumulated amounts wherefrom the additional burden on the schools could easily be met and the schools were only using the recommendations of Vth Pay

Commission as an excuse and under that garb the fee has been increased manifold. (emphasis supplied)"

(viii) **The Court was of the view that in order to find out as to whether the fee increase was reasonable or not a close examination of facts and figures of each school is necessary.** However, the Court was neither fully equipped nor it was possible for the Court to function and undertake each individual school. In the opinion of the Court, **such an exercise was to be undertaken by the authorities or by an independent committee**. The Court further opined that the matter could be discussed by all concerned and fee increase even as per the impugned order, whereas the schools be given an opportunity to justify the levy of higher charges. In Para 65 of the judgment, the Court summarized the discussed in the following manner:

"65. In view of the aforesaid discussion our conclusions may be summaries as under:-

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

(ii) The tuition fee and other charges are required to be fixed in a validly constituted meeting giving opportunity to the representatives of Parent Teachers Association and Nominee of Director of Education of place their viewpoints.

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

(iv) The Act and the Rules prohibit transfer of funds from the school to the society or from one school to another.

(v) The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.

(vi) The inspection of the schools, audit of the accounts and compliance of the provisions of the Act and the Rules by

private recognized unaided schools could have prevented the present state of affairs.

(vii) The authorities/Director of Education has failed in its obligation to get the accounts of private recognized unaided schools audited from time to time.

(viii) The schools/societies can take voluntary donations not connected with the admission of the ward.

(ix) On the peculiar facts of these petitions there is no per se illegality in issue of the impugned circular dated 10th September 1997.

(x) An independent statutory Committee, by amendment of law, if necessary, deserves to be constituted to go into factual matters and adjudicate disputes which may arise in future in the matter of fixation of tuition fee and other charges.

(xi) The Government should consider extending Act and Rules with or without modifications to all schools from Nursery onward.

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

(ix) As, according to the Court, the position in respect of each school warranted to be examined, a committee comprising of Ms.

> Santosh Duggal (a retired Judge of this Court) as Chairperson with power to nominate two persons in consultation with the Chief Secretary, Government of NCT of Delhi – one with the knowledge of accounts and second from the field of education, was constituted by the Court "to decide the matter of fee and other charges leviable by individual school in terms of the said decision."

28. Many schools and associations of unaided private schools challenged this decision before the Supreme Court. Singular and consolidated judgment in all these appeals was pronounced by the Supreme Court on 27.04.2004 in the case of ***Modern School (supra)***. It was a divided verdict of the Bench. The majority judgment which was authored by Hon'ble Mr. Justice S.H. Kapadia (as His Lordship then was) and Hon'ble Mr. Justice Mr. V.N. Khare (the then Chief Justice of India) concurring therewith. Hon'ble Mr. Justice S.B. Sinha gave dissenting opinion. The majority view substantially upheld the aforesaid judgment of this Court. However, some significant discussion and analysis touching upon and emphasized in the said judgment need to be highlighted. Therefore, we proceed to take note thereof hereafter.

29. The majority judgment starts by spelling out the issues which were posed before the Court and were to be answered. The Court noted:

> **"1. In this batch of civil appeals, following three points arise for determination:--**
>
> **(a)** Whether the Director of Education has the authority to regulate the quantum of fees charged by un-aided schools under section 17(3) of Delhi School Education Act, 1973?
>
> **(b)** Whether the direction issued on 15th December, 1999 by the Director of Education under section 24(3) of the Delhi School Education Act, 1973 stating *inter alia* that no fees/funds collected from parents/students shall be transferred from the Recognized Un-aided Schools Fund to

the society or trust or any other institution, is in conflict with rule 177 of Delhi School Education Rules, 1973?

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

30. Insofar first question is concerned, the Court affirmed the views of the Division Bench of the Delhi High Court with the guiding principle, viz., "hence we have to strike a balance between autonomy of such institutions and measures to be taken in avoiding commercialization of education". At the same time, the Court also observed that in none of the earlier cases, the Apex Court had defined the concept of "reasonable surplus, profit, income and yield, which are the terms used in various provisions in 1973 Act". For this reason, the Court proceeded to make in-depth analysis of the earlier judgments having aforesaid focus in mind. This analysis is contained in paras 15 and 16 of the judgment which is worth a read:-

> "15. As far back as 1957, it has been held by this Court in the case of ***State of Bombay*** ***v.*** ***R.M.D. Chamarbaugwala*** reported in [1957] 1 SCR 874 that education is per se an activity that is charitable in nature. Imparting of education is a State function. The State, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of ***Unni Krishnan, J.P. v. State of A.P. (supra)***, looking to the above ground realities, this Court formulated a self-financing mechanism/scheme under which institutions were entitled to admit 50% students of their choice as they were self-financed institutions, whereas rest of the seats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including Medical Council of India, University Grants Commission etc. were directed to make end or amend regulations so as to bring them on par with the said Scheme. In the case of ***TMA Pai Foundation*** ***v.*** ***State of Karnataka*** reported in (2002) 8 SCC 481, the said scheme formulated by this Court in the case of

Unni Krishnan (supra) was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue short-falls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in Unni Krishnan's case (supra) were held to be unconstitutional. This Court observed in the said judgment that the right to establish and administer an institution included the right to admit students; right to set up a reasonable fee structure; right to constitute a governing body, right to appoint staff and right to take disciplinary action. ***TMA Pai Foundation's case*** for the first time brought into existence the concept of education as an "occupation", a term used in Article 19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, right to establish an institution under Article 19(1)(g) is subject to reasonable restriction in terms of clause (6) thereof. Similarly, the right conferred on minorities, religious or linguistic; to establish and administer educational institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which inter alia may be framed having regard to public interest and national interest. In the said judgment, it was observed vide para 56 that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. **However, capitation fee and profiteering was held to be forbidden. Subject to the above two prohibitory parameters, this Court in *TMA Pai Foundation's case* held that fees to be charged by the unaided educational institutions cannot be regulated.** Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act. This issue was not there before this Court in the ***TMA Pai Foundation's case***.

16. The judgment in ***TMA Pai Foundation's case*** was delivered on 31.10.2002. The Union of India, State Governments and educational institutions understood the majority judgment in that case in different perspectives. It led to litigations in several courts. Under the circumstances, a bench of five Judges was

constituted in the case of ***Islamic Academy of Education v. State of Karnataka*** reported in AIR2003SC3724 so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure. It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government. As against this, on behalf of Union of India, State Governments and some of the students, it was submitted, that the right to set-up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests. It was contended that imparting education was a State function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in TMA Pai Foundation"s case. **In view of rival submissions, four questions were formulated. We are concerned with first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of that educational institution. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees.** It was held that surplus/profit can be generated but they shall be used for the benefit of that educational

> institution. It was held that profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise. The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute. (emphasis supplied)"

31. The Court, thus, analyzed the judgments of **TMA Pai Foundation (supra)** and **Islamic Academy of Education (supra)** by observing that it was held therein that fees to be charged by unaided educational institutions cannot be regulated except that capitation fees and profiteering were forbidden. There could not be any rigid fees structure and each institution must have freedom to fix its own fees structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. In the process, such educational institutions were even empowered to generate surplus funds, which must be used for betterment and growth of the educational institutes with clear embargo that these profits/surplus funds cannot be diverted for any other use or purpose and cannot be used for personal gain or any business or enterprise.

32. For fixing the fees structure, following considerations are to be kept in mind:

(a) The infrastructure and facilities available;

(b) Investment made, salaries paid to teachers and staff;

(c) Future plans for expansion and/or betterment of institution subject to two restrictions, viz., non-profiteering and non-charging of capitation fees.

33. The majority view thereafter applied the aforesaid principles in the context of 1973 Act and Rules framed thereunder. It was emphasized that Rule 175

indicates the accrual of income and Rule 177 indicates utilization of that income and answered to the first question by holding that the Director of Education was authorized to regulate fees and other charges to prevent commercialization of educational institutes in the following terms:

> "17.....Therefore, reading section 18(4) with rules 172, 173, 174, 175 and 177 on one hand and section 17(3) on the other hand, it is clear that under the Act, the **Director is authorized to regulate the fees and other charges to prevent commercialization of education.** Under section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading section 17(3) with section 18(3)&(4) of the Act and the rules quoted above, it is clear that the Director has the to regulate the fees under section 17(3) of the Act." (emphasis supplied)

34. While answering the second question, the Court held that it was not permissible for the schools to transfer the funds from recognized unaided school funds to the Society or Trust or any other institution. Repelling the contention of these private schools to the contrary, the Court gave the following rationale:

> "20. We do not find merit in the above arguments. Before analyzing the rules herein, it may be pointed out, that as of today, we have Generally Accepted Accounting Principles (GAAP). As stated above, commercialization of education has been a problem area for the last several years. One of the methods of eradicating commercialization of education in schools is to insist on every school following principles of accounting applicable to not-for-profit organizations/ non-business organizations. Under the Generally Accepted Accounting Principles, expense is different from expenditure. All operational expenses for the current accounting year like salary and allowances payable to employees, rent for the premises, payment of property taxes are current revenue expenses. These expenses entail benefits during the current accounting period. Expenditure, on the other hand, is for

> acquisition of an asset of an enduring nature which gives benefits spread over many accounting periods, like purchase of plant and machinery, building etc. Therefore, there is a difference between revenue expenses and capital expenditure. Lastly, we must keep in mind that accounting has a linkage with law. Accounting operates within legal framework. Therefore, banking, insurance and electricity companies have their own form of balance-sheets unlike balance-sheets prescribed for companies under the Companies Act 1956. Therefore, we have to look at the accounts of non-business organizations like schools, hospitals etc. in the light of the statute in question."

35. Substantial skill and dexterity of accounting and economic principles, while analyzing the various provisions of Rules of 1973 Act, are reflected in the discussion that followed in Paras 21 to 23:-

> **"21**. In the light of the above observations, we are required to analyze rules 172, 175, 176 and 177 of 1973 rules. The above rules indicate the manner in which accounts are required to be maintained by the schools. Under section 18(3) of the said Act every Recognized school shall have a fund titled "Recognized Unaided School Fund". It is important to bear in mind that in every non-business organization, accounts are to be maintained on the basis of what is known as 'Fund Based System of Accounting'. Such system brings about transparency. Section 18(3) of the Act shows that schools have to maintain Fund Based System of Accounting. The said Fund. contemplated by Section 18(3), shall consist of income by way of fees, fine, rent, interest etc. Section 18(3) is to be read with rule 175. Reading the two together, it is clear that each item of income shall be accounted for separately under the common head, namely, Recognized Unaided School Fund. Further, rule 175 indicates accrual of income unlike rule 177 which deals with utilization of income. Rule 177 does not cover all the items of income mentioned in rule 175. Rule 177 only deals with one item of income for the school, namely, fees. Rule 177(1) shows that salaries, allowances and benefits to the

employees shall constitute deduction from the income in the first instance. That after such deduction, surplus if any, shall be appropriated towards, pension, gratuity, reserves and other items of appropriations enumerated in rule 177(2) and after such appropriation the balance (savings) shall be utilized to meet capital expenditure of the same school or to set up another school under the same management. Therefore, rule 177 deals with application of income and not with accrual of income. Therefore, rule 177 shows that salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings. Therefore, capital expenditure cannot constitute a component of the financial fees structure as is submitted on behalf of the schools. It also shows that salaries and allowances are revenue expenses incurred during the current year and, therefore, they have to come out of the fees for the current year whereas capital expenditure/capital investments have to come from the savings, if any, calculated in the manner indicated above. It is for this reason that under Section 17(3) of the Act, every school is required to file a statement of fees which they would like to charge during the ensuing academic year with the Director. In the light of the analysis mentioned above, we are directing the Director to analyze such statements under section 17(3) of the Act and to apply the above principles in each case. This direction is required to be given as we have gone through the balance- sheets and profit and loss accounts of two schools and prima facie, we find that schools are being run on profit basis and that their accounts are being maintained as if they are corporate bodies. Their accounts are not maintained on the principles of accounting applicable to non-business organizations/not-for- profit organizations. 22. As stated above, it was argued that clause 8 of the order of Director was in conflict with rule 177. We do not find any merit in this argument.

23. Rule 177(1) refers to income derived by unaided recognized school by way of fees and the manner in which it shall be applied/utilized. Accrual of income is indicated by rule 175, which states that income accruing to the school by

> way of fees, fine, rent, interest, development fees shall form part of Recognized Unaided School Fund Account. Therefore, each item of income has to be separately accounted for. This is not being done in the present case. Rule 177(1) further provides that income from fees shall be utilized in the first instance for paying salaries and other allowances to the employees and from the balance the school shall provide for pension, gratuity, expansion of the same school, capital expenditure for development of the same school, reserve fund etc. and the net savings alone shall be applied for establishment of any other recognized school under rule 177(1)(b). Under accounting principles, there is a difference between appropriation of surplus (income) on one hand and transfer of funds on the other hand. In the present case, rule 177(1) refers to appropriation of savings whereas clause 8 of the order of Director prohibits transfer of funds to any other institution or society. This view is further supported by rule 172 which states that no fee shall be collected from the student by any trust or society. That fees shall be collected from the student only for the school and not for the trust or the society. Therefore, one has to read rule 172 with rule 177. Under rule 175, fees collected from the school have to be credited to Recognized Unaided School Fund. Therefore, reading rules 172, 175 and 177, it is clear that appropriation of savings (income) is different from transfer of fund. Under clause 8, the management is restrained from transferring any amount from Recognized Unaided School Fund to the society or the trust or any other institution, whereas rule 177(1) refers to appropriation of savings (income) from revenue account for meeting capital expenditure of the school. In the circumstances, there is no conflict between rule 177 and clause 8."

36. On the third issue formulated by the Court and noted above, the majority opinion was that the management of the schools was entitled to create Development Fund Account. For creating such a Fund, it could collect development fees as well. Concomitantly, the Court addressed the question as to whether directions given by the Government that development fund fees should not

exceed 10–15% of the total annual tuition fees, was appropriate and valid which was to be charged to supplement the resources for purchase, upgradation and replacement of furniture, fixtures and equipments. The Court was of the opinion that this direction was given with the purpose of introducing a proper accounting practice to be followed by non-business organizations/not-for-profit organizations which was a correct practice being introduced. The Court also held that taking into account the cost of inflation between 15-12-1999 and 31-12-2003 that the ceiling charge of development fees not exceeding 15% of the total annual tuition fees was appropriate.

37. After giving answers to the aforesaid three questions formulated by it in the aforesaid manner, the majority decision summed up the position as under:

> "**26**. To sum up, the interpretation we have placed on the provisions of the said 1973 Act is only to bring in transparency, accountability, expenditure management and utilization of savings for capital expenditure/investment without infringement of the autonomy of the institute in the matter of fee fixation. It is also to prevent commercialization of education to the extent possible.
>
> **CONCLUSION:**
>
> 27. In addition to the directions given by the Director of Education vide order DE.15/Act/Duggal.Com/ 203/99/23989- 24938 dated 15th December, 1999, we give further directions as mentioned hereinbelow: --
>
> **(a)** Every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organization/not- for-profit organization; In this connection, we *inter alia* direct every such school to prepare their financial statement consisting of

Balance-sheet, Profit & Loss Account, and Receipt & Payment Account.

(b) Every school is required to file a statement of fees every year before the ensuing academic session under section 17(3) of the said Act with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees in terms of rule 177(1). Such estimate will also indicate provision for donation, gratuity, reserve fund and other items under rule 177(2) and savings thereafter, if any, in terms of the proviso to rule 177(1);

(c) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with. We are shown a sample letter of allotment issued by the Delhi Development Authority issued to some of the schools which are recognized unaided schools. We reproduce herein clauses 16 & 17 of the sample letter of allotment:--

.."**16.** The school shall not increase the rates of tuition fee without the prior sanction of the Directorate of Education, Delhi Admn. and shall follow the provisions of Delhi School Education Act/Rules,1973 and other instructions issued from time to time.

17. The Delhi Public School Society shall ensure that percentage of free ship from the tuition fee as laid down under rules by the Delhi Administration, from time to time strictly complied. They will ensure admission to the student belonging to weaker sections to the extent of 25% and grant free ship to them."

38. We would like to point out at this stage that after the judgment of the Supreme Court in ***Modern School (supra)***, Seven Judges Bench revisited the scope

and ambit of ***Islamic Academy of Education (supra)*** as well as ***T.M.A. Pai Foundation (supra)*** in **P.A. Inamdar & Ors. Vs. State of Maharashtra and Others [(2005) 6 SCC 537].** For clarifying three issues, matter was referred to the Seven Judges Bench in ***P.A. Inamdar (supra),*** which are as under:

> "(i) the fixation of "quota" of admissions/students in respect of unaided professional institutions;
> (ii) the holding of examinations for admissions to such colleges, that is, who will hold the entrance tests; and
> (iii) **the fee structure.**"

39. Emboldened by the view which the Seven Judges Bench had taken in ***P.A. Inamdar (supra)***, these private schools as well as Action Committee, Unaided Private Schools filed Review Petition seeking review of the judgment rendered in ***Modern School (supra)***. This Review Petition has been decided by the Bench comprising of Hon'ble Mr. Justice S.B. Sinha, Hon'ble Mr. Justice S.H. Kapadia (as His Lordship then was) and Hon'ble Mr. Justice Cyriac Joseph. By majority of 2:1, the Review Petition has been dismissed. Justice Sinha who rendered the minority judgment stuck to his view. However, Hon'ble Mr. Justice Joseph agreed with Hon'ble Mr. Justice Kapadia, the author of majority view in ***Modern School (supra)***, in dismissing the review petition. The judgment is reported as **Action Committee Unaided Pvt. Schools and Others Vs. Director Education and Others 2009 (11) SCALE 7**. Reading of this judgment would disclose that the Review Petitions raised the following contentions:

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

> establishment of the school by a trust or a society is forbidden, the transfer of fund by one school to another school under the same management being permissible in terms of Rule 177 of the Rules, the directions prohibiting such transfer by the Director of Education in its order dated 15.12.1999 must be held to be illegal. (iii) The decision of T.M.A. Pai Foundation (supra) with regard to construction of Article 19(1)(g) of the Constitution of India should be considered in its correct perspective as there exists a distinction between `profit' and `profiteering'. (iv) The status of a minority institution being on a higher pedestal, as has been noticed in T.M.A. Pai Foundation (supra), the impugned directions could not have been issued by the Director of Education which would affect the autonomy of the minority institution."

40. From the aforesaid, it is clear that in Review Petition, thus, the Court considered as to whether ***T.M.A. Pai Foundation (supra)*** as clarified by ***P.A. Inamdar (supra)*** had made any difference to the conclusions, which were drawn by the Court in ***Modern School (supra)***. Hon‟ble Mr. Justice S.B. Sinha, who was in minority again, took view that even if reasonable restrictions could be imposed on citizen's fundamental right contained in Article 19(1)(g) of the Constitution of India, that could be done only by reason of a Legislative Act. However, the order dated 15.12.1999 issued by the Government giving various directions was not statutory orders. Furthermore, such a statutory order also could not have been issued under the directions of the High Court, as the very premise on which such directions had been issued did not survive any longer in view of the decision in ***T.M.A. Pai Foundation (supra).*** The minority view thus, held that all the schools and particularly unaided schools may lay down their own fee criteria. Imposition of regulation, however, only is permissible for the purpose of exercising of control over profiteering and not earning of a profit which would include reasonable return of the investment made.

41. On the other hand, Hon'ble Mr. Justice S.H. Kapadia, (As His Lordship the then Chief Justice of India) traced out the history of this particular litigation right from filing of Public Interest Litigation in the High Court by DAM, then extracted the portion of the judgment of Division Bench rendered in 1998 including appointment of Duggal Committee, report of Duggal Committee, filing of SLPs by the schools, etc. against the Division Bench Judgment of Delhi High Court and also orders dated 15.12.1999 issued by the Director of Education in terms of the Report of Duggal Committee. Thereafter, decision in ***Modern School (supra)*** is taken note of on the three points argued before it. Thereafter, the judgment proceeds with the filing of Review Petitions and notes the argument of the Review Petitioner that the majority view holding that the Director of Education (in short "DoE") had power to regulate the fees structure of private unaided schools, was not correct and no directions could have been issued by the Court contrary to the statutory Rules in the matter of fee fixation. It was also pointed out that the review petitioners had argued that the directions issued vide orders dated 15.12.1999 by DoE were neither the subject matter before Delhi High Court, nor the subject matter of Special Leave Petition. The basic grievance of the review petitioners in this behalf was that Clause 8 of the orders dated 15.12.1999 issued by the DoE was causing administrative difficulties which needed clarification. Under Clause 8, DoE stipulated that "no amount whatsoever shall be transferred from the recognized unaided school fund of a school to the society or the trust or any other institution". It was argued by the review petitioners that a rider needed to be introduced in Clause 8 by mentioning "except under the management of the same society or trust" to sub serve the object underlying the 1973 Act. Even the majority view found merit in this particular argument in the following words:

> "53 (20). There is merit in the argument advanced on behalf of the Action Committee/Management. The 1973 Act and the

> Rules framed thereunder cannot come in the way of the Management to establish more schools. So long as there is a reasonable fee structure in existence and so long as there is transfer of funds from one institution to the other under the management, there cannot be any objection from the Department of Education."

42. However, the contention that the order dated 15.12.1999 of DoE was never challenged and yet, the Court went on into validity thereof, was rejected. The majority decision also rejected the contention that whereas 1973 Act and Rules thereunder operate, regulation of education would be governed thereby and therefore, the Court cannot impose any other or further restrictions. On this aspect, it was observed that in ***T.M.A. Pai (supra)*** and ***Islamic Academy of Education (supra)***, the principles for fixing fees structure had been illustrated. However, they were not exhaustive. They did not deal with determination of surplus and appropriation of savings. In ***Modern School (supra)***, it was categorically recorded in the majority opinion that the above topics are not dealt with by the 1973 Rules and therefore, Clause 8 was found not to be beyond Rule 177 or in conflict thereto as alleged by the review petitioners. It was categorically ruled that additional directions given in the judgment of majority vide Para 27 do not go beyond Rule 177, but they are a part of gap-filling exercise and discipline needed to be followed by the management. In this behalf, following discussion needs to be extracted:

> "55 (22).....The Additional Directions given in the Judgment of the Majority vide para 27 do not go beyond Rule 177 but they are a part of gap-filling exercise and discipline to be followed by the management. For example: every school shall prepare balance sheet and profit and loss account. Such conditions do not supplant Rule 177. If reasonable fee structure is the test then transparency and accountability are equally important. In fact, as can be seen from Reports of Duggal Committee and the earlier Committee, excessive fees stood charged in some cases despite the 1973 Rules because

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

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

43. Hon'ble Mr. Justice Cyriac Joseph while agreeing with Hon'ble Mr. Justice S.H. Kapadia recorded his note as under:

"58. Though I agree with the view of S.B. Sinha, J. that any direction issued by the High Court or by the rule making authority or any statutory authority must be in conformity with the decision of this Court in the case of ***T.M.A. Pai Foundation*** as clarified by the decision of this Court in the case of ***P.A. Inamdar***, in my view, the judgment of S.H. Kapadia, J. does not question or contradict such a legal proposition. On the contrary, it is in recognition of the above legal proposition that modification suggested by the learned Counsel for the review petitioners in respect of Clause 8 of the order dated 15.12.1999 issued by the Director of Education has been accepted by S.H. Kapadia, J."

44. After taking note of all these judgments and the legal principles laid down therein in the matter stated above, the Delhi High Court summed up the legal position as under:

"56. A conjoint reading of the judgments of the Supreme Court in ***Modern School (supra)*** as well as review petitions in the case of ***Action Committee Unaided Pvt. Schools & Ors. (supra)*** would clearly demonstrate that the three points formulated are answered as under:

1) DoE has the Authority to regulate the quantum of fee charged by unaided schools under Section 17(3) of the

1973 Act. It has to ensure that the schools are not indulging in profiteering.

2) The direction of DoE that no fees/funds collected from parents/students shall be transferred from the Recognized Un-aided Schools Fund to the society or trust or any other institution, was valid. However, it could be transferred under the same society or trust, which aspect is clarified in the review petition.

3) Recognized unaided schools were entitled to set up Development Fund Account and could charge the students for the same, but that should not exceed 15% of the annual tuition fee."

xxx xxx xxx

61. Special Leave Petition against the aforesaid judgment was dismissed by the Supreme Court. After all Section 17(3) of the Act gives freedom to the unaided recognized schools to fix the fee at the commencement of each academic session, file with the Director a full statement of the fees as levied during the ensuing academic session. This would be necessary to the Government when we recommend the regulatory role of the Director to ensure that he fee charged is not unreasonable. Likewise, the only other restriction is that during the academic session, there should not be further increase without the prior approval of the Director. Again, this provision is made to check arbitrary increase in fee, time and again, after the academic session has commenced. There may be circumstances which may justify enhancement of fee even during the academic session. However, the schools are required to justify those circumstances for which prior approval is mandated. According to us, this provision is in tune with the legal principle stated by the Supreme Court in so many judgments, viz., autonomy to the schools to fix their fee on the one hand and conferring authority upon the DoE to regulate the quantum of fee with limited purpose to ensure that the schools are not indulging in profiteering. The provision, thus, strikes a balance between the rights of the

schools on the one hand and duty cast upon the DoE on the other hand. The only thing what is required at that stage is to We, therefore, are of the opinion that Section 17(3) does not suffer from any vires or arbitrariness and is not violative of Article 14 or 19(1)(g) of the Constitution of India.

62. With this, we revert back to the issues **On Merits**:

The clear legal position which emerges from the combined reading of the judgments of the Supreme Court, directly on the issue of revising tuition fee by Delhi schools under the Delhi Education Act, and already stated in detail above, demonstrates that the 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. At the same time, "reasonable surplus" is permissible as fund in the form of such surplus may be required for development of various activities in the schools for the benefit of 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 by the DoE which power is specifically conferred upon the DoE by virtue of Section 17(3) of 1973 Act. This is specifically held by the Supreme Court in ***Modern School (supra)*** and ***Action Committee Unaided Private Schools and Anr. (supra)***. Normally, therefore, in the first instance, it is for the schools to fix their fee and/or increase the same which right is conferred upon the schools as recognized in ***TMA Pai (supra)***. The DoE can step in and interfere if hike in fee by a particular school is found to be excessive and perceived as "indulging in profiteering". It would be a procedure to be resorted to routinely. However, validity of the orders dated 11.02.2009 passed by the DoE is to be judged in a different hue altogether. Situation arose because of the implementation of pay structure recommended by the 6th Pay Commission, which was to be done mid-session *albeit* from retrospective effect, i.e., with effect from 01.01.2006. All

aided and unaided recognized schools in Delhi were under obligation to give increase to their teachers and staff members which resulted in substantial hike in pay package of the employees of these schools. Further, it happened across the board and it was not a situation specific to a particular school. As a result of this added financial burden whereas the schools wanted to increase the fee, PTAs on the other hand, maintained that some of the schools enjoyed robust financial health, which was sufficient to bear the additional monetary burden without hike in the fee to be charged from the students. This necessitated going into the records of each school. Therefore, in a situation like this where on the one hand, there was perceptible additional financial burden created on account of increase in the pay of the staff and on the other hand, the exercise demanded by the PTAs of going into the financial records of each schools was time consuming, the issuance of orders dated 11.02.2009 by the Government, as an interim measure, proposing to increase the tuition fee in the manner provided in the said order with a lid on the upper limit cannot be faulted with. It is more so, when the proposed increase is not based on any whims of the DoE, but was preceded by the constitution of a Committee under the Chairmanship of Shri S.L. Bansal, a retired I.A.S. officer and the impugned orders were the result of the reports submitted by the said Committee after undertaking requisite exercise, *albeit,* of preliminary nature, but after giving hearing to all stakeholders. At this stage, while passing such an order, there could not have been any option, but to pass a general order for increase in fee.

63. We are of the opinion that in the aforesaid exceptional circumstance in which such an order came to be passed, it did not impinge upon the autonomy of the recognized aided or unaided private schools as well. We, therefore, uphold Para 7 of the impugned order, making it clear that was only an interim measure adopted by the Court. When we look into the matter in the aforesaid perspective, which according to us, is the only manner in which orders dated 11.02.2009 are to be viewed, we are clear in mind that the increase in fees

stipulated in the said orders as *ad-hoc* measure is legal and valid. However, as clarified above, we hasten to add that it would only be treated as an interim measure and would be subject to scrutiny into the records of each school to see as to whether there was any necessity to increase the fee having regard to the financial position of the said schools. Outcome of such an exercise could result in higher hike in fee than stipulated in the orders dated 11.02.2009 or reducing the fee than what is permitted in the said orders.

64. At the same time, we again point out that the orders dated 11.02.2009 were issued under exceptional circumstances. We, therefore, clarify that in the normal course when the fee is to be fixed at the start of academic session, no permission from DoE is necessary before or after fixing tuition fee. Of course, once the requirement of Section 17 (3) of the Act is fulfilled, it would be open to the DoE to see whether such fixation is valid or it is irrational or arbitrary. The position in sub-para (iii) of Para 65 of DAM-1 is reiterated in this behalf.

65. At this stage, we would like to examine some other Clauses of the orders dated 11.02.2009, validity whereof have been challenged by the schools. Notification dated 11.02.2009 while allowing the increase in existing fee as specified therein also restrains the private schools from increasing fee without seeking approval of PTA (see clause - 3). To our mind, this clause is clearly illegal and is not supported by any statutory or legal provisions. On the contrary, when as per Section 17(3) of the Act even the permission of the DoE is not required, asking the schools to be at the mercy of PTAs for making further increase would clearly be contrary to the said provision. We, thus, hold that this clause is not valid.

66. Likewise, we are of the opinion that even the requirement of seeking approval of the school accounts by PTA would not hold water and is not legally valid.

67. With regard to other Clauses, the directions contained in Interim order dated 28.05.2009 shall prevail."

45. The legal position with regard to the minority education institutions has been summarized in the said judgment is as under:

"**Minority Educational Institutions:**

68. No doubt, in **TMA Pai** while answering Question No.5 (C), the Supreme Court held that "fees to be charged by unaided institutions cannot be regulated" but also added "but no institution should charge capitation, etc." Further in the case of ***Modern School (supra)*** itself which discussed the fee issue of schools in Delhi with reference to Delhi School Education Act and Rules categorically held that even the minorities would not be entitled to indulge in commercial exploitation and the mechanism of regulation at the hands of Department of Education would apply. We cannot accept the argument of the learned counsel appearing for the minorities schools that the view taken in ***Modern School*** cannot prevail in view of ***TMA Pai***. It is stated at the cost of repetition that while taking the aforesaid view in ***Modern School***, the Supreme Court took into consideration ***TMA Pai Foundation*** as well. This legal position was reiterated in ***Action Committee Unaided Pvt. Schools & Ors.*** judgments."

"

46. Further taking note of the fact that such a situation would keep on recurring, the Court was of the opinion that there was a need for establishing a permanent regulatory body/mechanism. A rationale behind the same can be found in the following passages in the said judgment:

"70. The next question that we have to address at this stage as whether constitution of Grievance Redressal Committee by the aforesaid Notification dated 11.02.2009 was illegal. The contention of schools in this behalf is that establishment of such a committee is arbitrary, illegal and *ultra vires*. The provisions of 1973 Act and Rules impinge

upon the autonomy of schools. As already pointed out above, the exceptional circumstances under which orders dated 11.02.2009 came to be passed providing an interim measure for fixation of fee which is found to be justified. The objection of constitution of Grievance Redressal Committee was to receive complains from either side. If such an increase in respect of particular school is not justified and downward or upwards revision is necessary. In such a scenario, one may not find fault with the step taken by the Government in establishing the Grievance Redressal Committee. After all, the DoE is empowered to discharge this function and if such a Committee is constituted with Director of Education as Chairperson, two other members and one Chartered Accountant to achieve the aforesaid purpose, in principle that may not be wrong.

Having said so, we are constrained to state in this behalf that such *ad hoc* approach by the Government or DoE may not be proper and is not a lasting solution to the problem at hand, viz., continuing tussle and conflict between the managements of the school, clamouring for higher hike in the fee on the one hand and the PTAs, grieving each time with schools announcing increase in students" fee and raising a voice that such an increase is not predicated based on any rationale or legal basis. This grievance of the PTA becomes stronger when we notice that the Government is failing to discharge its duty of ensuring auditing of accounts regularly as provided under Section 18(6) of the 1973 Act read with Rule 170 of Rules. Further, as noted above, the Supreme Court has emphasized and emphatically reemphasized, time and again, that the schools are not to indulge in profiteering; the fees/funds collected from parents/students are not to be transferred from the recognized schools to the societies or trust or any other institutions; schools are not supposed to charge more than 15% of the annual tuition fee for the purposes of "development fund". All these aspects can be monitored and looked into only when there is continuous monitoring and regular auditing of the accounts of the schools, which is the statutory duty of the Government as well.

71. We are informed that Grievance Redressal Committee had received 58 complaints. Out of these, three were withdrawn and others have been considered a necessary order be passed. However, we get the feeling that the Redressal Committee could not do substantial job as the only focus of this Committee was to see as to whether fee fixed by orders dated 10.02.2009 was proper or it needs revision (upward or downward) by certain schools. The complaints of the parents which are brought forward by means of writ petitions, whether having been dealt with and could not be dealt with because of limited powers given to the said Redressal Committee.

Similarly, as would be pointed out at a later stage, even CAG has not performed its task.

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, Telecommunications, 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 becomes 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"."

47. The Court recommended the formation of a permanent expert body Committee, viz., establishing regulatory body. In interregnum, in order to sort out the issue, the Court appointed a Committee with the task to go into the accounts of the schools and to find out as to how much fees is required to be hiked on the

implementation of the recommendation of VIth Pay Commission. That Committee was set up to examine the records and accounts, etc. of these schools and taking into consideration the funds available, etc. at the disposal of schools at that time and the principles laid down by the Supreme Court in ***Modern School and Action Committee Unaided Pvt. Schools*** as explained in this judgment, to find out how much fees increase was required by each individual schools.

48. Having taken note of the statutory regime, other provisions which regulate school education in the States of Punjab and Haryana as well as Union Territory, Chandigarh and the judgments of the Supreme Court, the stage is ripe now to take note of the submissions of the School Managements appearing in all these writ petitions.

INDEPENDENT SCHOOLS ASSOCIATION, CHANDIGARH

49. This Association is respondent No. 9 in Civil Writ Petition No. 20545 of 2009 and is a registered Association of 61 unaided Private Schools situated in and around, Chandigarh, comprising both Minority as well as Non-Minority Schools. All these schools are affiliated either with C.B.S.E. or I.C.S.E. After this Court passed orders dated 01.05.2012 in the aforesaid writ petition, in compliance therewith, the Central Board of School Education (CBSE) issued a circular dated 06.07.2012 and show-cause notice dated 22.07.2012, (which are already taken note of), the Association came forward and got itself impleaded as the respondent No. 9.

50. The submission of this Association is that the schools have a right to charge fees in accordance with the Bye-law 11 of C.B.S.E. Bye-Laws, which specifically deals with this aspect. It is submitted that this Bye-law is to the effect that fees charged should be commensurate with the facilities provided by the

Institutions and further, that unaided schools should consult parents through parents' representatives before revising the fees. There is no provision in either the Bye-Laws of C.B.S.E. or I.C.S.E., which mandates the Schools to seek their approval before changing the Tuition fees. All the members of the Association are unaided Schools and some of them are also classified as minority institutions. It is also submitted that every unaided educational institution has an autonomous character in the matter of administration, which is even recognized by this Court as well as the by the Supreme Court of India in catena of judgments. The excellence in education necessarily requires huge monetary inputs. The qualified and efficient teachers command good salary, the conducive and healthy school environment needs capital expenditure and the modern school equipments for Laboratories and Computers also cost huge sum of money. For providing these facilities, the unaided schools have to charge fees from its students as they have no other source of income.

It is further submitted that this freedom of charging fee commensurate with facilities provided by educational institutions is limited by one consideration only that is provided by Bye-Law 7 of C.B.S.E. Bye-Laws which restrains the Schools from charging capitation fees or voluntary donations for granting admission. It also puts an embargo on diversion of the income from the schools to any other person. The violation of this Bye-Law-7 and/or Bye-Law 11 may entail the schools of withdrawing of affiliation as provided under Bye-Law 17. It is thus argued that this Bye-Law nowhere gives the power of superintendence to the affiliating bodies over the financial autonomy of private unaided schools.

51. This argument is sought to be elaborated by spelling out the role of C.B.S.E. and I.C.S.E. by arguing that they are merely affiliating bodies and to get themselves affiliated the schools have to follow the approved courses of studies

prescribed by these bodies. However, the Bye-Laws do not provide for any intrusive function of C.B.S.E. or I.C.S.E. in the working of the schools. The schools are autonomous bodies which have complete freedom in running their administration within the four walls of the limitations prescribed by the Bye-Laws. It is thus argued that the order dated 01.05.2012 has infact frittered the autonomy of the unaided Private Schools and has given control in the hands of affiliating bodies, which is neither contemplated in any statutory provision nor provided for in any of the Bye-Laws, which governs the process of recognition/affiliation.

52. Highlighting practical aspects as well, it is further argued that there are tens of thousands of schools within the jurisdiction of States of Punjab, Haryana and Union Territory, Chandigarh. The affiliating bodies neither have the wherewithal nor the infrastructure to carry out the directions given by this Hon'ble Court. If the directions given by this Court are implemented, the whole edifice of primary and secondary education is bound to crack. It is not the job of the affiliating bodies to control the fees structure of an unaided private school. Their primary aim is to conduct examinations and design syllabi for the affiliated schools to follow.

53. In so far as the Minority Schools are concerned, they have even pleaded that these institutions enjoy the protection under Article 30 of the Constitution of India and no restriction can be imposed which would be a direct conflict on that provision. Referring to the judgment of Apex Court in **Sitambla Sharma Vs. St. Paul's Senior Secondary School 2011(13) S.C.C. 760,** it is submitted that the Supreme Court in the said judgment has held that the Government has no administrative control over the unaided private minority schools and they are under no obligation to ensure "*equal pay for equal work*".

54. Notwithstanding the above, the response to the four queries raised in the order dated 01.05.2012 is given by arguing that:-

i) most of the schools associated with the 'Independent School Association' are submitting their annual balance sheets with their respective Boards. Furthermore, for renewal of affiliation after five years, it is mandatory for the Schools which are affiliated with the C.B.S.E. to submit their balance sheets.

ii) with respect to issue regarding Right of Children to Free and Compulsory Education Act, 2009, (for short' the Act of 2009'), it is stated that all the schools affiliated to the Association complied with the provisions of the Act of 2009. This Act provides a comprehensive mechanism for implementing its mandate. The affiliating bodies have nothing to do with the implementation of the Act of 2009. It is further submitted that as per the information supplied under the Right to Information Act, 2005, the Central Government has admitted that it has not issued any Notification in terms of the provisions contained in Section 2(d) and 2(e) of the Act of 2009. It is further submitted that be that as it may, the Association undertakes to abide by the statutory provisions of the Act of 2009 in letter and spirit.

iii) It is also argued that as a matter of fact most the schools are giving salaries to the teachers in accordance with the rules prescribed by the Affiliating Boards and in certain cases they are even paying much higher salary than what is being paid to their counterparts in Government run schools.

HARYANA PROGRESSIVE SCHOOL'S CONFERENCE
(H.P.S.C. Respondent No. 10 in CWP No. 20545 of 2012)

55. It is an Association of about 270 unaided privately managed schools in the State of Haryana. These schools are also affiliated either with C.B.S.E. or I.C.S.E. and Haryana Progressive School's Conference (H.P.S.C.) has got itself impleaded as respondent No. 10 in Civil Writ Petition No. 20545 of 2012 after orders dated 01.05.2012 were passed.

It is argued by H.P.S.C. that the main thrust of the writ petitioner relates to the Schools in the State of Punjab which are not governed by any legislation. As far as Schools in Haryana are concerned there is Haryana Education Act, 1955 on the same lines as Delhi School Education Act, 1973 and therefore, these schools are governed by the said Act and the rules framed thereunder, which seek to regulate the education in the State and provide the powers to the Director to put check upon the profiteering and capitation by the schools. Otherwise, it is submitted that there is no provision in the Bye-Laws of the Central Board of School Education which mandates the schools to seek approval of the Board before enhancing the fees.

56. Learned counsel appearing for this Association referred to the judgment dated 27.04.2011 passed in Civil Writ Petition No. 11223 of 2009 titled as **Haryana Progressive Schools' Conference (Retd.) Vs. State of Haryana and others**. It is submitted that the learned Single Judge in the said case following **T.M.A. Pai Foundation's** case (supra) held that the schools are free to fix their fees structure and the Government cannot put restrictions such as fixing a rigid fees structure, dictating the formation and composition of Governing Body, compulsory nomination of teachers and staff for appointment or nominating students for

admission. On the same lines as that of the respondent No. 9, the submission of this respondent is also that the only check which rests with the Government is to see that there is no profiteering and no capitation fees is being charged and the Director would be in a position to issue directions in case he finds that the schools are indulging in capitation fees or resorting to profiteering.

57. Other legal submissions qua charging of fee commensurating with the facilities and infrastructure provided by the Schools as well as qua the role which the C.B.S.E. or I.C.S.E., as examination bodies are supposed to prescribe, are the same which are made by the respondent No. 9.

58. As regards the queries raised by this Court to the Affiliating Board(s), vide order dated 01.05.2012, the response is that most of those are alien to the functions of the Affiliating Bodies and as such the same seems to have been misdirected as it is not for the Board to deal with those issues. The Board being only an Examining Body and/or Affiliating Body lacks power and/or authority to issue any guidelines in respect of issues under the Right of Children to Free and Compulsory Education (Amendment) Act, 2010. Further, there is no statutory provision, which binds a school to provide NCERT books. It is submitted that the books are chosen keeping in view the intellectual competitive world as also the intellectual autonomy of the teachers to teach the students and any restriction in that regard would only hamper the horizons of the students to attain knowledge. It is thus argued that order dated 01.05.2012 seeking to create impediment in the free and autonomous functioning of the schools, whose rights are being affected and unnecessary and unwarranted prejudice is being caused despite the well settled law that the private unaided schools are free to fix their fees structure and even the Government cannot put restrictions in that regard, leave apart the Board, whose role is limited only to provide affiliation and prescribe syllabi.

GREEN GROVE PUBLIC SCHOOL, KHANNA
(Respondent No. 8 in Civil Writ Petition No. 3834 of 2010)

59. It may be recalled that in Civil Writ Petition No. 3834 of 2010 filed by All India Crime Preventing Society (Regd.) in the nature of Public Interest Litigation, only issue is raised on which question No. (iv) is framed in the orders dated 01.05.2012. To specify, it pertains to prescribing the books of private publishers by the schools instead of prescribing the books published by the N.C.E.R.T or the Punjab School Education Board, as the case may be. The main thrust in the petition is that the books published by the N.C.E.R.T. /C.B.S.E. cost much less as compared to the books published by the private publisher. However, these schools compel the parents/students to buy books published by the private publishers by prescribing those books and in the process the parents/students have to cough out much more money. The allegation is that this practice is adopted because of nexus between the publishers, booksellers and the school management to share the bounty and to commercialize the education, which is impermissible.

60. Respondent No. 8 School has questioned the motive of the petitioner in filing the Public Interest Litigation. This school has, on the contrary, blamed the petitioner in filing this petition, which is actuated with personal gains and private motive. It is sought to argue that the petition has been filed at the instance of certain book sellers as this respondent No. 8 school did not prescribe the books of said book-sellers for the studies in the curriculum for the students. It is submitted that the respondent No. 8 is singled out and impleaded as party, whereas there are 13 schools in Khanna region which prescribe the text books other than N.C.E.R.T./Punjab School Education Board. It is also submitted that the petitioner society has already sought an alternative remedy by filing a civil suit before the Court of Addl. Civil Judge (Senior Division), Khanna claiming identical relief. On-

merits, it is the submission that the school is adhering to all the norms of C.B.S.E. by prescribing N.C.E.R.T. books to classes VI to XII but for classes 1 to V along with N.C.E.R.T. books other private publisher is introduced, as N.C.E.R.T. books do not satisfy the requirement and level of education for rural background and age/tiny tots. It is further submitted that according to the information sought by the answering respondents from the C.B.S.E. under the Right to Information Act, 2005, the recommendation of private publisher is not bar, provided the number of textbooks does not exceed the number printed by N.C.E.R.T. for that subject and class. It is also argued that the syllabus of the answering respondents is strictly in accordance with the N.C.E.R.T. guidelines and norms and the number of textbooks does not exceed those printed by the N.C.E.R.T.

SITA GRAMMER SCHOOL, MALERKOTA
(Respondents No. 4 and 5 in Civil Writ Petition No. 5587 of 2010)

61. It may be recapitulated that this writ petition also challenges the action of the respondent-State of Punjab in not curbing the menace of irrational fee hike. It is submitted by the petitioners that the respondent school has enhanced the annual charge fees from Rs. 4500/- to Rs. 9000/- for the session 2010-11, which is illegal. Prayer is also made that teachers and other staff be paid salaries in accordance with the government schools and to provide education as per C.B.S.E. regulations.

62. Sita Grammer School i.e. the respondents No.4 and 5 have contested these reliefs relying upon the bye-laws of Central Board of School Education and same submissions on the lines of ‘Independent School Association’ (respondent No. 9 in Civil Writ Petition No. 20545 of 2009) have been made. In nut-shell, it is argued that the schools have right to fix their fees etc. commensurating with the

facilities provided; the only obligation is not to charge capitation fees or commercialize the education; the role of C.B.S.E. to regulate the curriculum and conduct examinations and cannot interfere with the autonomy of the schools; the obligation of the schools is limited to submission of accounts duly audited by the Chartered Accountants.

63. In the context of its own school, the respondents No.4 and 5 have submitted that it is a private unaided school which is affiliated to C.B.S.E. The stress is laid down on the following aspects:-

i) **Facilities vis.a.vis. fees**

It is stated that the school has been complying with the provisions of Bye-law-11 of C.B.S.E. Bye-Laws, inasmuch as before revision of fee, appropriate notice to the parents and the general public, intending to get their wards admitted in the school was issued. It is further submitted that before issuance of Circular No. 73 dated 24.03.2010 even a Circular No. 68 dated 15.02.2010 was also issued to the parents showing intention of the trust to increase the fees in order to provide these advanced educational services and facilities.

It is also argued that the fee being charged is very less as compared to the facilities being provided by the respondent school. Few facilities are being reproduced hereunder:-

a) The entire school is air-conditioned;

b) There are 42 class-rooms with separate chair and desk for each student;

c) Library room with the latest books for the students with 'A' Class furniture;

d) Well equipped computer room (providing laptop/computer for each and every student for the computer classes);

e) Provision of ultra-modern techniques for teachings (i.e. projectors/T.V's in the class-rooms for teaching);

f) Provision of photocopier-cum-printer scanner (for preparation of assignments to be given to the students free of cost);

g) Adequate facilities of fire fighting system;

h) Provision of modern machine to maintain the hygienic ambience;

i) Maintenance of greenery in and around the school for making the school environment friendly;

j) Cleanliness of washroom (liquid soap and change of towel every two hours);

k) Provision of coffee machine and microwave ovens;

l) Provision of transformers, generators to ensure uninterrupted power supply to the school during the teaching hours;

m) RO system for provision of clean drinking water with water cooler on each floor;

n) Specific halls/area earmarked for the purposes of extra-curricular activities;

o) Insurance of each and every child along with other staff members;

p) The students of each class are taken for educational/site seeing once a year free of cost;

q) Free T-shirt to each and every student;

p) Free Notebooks;

The school also boasts that the students are given free personalized school diary (with photograph and name) and stickers with photo and name for the books and note books. Furthermore, the students are also given free school magazines depicting the work i.e. articles and paintings done by the students to encourage the other students to actively participate in the extra co-curricular activities as well. Thus, facilities provided to the students are much more than the fee being charged and that is why school is still under debt. It is further submitted that the school has taken loan for its expansion, especially, for construction of the Primary Wing and the photographs filed duly show the construction under process of the new blocks. It is further submitted that while increasing the fees, particularly the annual charges, the grievances, convenience, suggestions and welfare of the parents and their wards had duly been taken into consideration, thus, the increase of fees having rational with the facilities provided.

ii) **Expenditure of the School:-**

It is further submitted by respondents No. 4 and 5 that the school is being run by the trustees, therefore, there is no question of earning any profits and whatever revenue is generated by way of school fees, the same is being spent upon payment of salaries to of the teachers and other staff for making provision of basic amenities, appropriate ambience, extra-curricular activities and for providing infrastructure.

It is further submitted that the respondent school has increased the annual charges and it would stand justified from the expenses made by the school in the year 2010-11 to provide facilities to the students which are as under:-

Sr. No.	Description	Appropriate costs (in lacs)
1.	Air Condition 21 Nos. (now all class rooms are fitted with Air Conditioners)	8.89
2.	Taski Machine for cleaning	2.21
3.	Projector (complete set)-10 Nos.	4.75
4.	Laptop 10 Nos.	2.83
5.	New Furniture	1.13
6.	Transformer 500 KVA	5.46
7.	Fee deposited to PSEB for Transformer	2.74
8.	Audio System	0.42
9.	Birthday Card+Group Photo+Certificate+Report Card Photo	3.54
10.	Plasma Television 50”-2 Nos.	1.10
11.	Handy Cam	0.17
12.	Trolley for Shed Cleaning	1.45
13.	Free Note Books	1.50
14.	Free T-Shirt	1.50
	Total:	34.69

It is submitted that the number of Air conditioners in the year 2009 was 27, whereas by increasing the said strength of the Air

Conditioners, the same in the year 2010 was 58, similarly, the projectors, which were 3 in the year 2009 were increased to 13 by adding 10 new projectors in the year 2010; 10 new laptops were purchased increasing the earlier number of 5 to 15 in the year 2010 and the Air Conditioners contain dual system (i.e. hot as also cold).

It is further submitted that the projected Expenses during the year 2010-11, are Rs. 268.83 lacs (including of already spent as mentioned above) the detail of which is being given hereunder:-

Sr. No.	**Description**	**Appropriate costs (in lacs)**
1.	**Audio System for open assembly area`**	**1.50**
2.	**Upgradation of Laboratory (Phy. + Chem. + Bio).**	**45.00**
3.	**Upgradation of Library with latest infrastructure**	**5.00**
4.	**Conference Hall**	**5.00**
5.	**Generator (Sound Proof)**	**25.00**
6.	**Lift for 10 persons**	**17.00**
7.	**Patio Heater**	**0.50**
8.	**Musical instruments**	**1.00**
9.	**New furniture for Nursery Wing**	**5.00**
10.	**Automatic Control Panel for Transformer & Generator)**	**10.00**
11.	**New Play Ground (Conversion of Ag. Land to play ground)**	**7.00**
12.	**Auditorium**	**10.00**
13.	**Dinning Hall**	**2.00**
14.	**Replacement of 10 buses @ 10 lacs each**	**100.00**
	Total in lacs	**268.83**

On the basis of the aforesaid extracts, it is submitted that all ultra-modern facilities have either been provided or the efforts for the same are under process.

It is further submitted that apart from the said facilities, the school has total staff (teachers) of 74 whereas there are 23 employees of Group=-D. The total monthly salary of the entire staff for the

month of March, 2010 had been Rs. 4,76,411/- whereas for the month of April, 2010, the same was Rs. 5,61,617/-, besides the contribution towards the Provident Fund in respect of all the employees (teaching and non-teaching staff) is also being made by the answering respondent school. Apart from the said act, fees concession is also being given to the wards, whose brothers or sisters are already studying in the school. The answering respondent's school is an unaided school and as such the expenses are meted with the fee charged from the students.

It is further submitted that the balance sheets of the yearly receipt and expenditure are prepared; income tax is also paid and at the end of very financial year, proper audit is conducted and thereafter report in this regard is sent to the authority concerned i.e. C.B.S.E.

It is further submitted that the total income generated from the increase of the annual charges from Rs. 4500/- to Rs. 9000/- is around rupees one Crore. It is further submitted that if the details mentioned above, are properly scrutinized and taken into consideration vis.a.vis. the amount generated from the increase of the fees, the transparent approach of the school would be crystal clear.

64. On the aforesaid basis, the answer of this school to question No.(i) is that there can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fees structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students.

65. It is further submitted that they must also be able to generate surplus funds which must be used for the betterment and growth of that educational institution. It is further submitted that the answering respondent's school has a very strict policy towards uniformity and equality among the students. The school provides best quality books selected by the appropriate professional teaching staff as per CBSE curriculum and uniform at very affordable price. These facility provided by the school is to protect the interests of the parents. It is further submitted that at the same time, the parents are not under any obligation to buy it from specific point and they are free to buy from anywhere. Justifying the present structure of fees, whereby the school is charging Rs. 29,000/- average per year per child, it is submitted that it covers only the expenses incurred to provide high standard facilities being provided by the school.

66. After referring to all the aforesaid material, Mr. Bhatia, learned counsel appearing for Sita Grammar School summarized his arguments as under:-

i) Respondent School has been maintaining an absolute transparency and accountability in regard to the affairs, including the financial matters, of the school. Every year audit is being done by the Chartered Accountant before filing the Income Tax Returns and the same is being also submitted to the C.B.S.E. for their perusal.

ii) Respondent school is running the school in accordance and within the parameters of the Bye-Laws and before enhancing the fees the school informs and consults the parent(s) of the students.

iii) Respondent school is charging the fees in consonance with the facilities being provided. The respondent school is not charging any capitation fees as projected by the petitioner nor there is any proposal for the same.

iv) After the implementation of the Right of Children to Free and Compulsory Education Act, 2009, the respondent school has implemented the principles in letter and spirit.

v) During the pendency of the writ petition the new session commenced i.e. 2011-12 and the counsel for the petitioner made a request to this Court to restrain the respondent school from enhancing the fees further, this Court vide order dated 8.3.2011 after considering the fees hiked by the respondent school had stated that the hike in the tuition fees is not unreasonable and refused to stay.

vi) The strength of the students has been increasing year by year. The school had been imparting the best education by employing the highly qualified teachers and installing modern technology/ gadgets etc. The respondent school is providing better facilities as per the standard of World Class Educational Institutions.

vii) The respondent school has been paying the teachers and other staff adequately and till date no complaint whatsoever has been filed by any of the staff members and as a matter of fact, the staff at the school has been increased keeping in view the student-teacher ratio.

viii) It is well settled law that the school/educational institutes can enhance and fix the fees keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teacher and staff, future plans for expansion and/or betterment of the institution etc. and in the case in hand when the respondent school started functioning on 10 bighas of land now the school has 18 bighas of land which is being developed for expanding the school and the sports facilities for the students.

The Judgment

67. Keeping in view the legal principles in mind we proceed to deal with the issues spelt out in the orders dated 01.05.2012 on which replies from the various parties were solicited:-

i) ***Whether the schools affiliated to them have submitted the annual profit and loss accounts to them during the last five years, and if not, what action has been taken by them against the defaulting schools?***

68. As far as Indian School Certificate Education is concerned, in response filed by it, it is mentioned that in terms of provisions of the affiliation guidelines, it does not ask the school to submit their annual profit and loss account on year to year basis. However, if any, specific complaint is received against a school, the same is duly looked into by the Council. Further the schools are required to furnish their annual accounts statement with the Education Department of the respective State Governments annually as per the relevant local laws.

69. Punjab School Education Board has replied by stating that it is mandatory to all the private affiliated institutions to submit the annual account

reports/balance sheets duly counter signed by the Chartered Accountants along with Annual Progress Reports failing which the affiliation of the concerned institutions cannot be continued. It is also mentioned that if a school does not submit the balance sheet, it is asked to submit the same. However, no specific information is provided as to whether any schools have defaulted in submitting the annual accounts and if so action taken against them. This affidavit, therefore, does not give answer to the query raised. Thus as far as I.S.C.E. is concerned, we direct that those schools who have defaulted in submitting the annual accounts, immediate action be taken and show cause notices be issued for de-affiliation of such schools.

70. Punjab School Education Board has stated that all the affiliated schools have complied with the requirements of submitting their annual account statements.

ii) ***Whether the schools affiliated to them have followed the mandatory requirement of the Right to Education Act, 2010, i.e. giving admission to 25% students of weaker section of the society and have supplied books and addresses as per the requirement, and if not, what steps have been taken by them in this regard?***

71. It is apparent from the position taken by the petitioners, the Government/Statutory Bodies as well as Schools/Association of Schools in question, though there may be endaveour to fulfill the mandatory requirements of giving admission to 25% students of weaker section of the society, the fact remains that the aforesaid provision has yet to be turned into reality. Even when some

children belonging to Economically Weaker Section are given admission, many seats in these schools meant for E.W.S. go unfilled.

72. The RTE Act was enacted in implementation of the mandate and spirit of Article 21A of the Constitution of India inserted vide 86th Amendment Act, 2002. Article 21A provides for free and compulsory education of all children in the age group of 6 to 14 years as a Fundamental Right. To achieve this goal, Section 12(1)(c) requires private unaided schools, some of which in Chandigarh are represented by respondent No.9 to admit in Class-I, to the extent of at least 25% of the strength of that class children belonging to Economically Weaker Sections (EWS) and disadvantaged groups in the neighbourhood and provide free and compulsory elementary education till its completion. Such Schools, under Section 12(2) of the RTE Act shall be reimbursed expenditure so incurred by them to the extent of per child expenditure incurred, by the State or the actual amount charged from the child whichever is less. Since some Schools are already under obligation (as per the term of allotment of land to them) to provide free education to a specified number of children, the second proviso to Section 12 (2) provides that the Schools shall be not entitled to reimburse to the extent of the said obligation. Though the RTE Act in Section 12 (supra) also elsewhere uses the word "neighbourhood" but does not define the same.

73. In first place, it thus becomes incumbent upon the authorities to frame the Rules to define '*neighbourhood*'. We may mention that the Government of Delhi has framed such Rules known as Right of Children to Free and Compulsory Education Rules, 2010 (RTE Rules) which prescribe the limit of neighbourhood in respect of children in Classes-I to V as within walking distance of 1 Km. and in respect of children in Classes VI to VIII as within 3 Kms. If similar Rules are made by the States of Punjab and Haryana as well as Union Territory, Chandigarh, the

children in the neighbourhood of a particular school can always have the access to the schools for admission and the schools can also be compelled to admit those students. While fixing the limit to define 'neighbourhood', the authorities can also take into consideration the report of April, 2010 of the Committee on Implementation of the RTE Act and to the 213th Report on the RTE Bill of the Department related Parliament Standing Committee of Human Resource Development which report was presented to the Rajya Sabha. Still it may not be necessary to confine the admission only to those children living in neighbourhood inasmuch it is the bounden duty of the all concerned to ensure that the aforesaid provision of the Act is implemented. The Government, therefore, while framing the Guidelines can provide for the following:-

(i) Admission shall first be offered to eligible students belonging to EWS and disadvantaged group residing within 1 Km. of the specific schools;

(ii) In case the vacancies remain unfilled, students residing within 3 kms. of the schools shall be admitted;

(iii) If there are still vacancies, then the admission shall be offered to other students residing within 6 kms. of the institutions;

(iv) Students residing beyond 6 kms. shall be admitted only in case vacancies remain unfilled even after considering all the students within 6 kms. area.

74. The Supreme Court in a recent judgment in the case of **Society for Unaided Private Schools of Rajasthan Vs. Union of India and another 2012(6) SCC 1,** has also discussed the issue elaborately which should be kept in mind while giving proper implementation to this provision.

iii) *Whether the salaries paid to the teachers and other employees, by the schools affiliated to them, are in accordance with the rules and guidelines framed by them or the State Government?*

75. In so far as the payment of salaries to the teachers and other staff is concerned, it appears that most of the institutions are paying salaries in accordance with the Rules and Guidelines framed by the State Government and in certain cases they are even paying higher salaries than the salaries paid by the Government Schools to their teachers. However, there may be certain schools who are violating these norms by not paying the salaries in accordance with the Rules and Regulations framed by the State Government. It is also possible that certain schools may be showing salaries paid as per the Government norms on papers but infact paying lessor salaries. There has to be some mechanism to check this malpractice in respect of which directions are issued at the appropriate place.

iv) *Whether the schools affiliated to them are prescribing the books of private publishers, if yes, what steps have been taken by them for directing the schools to prescribe the books published by NCERT?*

76. No doubt, there should be an attempt to prescribe the books of NCERT wherever available. However, it is also a matter of fact that there is no law or Regulation which mandates the schools to prescribe books of NCERT only to the students. It is stated by various schools that the books are chosen keeping in view the intellectual competitive world as also the intellectual autonomy of the teachers to teach the students and any restriction in that regard would only hamper

the horizons of the students to attain knowledge. This issue is mainly raised in Civil Writ Petition No. 3834 of 2010 which pertains to Green Grove Public School, Khanna. It is specifically pleaded by the said school in its reply that the said petition filed as Public Interest Litigation is totally motivated and has been filed at the instance of certain book sellers only because this school did not prescribe the books of those book sellers for the studies in the curriculum for the students. This school appears to be correct in its submission that when there are 13 schools in Khanna region which prescribe the text books other than the NCERT/Punjab School Education Board, it is only the Green Grove Public School which is singled out and targeted. Further more, the petitioner has also filed a civil suit claiming identical relief.

As per the information supplied by the Central Board of School Education (CBSE) to this school under the Right to Information Act, the recommendation of private publisher is not a bar provided the number of text books does not exceed the number of books prescribed by the NCERT for that subject and class. The school mantained that their syllabi is strictly in accordance with the NCERT guidelines and norms and number of text books does not exceed those prescribed by the NCERT. Thus, in absence of any statutory regime putting any obligation on these private schools to have only the NCERT books, it is difficult to give any specific direction in this behalf. However, we leave it open to the government authorities to look into this issue in greater depth and to decide as to whether it would be necessary for the private schools to prescribe only NCERT/Boards books. It will also be examined as to whether any Regulatory mechanism is required and whether it is feasible to regulate the prices fixed by the private publishers in respect of books prescribed in the Schools.

77. Coming to the thorny issue of charging of fees which is the bone of contention between the parties, the position of law in this behalf has already been stated in detailed above extracting the ratio of various judgments of the Supreme Court. Specific question on this issue was framed by the Supreme Court in **Modern School (supra),** in the following manner:-

> a) Whether the Director of Education has the authority to regulate the quantum of fees charged by un-aided schools under section 17(3) of Delhi School Education Act, 1973?

78. No doubt, the issue was answered having regard to the provisions of Section 17(3) of Delhi School Education Act, 1973. There is a similar provision in Haryana School Education Act, 1995 and there is no similar law in Union Territory, Chandigarh or State of Punjab. At the same time, the Court took into consideration the general principles laid down in earlier decisions of this Court while answering this question. Referring to the judgments of **TMA Pai Foundation (supra)** and **Islamic Academy of Education (supra)**, it was held in no uncertain terms that the fees to be charged by unaided educational institutions cannot be regulated except that capitation fees and profiteering were forbidden. There could not be any rigid fees structure and each institution must have freedom to fix its own fees structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. In the process, such educational institutions were even empowered to generate surplus funds, which must be used for betterment and growth of the educational institutes with clear embargo that these profits/surplus funds cannot be diverted for any other use or purpose and cannot be used for personal gain or any business or enterprise.

For fixing the fee structure, following considerations are to be kept in mind:

(c) The infrastructure and facilities available;

(d) Investment made, salaries paid to teachers and staff;

(c) Future plans for expansion and/or betterment of institution subject to two restrictions, viz., non-profiteering and non-charging of capitation fees.

The majority view thereafter applied the aforesaid principles in the context of 1973 Act and Rules framed thereunder. It was emphasized that Rule 175 indicates the accrual of income and Rule 177 indicates utilization of that income and answered to the first question by holding that the Director of Education was authorized to regulate fees and other charges to prevent commercialization of educational institutes in the following terms:

> "17.....Therefore, reading section 18(4) with rules 172, 173, 174, 175 and 177 on one hand and section 17(3) on the other hand, it is clear that under the Act, the **Director is authorized to regulate the fees and other charges to prevent commercialization of education.** Under section 17(3), the school has to furnish a full statement of fees in advance before the commencement of the academic session. Reading section 17(3) with section 18(3)&(4) of the Act and the rules quoted above, it is clear that the Director has the to regulate the fees under section 17(3) of the Act.....(emphasis supplied)".

79. What follows from the above said is that freedom is to be given to the schools to fix their fees structure as fixation thereof depends upon the infrastructure and facilities available in the schools, investments made and salaries paid to the teachers and staff as well as the future plans for expansion and/or betterment of institution. Obviously, there cannot be any uniformity in all the

schools in respect of aforesaid parameters. Various schools in their replies have highlighted and boosted about the high quality of infrastructure which has been provided by them. We have taken note of these facilities in detail as stated by Sita Grammer School, Malerkotla. Thus, the legal position which cannot be denied is that there cannot be any rigid fees structure prescribed by the Government. Each institute has to be given freedom to fix its own fees structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefits of the students.

80. At the same time, the Supreme Court has also laid down categorical principles that the schools cannot indulge in profiteering and they cannot charge capitation fee higher, therefore, the fees fixation is subject to the aforesaid two restrictions. It is also to be ensured that the fees/funds collected by the Schools from parents/teachers are not transferred from the school funds to the society or the trust which runs such schools or any other institutions. Here again, however, the recognized unaided schools are entitled to set up Development Fund Account and for this purpose they can charge from the students but such a charge do not exceed 50% of the annual tuition fees. The position in this behalf is summarized by Delhi High Court in its judgment dated 12.08.2011 in **Delhi Abhibhavak Mahasangh case** (supra) in the following manner:-

> **"**62. With this, we revert back to the issues **On Merits**: The clear legal position which emerges from the combined reading of the judgments of the Supreme Court, directly on the issue of revising tuition fee by Delhi schools under the Delhi Education Act, and already stated in detail above, demonstrates that the 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. At the same time, "reasonable surplus" is permissible as fund in the form of such surplus may be

> required for development of various activities in the schools for the benefit of 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 by the DoE which power is specifically conferred upon the DoE by virtue of Section 17(3) of 1973 Act. This is specifically held by the Supreme Court in ***Modern School (supra)*** and ***Action Committee Unaided Private Schools and Anr. (supra)***. Normally, therefore, in the first instance, it is for the schools to fix their fee and/or increase the same which right is conferred upon the schools as recognized in ***TMA Pai (supra)***. The DoE can step in and interfere if hike in fee by a particular school is found to be excessive and perceived as "indulging in profiteering". It would be a procedure to be resorted to routinely."

81. The moot question is while giving freedom to the schools to fix their own fees structure, how to ensure that these schools are not indulging in profiteering/commercialization of education and are also not diverting funds through unauthorized channels. In **Delhi Abhibhavak Mahasangh case** (supra), Delhi High Court expressed the view that there was a need for establishing a permanent Regulatory Body/mechanism, the rationale whereof is given in paras No. 72 and 81, already extracted above.

82. No doubt, in the instant cases before us, as per the replies filed by the official respondents themselves, most of the schools are fulfilling the requirements of submitting the Annual Reports etc. At the same time, it is also a matter of record that there is hardly any examination of these records which are simply dumped by the schools with the Boards/Regulatory Authorities and keep lying there in their archives. Needless to mention 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 developmental activities needed and does not result into profiteering. It is also to be ensured that the funds are not diverted elsewhere. However, there is no mechanism for checking the same. In a situation like this, we are of the opinion that the States of Punjab and Haryana as well as Union Territory, Chandigarh should also provide for some permanent Regulatory Bodies/mechanism which would go into this aspect on regular basis. We accordingly give directions to the States of Punjab, Haryana as well as Union Territory, Chandigarh to examine the feasibility of establishing such a mechanism and take decision thereupon within a period of six months from today. Till that is done and in order to sort out the issue as to whether the hike in fees by the schools is proper or not, we would like to follow the same path as done by the High Court of Delhi, namely, setting up a Committee with the task to go into the accounts of the Schools and find out the reasonableness of increase in fees by the schools. Accordingly, we appoint three committees, one each for the State of Punjab, State of Haryana and Union Territory, Chandigarh, with the following constitutional members:-

FOR STATE OF PUNJAB:-

i) **Hon'ble Mr. Justice Ranjit Singh (Retd.)**: **Chairperson**

ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.

iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

FOR STATE OF HARYANA:-

i) **Hon'ble Mrs. Justice Kiran Anand Lall (Retd.): Chairperson**

ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.

iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board.

FOR UNION TERRITORY CHANDIGARH:-

i) **Hon'ble Mr. Justice R.S.Mongia (Retd. Chief Justice)**: **Chairperson**

ii) One Chartered Accountant to be nominated by the Chairperson of the Committee.

iii) One Member from the field of Education preferably a retired teacher/officer of eminence to be nominated by the Director of Public School Education Board, U.T. Chandigarh.

The fee of the Chairperson(s) shall be Rs. 25,000/- per sitting and that of the members Rs. 10,000/- each per sitting. The said fee shall be shared by the schools in the respective States. In addition to the aforesaid fee, the Committee(s) shall also be reimbursed the amount of clerical and other expenses. They shall also be provided suitable place/office for undertaking the task assigned.

Since the schools are submitting the accounts with the Boards, these accounts and records can be given by the Boards to the Committees. In addition all

the schools shall also render full cooperation to the Committee(s) by submitting the Account and other necessary information demanded by the Committee(s). The scope of the work undertaken by the Committee(s) shall be restricted to the academic year 2012-13. Likewise, for the academic year 2013-14, though the schools shall have the right to fix their fees structure, they will have to justify the same by producing necessary material before the Committee(s). The Committee(s) shall be entitled to specifically look into the aspects as to how much fees increase was required by each individual school on the examination of records and accounts etc. of these schools and taking into consideration the funds available etc. at the disposal of the schools. While doing this exercise, it shall keep in mind the principles laid down by the Supreme Court in Modern School case (supra) as well as Action Committee Unaided Pvt. Schools case (supra) and other decision noted by us in this judgment. Needless to mention in case it is found that the fees hiked by the schools was more than warranted, the direction can be given to those schools to refund the same to the students.

All these writ petitions stand disposed of in terms of directions given hereinabove.

(A.K.SIKRI)
CHIEF JUSTICE

09.04.2013 **(RAKESH KUMAR JAIN)**
'ravinder' **JUDGE**