IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6651 of 2007 (O&M)
Date of decision: 24.09.2010

St. Xavier's Sr. Sec. School, Sector 44, Chandigarh, and others
....Petitioners

Versus

Municipal Corporation through its Commissioner, Sector-17, Chandigarh and another
....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA

Present: - Mr. I William Gosain, Advocate,
for the petitioners in CWP No.6651 of 2007.
Mr. Puneet Jindal, Advocate, for
the petitioners in CWP Nos.9018 of 2007 & 9519 of 2008.
Mr. R.S. Ahluwalia, Advocate, for
the petitioners in CWP Nos.13910, 16070, 13969 & 16025 of 2007.
Mr. M.L. Sarin, Sr. Advocate, with
Ms. Alka Sarin, Advocate,
for the petitioners in CWP No.6038 of 2009.
Mr. Inderjit Kaushal, Advocate,
for the petitioner in CWP No.6502 of 2009.
Mr. R.S. Cheema, Advocate, for
the petitioners in CWP Nos.304, 306, 3223 & 390 of 2009 and 6822 of 2010.
Mr. Rajdeep Singh Cheema, Advocate, for
Mr. Hardeep Singh Dhindsa, Advocate, for
the petitioners in CWP Nos.9875 & 10295 of 2009.
Mr. B.S. Guliani, Advocate, for
the petitioners in CWP Nos.9753, 9754 & 9952 of 2008.
Mr. Sandeep Kotla, Advocate, for
the petitioners in CWP No.938 of 2010.
None for the petitioner(s) in
CWP Nos.8246 of 2007 and 16699 of 2008.
Mr. Sanjay Kaushal, Sr. Standing Counsel,
with Mr. Sanjiv Ghai, Advocate,
for UT, Chandigarh.
Mr. Rajiv Sharma, Sr. Central Govt. Counsel,
for Union of India.
Ms. Lisa Gill, Advocate,
for the Municipal Corporation, Chandigarh.

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VINOD K. SHARMA, J.

This judgment shall dispose of (1) CWP No.6651 of 2007 titled St. Xavier's Sr. Sec. School, Sector 44, Chandigarh, and others Vs. Municipal Corporation and another, (2) CWP No.6038 of 2009 St. John's High School, Sector 26, Chandigarh Vs. Union of India and others, (3) CWP No.6822 of 2010 titled DAV College Trust and Management Society, Chitra Gupta Road, New Delhi and another Vs. Municipal Corporation Chandigarh and others, (4) CWP No.10295 of 2008 titled Dev Samaj College for Women, Sector 45-B, Chandigarh Vs. Municipal Corporation and another (5) CWP No.9952 of 2008 titled S.D. High School, Sector 24-C, Chandigarh Vs. Municipal Corporation and others, (6) CWP No.304 of 2009 titled DAV College Trust and Management Society, Chitra Gupta Road, New Delhi and another Vs. Municipal Corporation Chandigarh and others, (7) CWP No.16698 of 2008 titled Divya Educational Society and others Vs. Union of India and others, (8) CWP No.323 of 2009 titled DAV College Trust and Management Society, Chitra Gupta Road, New Delhi and another Vs. Municipal Corporation Chandigarh and others, (9) CWP No.306 of 2009 titled DAV College Trust and Management Society, Chitra Gupta Road, New Delhi and another Vs. Municipal Corporation Chandigarh and others, (10) CWP No.390 of 2009 titled DAV College Trust and Management Society, Chitra Gupta Road, New Delhi and another Vs. Municipal Corporation Chandigarh and others, (11) CWP No.6502 of 2009 titled Vivek High School Vs. Municipal Corporation and another, (12) CWP No.10142 of 2007 titled Vishesh Educational Society (Regd.) Vs. Municipal Corporation, Chandigarh and others (13) CWP No.938

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of 2010 titled Gyandeep Public School, Sector 20, Chandigarh Vs. Union of India and others, (14) CWP No.9753 of 2008 titled Shri Guru Gobind Singh Senior Secondary School, Sector 35-B, Chandigarh and another Vs. Municipal Corporation and others, (15) CWP No.9754 of 2008 titled Gurdwara Ashthapan Committee (Regd.) Sector 22, Chandigarh and others Vs. Municipal Corporation and others, (16) CWP No.16070 of 2007 titled Sri Guru Gobind Singh college of Pharmacy, Sector 26, Chandigarh Vs. Municipal Corporation and another, (17) CWP No.13969 of 2007 titled Guru Gobind Singh College for women, Sector 26, Chandigarh Vs. Municipal Corporation and another, (18) CWP No.8246 of 2007 titled Dayanand Anglo Vedic (DAV) College Trust and Management Society and others Vs. Municipal Corporation and others, (19) CWP No.9018 of 2007 titled St. Joseph Educational and Charitable Trust and others Vs. Union of India and others, (20) CWP No.16025 of 2007 titled Sri Guru Gobind Singh Collegiate Public School, Sector 26, Chandigarh Vs. Municipal Corporation and another, (21) CWP No.13910 of 2007 titled Sri Guru Gobind Singh College, Sector 26, Chandigarh Vs. Municipal Corporation and another (22) CWP No.9519 of 2008 titled Kids 'R' Kids International Educational & Social Welfare Trust, Sector 42, Chandigarh and others Vs. Union of India and others and (23) CWP No.9875 of 2008 titled I.S. Dev Samaj Public School, Sector 21-C, Chandigarh Vs. Municipal Corporation and another, as common questions of law and facts are involved.

For the sake of brevity, facts are being taken from CWP No.6651 of 2007.

The brief facts pleaded in the writ petition are, that the

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petitioner schools are managed by the societies registered under the Societies Registration Act, 1860. The schools are within the jurisdiction of the city of Chandigarh. The petitioner schools have challenged the illegal imposition of Municipal (Land and Building) Tax (Commercial Property Tax) only on private schools, which will result in financial burden on thousands of students studying in all the private unaided schools. The case of the petitioners was, that land of the petitioner schools was owned by the Central Government and allotted on lease to the unaided schools as per Chandigarh Lease Hold of Sites and Buildings Rules, 1973. The Central Government, therefore, is the owner of the land, whereas the petitioners were lessees/tenants. The petitioner-schools are recognised by the Chandigarh Administration and affiliated with either the Council for Indian School Certificate Examination (ICSE), New Delhi, or Central Board of Secondary Education (CBSE), New Delhi. The case of the petitioners is, that the petitioner-schools survive financially on the fee collected from the students, and have no other source of income, as they are neither funded nor aided by the State Government in any way.

The case of the petitioners is also, that State of Punjab had granted complete exemption to all the schools from payment of municipal tax, which was imposed under the Punjab Municipal Act, 1911. Copy of the notification is placed on record as Annexure P-16.

This fact is not relevant, as the action taken by the Municipal Corporation of Chandigarh is not under the Punjab Municipal Act, 1911, nor was Punjab Municipal Act, 1911 even applied to UT Chandigarh.

The petitioners claim that under Section 3 of the Punjab

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Municipal Corporation Law (Extension to Chandigarh) Act, 1994 deals with the savings of certain Sections of the Punjab Municipal Act, 1911 and the rights that accrued from exemption granted were protected under the new Act.

This again is of no consequence, as prior to imposition of tax, neither any tax was imposed nor the Punjab Municipal Act 1991 was applicable to UT Chandigarh. The petitioners cannot claim any right, privilege or obligation in pursuance of the notification issued by the State of Punjab/under Punjab Municipal Act, 1911.

The averment of the petitioners, that in view of Section 428(a) of the Punjab Municipal Corporation Act, 1976, adopted by the respondents, respondents adopted all notifications issued under the Punjab Municipal Act, 1911 would continue to be in force, is again of no help for the reasons stated above.

The petitioner also claim that the Government of Haryana has exempted all educational or charitable institutions from the application of taxes pertaining to Haryana Municipal Act, 1973.

This again is not relevant to the issue raised in the present petition.

These facts are noticed, because it has been so averred in the writ petition, and contentions raised by the learned counsel in support thereof.

The case of the petitioners, which is relevant for consideration by this Court in this writ petition, as pleaded, is that the Administrator, UT Chandigarh violated Section 90(3), and issued impugned notification dated 7.5.2003, specifying tax on commercial, industrial and

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institutional lands and buildings in Chandigarh.

The relevant extract of the notification dated 7.5.2003 reads as under: -

> *".....The Administrator Union Territory Chandigarh is pleased to specify that the Tax on Commercial Industrial and Institutional Land and Buildings in Chandigarh to be levied........And collected at the rate of 5% of the rateable value...."*

The case pleaded was, that the Administrator, UT Chandigarh, violated Section 399 of the Punjab Municipal Corporation Act 1976, without any authority of law, in issuing the second notification dated 3.6.2003 thereby framing bye-laws for imposition of tax.

The extract of the notification dated 3.6.2003 reads as under: -

> *"......and in exercise of the powers conferred by Sub Section (1) of Section 399 of the Punjab Municipal Corporation Act 1976, as extended to the Union Territory Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act 1994 (Act No.45 of 1994),* ***the Administrator Union Territory, Chandigarh, hereby makes the following Bye Laws, namely****......"*

The case of the petitioners is, that the Administrator, UT Chandigarh, therefore violated Section 90(3) of the Punjab Municipal Corporation Act, as adopted by the UT Chandigarh, in reducing the rate of municipal tax to 2.25% without having jurisdiction to do so.

The petitioners also challenged the notification dated 22.11.2004 specifying tax on commercial, industrial and institutional lands and buildings in Chandigarh being violative of Section 90(3).

The extract of the notification dated 22.11.2004 reads as under: -

> *"In supersession of the Chandigarh*

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> *Administration, Local Government Department's Notification bearing No.774 – FII(8) – 2003/2779, dated 7 May 2003, and in exercise of the powers conferred by Sub Section (3) of Section 90 of the Punjab Municipal Corporation Act 1976, as extended to The Union Territory Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act 1994 the Administrator, Union Territory, Chandigarh is pleased to specify that Tax on Commercial, Industrial and Institutional Lands and Buildings in Chandigarh is to be levied by the Municipal Corporation, Chandigarh, under Clause (a) of Sub Section (1) of Section 90 of the Act, shall be assessed and collected at rate of 3% of the Rateable Value of such lands and buildings within the limits of the Municipal Corporation of Chandigarh."*

The challenge is also to the service tax on Government buildings in UT Chandigarh by way of notification dated 22.11.2004, which is attached as Annexure P-13 to the writ petition.

The extract of notification with regard to specified service charges reads as under: -

> *"The Administrator Union Territory, Chandigarh is further pleased to specify that Service Charges at the Rate of 2.25% of the Tax calculated on the building as per the rate of Zone "C" of the respective group in which building is situated as per Annexure I of the Self Assessment Scheme shall be levied in respect of Government Buildings of the Union Government Chandigarh Administration and State Governments, not being used for commercial purpose."*

The case set up by the petitioners is, that the Hon'ble Supreme Court in ***TMA Pai Foundation Vs. State of Karnatka, 2002 SCC 481*** has laid down, that educational institution is not a business but is recognized head of charity.

The case of the petitioners is, that the respondents by illegally inserting word "institution" by way of advertisements in newspapers,

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have imposed the Municipal (Land Building) Tax on the petitioner-schools since 2004. The copy of the advertisement issued in the newspaper is attached as Annexure P-12 to the writ petition.

The case of the petitioners also is, that the word “institution” has not been defined in the Municipal Corporation Act or in the impugned notifications imposing municipal tax. Section 2 dealing with the definitions in bye laws 2003 also does not define the word “institution”.

The case of the petitioners is, that the examples of institutions given in the self-assessment scheme attached to bye laws, could not be a legal base, to impose municipal tax on private schools.

The institutional buildings as defined in the self-assessment scheme read as under: -

> *“Institutional Buildings:*
> *Commercial and Institutional Buildings, which are other than SCOs, SCFs, or Booths but have been constructed on the site earmarked for a specific purpose e.g. Cinema House, Pvt. Schools/Colleges, Theaters, or any other type of building which is being used for any type of Commercial/Institutional activities.”*

Petitioner No.1 paid the tax amounting to ₹3,91,121/- (Rupees three lac ninety one thousand one hundred and twenty one only) on 31.3.2006 for the assessment year 2004-05 and 2005-06 under protest. Petitioners No.1 and 4 also paid property tax for the year 2006-07 and 2007-08 also under protest, vide receipts attached with the writ petition.

The pleaded case of the petitioners, however, is that the petitioner-schools, who are the members of the Independent Schools Association, Chandigarh (Regd.), protested and opposed the illegal

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imposition of municipal property tax by asserting that the petitioners being educational institutions, are not commercial bodies, therefore, the tax could not be imposed on them. The petitioners have also challenged the bills, subsequently sent calling upon the petitioners to pay the house tax, in pursuance of the notifications and bye laws read with the self-assessment scheme.

The case of the petitioners further is, that the respondents in the advertisements have specified that the tax imposed is a commercial tax for commercial activities. But in the advertisement Annexure P-12, it has been stated that "pay property tax" and also that "all owners/occupiers of commercial, industrial and institutional properties and residential properties, from where commercial activities, are being undertaken are liable to pay property tax".

The case of the petitioners is, that in view of the admission by the respondents, that tax imposed was commercial tax it could not be applied to the private unaided schools, as the schools are not commercial but charitable, as held by the Hon'ble Supreme Court in ***TMA Pai Foundation Vs. State of Karnatka*** (supra).

It was on 31.10.2006 that a resolution was passed in the elected House of the Municipal Corporation, Chandigarh, which exempted all the Government and Government aided schools from the payment of municipal tax. The petitioners claim that in pursuance of an application moved under RTI Act, a copy of the MC House resolution dated 31.10.2006 was supplied, wherein all the Government and Government aided schools, were exempted from payment of municipal tax.

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The resolution passed by the House of the Municipal Corporation, Chandigarh, reads as under: -

> *"....After detail discussions the House passed the following Resolution.*
> *Considered and resolved by the Majority to commend to the Chandigarh Administration that Government Aided Pvt. Schools, Colleges, and Punjab University excluding Professional Colleges be exempted from the imposition of the Property Tax and is hereby approved."*

The case of the petitioners further is, that as the petitioners are also performing the same function, therefore, this exemption should be equally applied to the petitioner-schools, on the basis of equality, as they form the same class.

The petitioners also invoked the principle of promissory estoppel to challenge the imposition of tax. The petitioners also relied on the 74th Constitutional Amendment 1992, to plead, that the Municipal Corporation has an obligation and responsibility towards furtherance of education as an instrument of Local Self-Government.

The petitioners referred to Section 44(u) of the Municipal Corporation Act, 1976, which makes it obligatory for the Municipal Corporation to fulfil its responsibility being Local Government/part of the Government, under the Constitution of India.

Again under Section 45 of the Municipal Corporation Act, 1976, the Municipal Corporation has been made responsible towards education. The petitioners also claim that in view of the provisions of Article 243-W (12th Schedule) of the Constitution of India, the Municipal Corporation is under obligation to spend its funds on schools and education.

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It is also pleaded by the petitioners, that it could not be denied that private unaided educational institutions/schools are greatly shouldering the fundamental responsibility of the State, and that the Act of the respondents in imposing tax was likely to make the education more expensive. The result of the notifications is, that the education is being taxed, which is not permissible.

It is further pleaded by the petitioners, that religious institutions have been exempted from payment of the tax under the self-assessment scheme, which provide that the religious institutions are exempted, except the one under commercial activity.

The petitioners also pleaded that in the report of Central Advisory Board of Education (CABE) Committee in June, 2005 to the Ministry of Human Resources, it was stated that one of the principles that guided the Committee, is that: -

> *"5(ii) Right to Education also employs that it is State's obligation to remove whatever obstacles, Social, Economic, Academic, Linguistic, Cultural, Physical etc. that prevent children from effectively participating and completing elementary education of satisfactory quality.*
> *5(iii). Right to education must be seen not merely as a right for its own or the individual child's sake but also as an instrument of promoting other constitutional objectives e.g. equality, justice, democracy, secularism, social cohesion etc."*

The petitioners also claimed, that the petitioner-schools have been granted exemption from payment of income tax by the Income Tax Authority, being educational institutions.

The petitioners also placed reliance on the judgment of this Court in ***CWP No.19714 of 2006, titled The Sukhjit Starch & Chemicals Ltd., Sukhjit Road, Phagwara Vs. State of Punjab & others***

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decided on 3.9.2008, whereby this Court had quashed the notification imposing tax for want of imposition of tax as per the provisions of the statute.

On the facts pleaded above, the petitioners challenged the imposition of tax, and the notices issued for recovery, on the following grounds: -

1. That the land of the petitioner-schools being owned by the Central Government it is not open to the Corporation to tax the Government land.
2. That the respondents illegally implied and applied the term “institution”only to private schools to impose tax, though the term “institution” has not been defined in the Act or the bye laws framed under the Act, the term “institution” cannot be read to mean only private schools.
3. That Section 3(1)(B) of the Punjab Municipal Act, 1994 (as adopted by the UT Chandigarh) saves the obligations/rights under the 1911 Act.
4. That the imposition of tax is in violation of principles of natural justice, as it was illogical to impose tax on private unaided schools while exempting the Government schools when specific Section of the Municipal Act, stipulates that the municipality should spend its municipal funds on furtherance of education.
5. That the tax cannot be imposed as it would be in violation of doctrine of promissory estoppel.
6. That the imposition of service tax is without jurisdiction, as there is no provision or section in the Municipal Act to impose service charges.
7. That the Administrator, UT Chandigarh, has no authority to specify the impugned taxes or make the impugned bye laws 2003, as it is only the Government which could issue a notification qua the rate of tax. The Government qua UT Chandigarh, is the Central Government and not the Administrator.
8. That Section 399 of the Municipal Act,

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1976 only empowers the Corporation to make bye laws and not the Administrator, therefore, the bye laws by the Administrator are illegal and void.

9. That the notifications imposing tax are in violation of provisions of Section 90(3) of the Municipal Act, 1976, which only authorises the Central Government to issue such notification.

10. That the imposition of tax is violative of Constitutional provisions, specially Article 14 of the Constitution of India.

11. That the Municipal Corporation, Chandigarh, has abdicated and violated its mandatory obligation of funding the educational schools by taxing private schools in violation of 74th Constitutional Amendment.

Before noticing the reply filed by the respondents, it would be pertinent to hold, that the plea of the petitioners, that no tax could be imposed on the petitioners, as the land was owned by the Central Government, which is the owner of the land whereas the petitioners are only lessees/tenants, deserves to be rejected.

As Section 97(2) of the Punjab Municipal Corporation Act, 1976 (as extended to the Union Territory, Chandigarh), provides that if any land is let for a term exceeding one year, to a tenant and such tenant has built upon the land, the taxes on lands and buildings assessed in respect of that land, and the building erected thereon shall be primarily leviable on the said tenant, whether the lands and building are in the occupation of such tenant or a sub-tenant of such tenant.

Similarly, the plea of the petitioners that the tax could not be imposed on the principle of promissory estoppel, is also misconceived, as in order to attract the principle of promissory estoppel, it is for the person to plead and prove, that in pursuance of the promise made he

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acted to his detriment.

In absence of the promise and action taken by the person acting on the promise to his detriment, the principle of promissory estoppel has no application.

It is not the case of the petitioners that any such promise was made by the Municipal Corporation, Chandigarh, not to impose tax on the private schools, which prompted the societies to run the schools. The plea of promissory estoppel is thus rejected.

The third plea of the petitioners, that the exemptions granted under the Punjab Municipal Corporation Act, 1911, were protected under the Municipal Corporation Act, 1976, again is misconceived, as the Punjab Municipal Corporation Act, 1911 was never applied to the UT Chandigarh, nor any notification was issued exempting the private schools from payment of tax.

This contention of the petitioners again being misconceived, is rejected.

The other contention of the petitioners, that there is a Constitutional bar, that the educational institutions cannot be taxed, is also misconceived, as power under Section 90 of the Municipal Act to impose tax is not restricted by any provisions of the Constitution to hold that the Municipal Corporation does not have the jurisdiction, to impose tax, merely because the petitioner-schools were running without the aid of the Government.

The next contention of the learned counsel for the petitioners, that the imposition of tax is violative of Article 14 of the Constitution of India, being arbitrary and discriminatory, is also not correct, as the aided

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educational institutions, Government institutions and private aided institutions, form distinct classes and principle of equality cannot be applied to unequals.

The contention of the learned counsel for the petitioners, that it was only the Central Government, and not the Administrator, which could impose the tax, also deserves to be rejected, as according to the Schedule of the Act as extended to UT Chandigarh the Government, has to be read as an Administrator, and not Central Government.

The only question for consideration in the writ is as to whether the tax has been rightly imposed by following the procedure laid down under the Act, and whether the bye laws could be the basis to impose tax, on the petitioner-institutions.

In the reply filed to the writ petition the stand taken is, that the tax has been imposed by following the procedure laid down under Section 90 of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994, (hereinafter referred to as 'the Act').

Sections 90, 91 and 97 of the Act read as under: -

"90. (1) The Corporation shall, for the purposes of the Act, levy the following taxes: -
(a) taxes on lands and buildings;
(b) & (c) – Omitted.
(d) a tax on advertisements other than advertisements published in newspapers;
(e) a tax on buildings payable along with the application for sanction of the building plan; and
(f) a development tax on the increase in urban land values caused by the execution of any development or improvement work.
(2) Subject to the prior approval of the Government the Corporation may, for the purposes of this Act, in addition to the taxes specified in sub-section (1), levy,--
(a) a tax on professions, trades, callings and

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employments; and

(b) any other tax which the State Legislature has power to impose under the Constitution:

Provided that no tax shall be imposed under this sub-section unless an opportunity has been given in the prescribed manner to the residents of the City to file objections and the objections, if any, thus received have been considered.

(3) The taxes specified in sub-section (1) and sub-section (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.

(4) The Government may, by special or general order, direct a Corporation to impose any tax falling under sub-section (1) or sub-section (2), not already imposed, within such period as may be specified and the Corporation shall thereupon act accordingly.

(5) If the Corporation fails to carry out any order passed under sub-section (4), the Government may by a suitable order notified in the Official Gazette impose the tax and the order so passed shall operate as if the tax had been duly imposed by the Corporation under sub-section (1) or sub-section (2), as the case may be.

(6) after the close of each year the Government may pay to the Corporation the whole or such part as it may determine of the Tax collected by it--

(a) under the Indian Stamp Act, 1899 on account of stamp duty on transfer of property situated within the local area of the City;

(b) under the Punjab Motor Vehicles Taxation Act, 1924 as applicable to the Union Territory of Chandigarh, from every person keeping a motor vehicle within the local area of the City;

(c) under the Punjab Electricity (Duty) Act, 1958, on the energy supplied within the local area of the City;

(d) under the Punjab Entertainments Duty Act, 1955, as applicable to the Union Territory of Chandigarh from every person admitted to an entertainment within the local area of the City.

(e) under the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954, as applicable to the Union Territory of Chandigarh from the proprietor of the premises where a public cinematograph

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exhibition is held within the local area of the City."

"91. Save as otherwise provided in this Act, taxes on lands and buildings in the City shall consist of the following, namely: -

(a) a water tax of such percentage of the rateable value of lands and buildings as the Government may deem reasonable for providing water supply in the City;

(b) a fire tax on such percentage of the rateable value of lands and buildings as the Government may deem reasonable for the expense necessary for the conduct and management of the Fire Service and for the protection of life and property in the case of fire;

(c) a general tax of not more than fifteen per cent of the rateable value of lands and buildings within the City:

Provided that the general tax may be levied on a graduated scale, if the Government determines.

(2) The Government shall exempt from the general tax lands and buildings of which the rateable value does not exceed the prescribed limit."

"97. (1) The taxes on lands and buildings shall be primarily leviable as follows:--

(a) if the land or building is let, upon the lessor;

(b) if the land or building is sub-let, upon the superior lessor;

(c) if the land or building is unlet, upon the person in whom the right to let the same vests.

(2) If any land has been let for a term exceeding one year to a tenant and such tenant has built upon the land, the taxes on lands and buildings assessed in respect of that land and that the building erected thereon shall be primarily leviable upon the said tenant, whether the land and building are in the occupation of such tenant or a sub-tenant of such tenant.

Explanation. -- The term "tenant" includes any person deriving title to the land or the building erected upon such land from the tenant whether by operation of law or by transfer inter vivos.

(3) The liability of the several owners of any building which is, or purports to be, severally owned in parts or flats or rooms, for payment of taxes on lands and buildings or any instalment thereof payable during the period of such membership shall be joint and several."

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It is also pleaded case of the respondents in the written statement, that Section 399(1) of the Act empowers the Corporation to make bye-laws providing for all or any of the matters specified therein, and that under Section 401(1) of the Act, such bye-laws take effect on approval by the Government, by publication in the official gazette.

The Government while approving the bye-laws can make any change therein, which appears to be necessary. Section 401 of the Act, reads as under: -

> *"401. (1) Any power to make bye-laws conferred by this Act is conferred subject to the conditions of the bye-laws being made after previous publication and in the case of such bye-laws being made by the Corporation of their not taking effect until they have been approved by the Government and published in the Official Gazette.*
> *(2) The Government in approving a bye-law may make any change therein which appears to it to be necessary.*
> *(3) The Government may, after previous publication of its intention cancel any bye-law which it has approved, and thereupon the bye-laws shall cease to have effect."*

The case of the respondents is, that Section 90 of the Act has been meticulously complied with, while imposing tax on industrial, commercial, institutional lands and buildings. It is denied that the tax was leviable only on commercial activities, therefore, it could not be levied on the private educational institutions. Stand taken is, that it is within the jurisdiction of the Municipal Corporation/Government, to impose tax on private educational institutions.

The case of the respondent is, that after coming into being of Municipal Corporation, Chandigarh, the Secretary, Local Government vide letter dated 26.9.1996 requested the Commissioner, Municipal

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Corporation, Chandigarh to pass resolution for imposing tax on the lands and buildings under Section 90(1) of the Act.

In pursuance of the letter of the Secretary, Local Government, Municipal Corporation sent a copy of the resolution passed by the Corporation in its meeting held on 22.10.1996, whereby proposal was made, vide agenda item No.6.4 to impose house tax on the lands and buildings and all commercial/industrial units @ 10% and 15%, respectively, falling within the municipal limits of the Corporation.

The resolution was said to have been approved on 22.10.1996, and by way of said resolution it was decided that the tax should be charged @ 20% of the rateable value.

The case of the respondents is, that on 24.12.1996, the Secretary, Local Government, Chandigarh Administration, requested the Commissioner, Municipal Corporation, Chandigarh, to place item for imposition of taxes, on the lands and buildings, before the elected body of the Corporation. The case of the respondents further is, that at the time of passing of resolution on 22.10.1996, the Municipal Corporation, Chandigarh, did not have its elected body, that is to say that it had not come into existence.

The case of the respondents is, that the issue of levy of property tax in Chandigarh, was considered by the Municipal Corporation, Chandigarh, vide agenda item No.10 in its 11th meeting held on 18.9.1997, wherein following resolution was passed: -

> *"**In partial modification of resolution passed vide item No.6.4 by the Corporation in its meeting held on 22.10.1996, it is hereby considered and resolved that all commercial lands and buildings including Industrial units, residential houses***

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> ***used for commercial purposes and that of Central Govt., Chandigarh Administration, State Govts. Semi Govt. and Autonomous Bodies used for commercial purposes shall be levied the property tax @ 10% of the rateable value without any exemption for the self-occupied buildings/portion used for commercial purposes.***
> ***Further resolved that service charges @ 10% of the rateable value in respect of Govt. buildings of Union Govt., Chandigarh Administration and State Governments and not used for commercial purposes will also be levied.***
> ***Further resolved that the levy of house tax on residential lands and buildings used for commercial purpose is hereby dropped.***"

The resolution referred to above was forwarded to the Secretary, Local Government, Chandigarh Administration, on 14.10.1997, thereafter, Commissioner, Municipal Corporation, Chandigarh, vide letter dated 6.11.1997 requested the Secretary, Local Government, Chandigarh Administration, for according approval for giving of public notice for self-assessment.

The resolution dated 18.9.1997, referred to above, was again considered on 29.1.1998. It was resolved, that the word "in partial modification" mentioned in resolution No.10 of the 11th meeting of the Corporation held on 18.9.1997 be substituted by word "supersession".

The case of the respondents, therefore, is that in pursuance of the resolution passed by the Municipal Corporation, Chandigarh, the Administrator, UT Chandigarh, in exercise of powers conferred by sub-section (3) of Section 90 of the Act issued notification dated 24.2.1998, specifying the rate of tax on the lands and buildings (commercial including industrial units) to be levied by the Municipal Corporation, Chandigarh, under Section 90, sub-section (1) of the Act, to be assessed and collected @ 10%, of the rateable value, on such lands and buildings

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within the city of Chandigarh.

The corrigendum to the notification dated 22.2.1998 was issued on 30.3.1998, whereby the word and figure “Clause 9” mentioned in notification dated 24.2.1998, was notified to be read as “Clause (a)” and the words “within the city of Chandigarh” to be read “within the limits of the Municipal Corporation of Chandigarh”.

The case of the respondents is, that after the issuance of the notification, survey of commercial and industrial lands and buildings was started by the Municipal Corporation, Chandigarh, and public was also informed, by public notices issued in various newspapers.

The case of the respondent-Corporation further is, that as the notifications dated 24.2.1998 and 30.3.1998 were not being carried out into effect, the Chandigarh Administration vide letter dated 18.4.2000, asked the Commissioner, Municipal Corporation, Chandigarh, to take steps to levy the property tax on the commercial/industrial lands and buildings for which the Administration had already issued notification for levy of tax @ 10% of rateable value.

The Chandigarh Administration in exercise of powers conferred under Section 403 of the Act directed the Commissioner, Municipal, Corporation, Chandigarh, to furnish all relevant records, proceedings along with a detailed report as to the action taken by the Municipal Corporation to initiate levy of property tax on commercial properties in UT Chandigarh, as also the action taken by the Corporation in this respect.

Vide letter dated 16.10.2000, the Administrator, UT Chandigarh, in exercise of powers under Section 405 of the Act issued

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directions to the Commissioner, Municipal Corporation, Chandigarh, to take immediate steps for implementation of the decision of the Municipal Corporation i.e. resolution dated 18.7.1997, by getting it approved by the General House of the Corporation.

The issue regarding levy of property tax in UT Chandigarh was thereafter discussed in the meeting held on 20.4.2001 under the Chairmanship of Advisor to the Administrator, which was attended by the various functionaries of the Chandigarh Administration, and also by the Commissioner, Municipal Corporation, Chandigarh, wherein Empowered Committee on Property Tax, was constituted to study various systems for assessment of property tax, and to submit its recommendations to the Chandigarh Administration.

The Municipal Corporation, Chandigarh, in its 61st meeting held on 29.1.2003 vide agenda item No.4.1 passed the following resolution: -

> *"In supersession of resolution passed by the Municipal Corporation, Chandigarh in its 11th meeting held on 18.9.97 vide agenda item No.10, it is hereby considered and resolved that all commercial lands and buildings including industrial units, residential house used for commercial purposes and that of Central Govt., Chandigarh Admn., State Govt., Semi Govt. and autonomous body used for commercial purposes shall be levied the property tax @ 2% of the rateable value without any exemption for the self occupied buildings/portion used for commercial purposes."*
>
> *"Further resolved that service charges @ 1.5% of the rateable value in respect of Govt. buildings of Union Govt., Chandigarh Admn. and State Governments and not used for commercial purposes will be levied.*
>
> *Further resolved that the levy of house tax on residential lands and buildings used for residential purpose is hereby dropped."*

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In the said meeting, the Corporation also approved the draft bye-laws, namely, the Chandigarh Municipal Corporation (Tax on Commercial & Industrial Lands and Buildings) Bye-Laws, and Self Assessment Scheme-2002, with the amendments/additions mentioned in the said resolution.

The Commissioner, Municipal Corporation, Chandigarh, forwarded the resolution referred to above to the Secretary, Local Government, Chandigarh Administration, wherein it was resolved by the House, that the Chandigarh Administration may be requested to de-notify the previous notification dated 24.2.1998 relating to property tax issued by it, and a fresh notification be issued for levy of tax @ 2% along with amended draft bye-laws.

The case of the respondents, therefore, is that issue with regard to levy of property tax in view of resolution dated 29.1.2003, and the draft bye-laws, was approved by the Municipal Corporation in its meeting held on 29.1.2003.

The bye-laws were thereafter considered by the committee consisting of Secretary, Local Government, Commissioner, Municipal Corporation, Chandigarh and the Legal Remembrancer. The Commissioner, Municipal Corporation, Chandigarh, was asked to rectify the bye-laws for consideration by sub committee. It was decided that the heading be modified, to cover tax on commercial, industrial and institutional lands and buildings, and necessary amendments be made, in the bye-laws, so as to bring in its ambit, not only commercial and industrial lands and buildings, but also the institutional lands and buildings.

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The Commissioner, Municipal Corporation, Chandigarh, submitted modified bye-laws and the scheme for consideration and approval of the sub committee. It was decided by the Chandigarh Administration, that the property tax be imposed on commercial, industrial and institutional lands and buildings.

It was further decided that vacant land, on which construction was allowable as per the ground coverable and F.A.R., but where construction was not raised, will also attract the property tax. Besides this, it was also decided to levy service tax on the Government buildings. In addition, service charges @ 7.5.% of the tax was specified in respect of the Government buildings of the Union Government, Chandigarh Administration, and the State Government not being used for commercial purposes.

The building bye-laws along with self-assessment scheme were approved by the Administrator under Section 401 of the Act and published.

In the self-assessment scheme the word "institutional buildings" was defined for the first time to read as under: -

> *"Institutional Buildings: Commercial and Institutional buildings, which are other than SCOs, SCFs or Booths but have been constructed on the sites earmarked for a specific purposes e.g. Cinema Houses, Private Schools/Colleges, Theaters, Barat Ghars, Marriage Palaces, Conventional Halls, Party/Meeting Halls, Farm Houses, Clinics, Diagnostic Centres, Laboratories, Health Care Systems, Gyms, Hospitals, Nursing Homes, Petrol Pumps, Clubs, Godowns or any other type of building which is being used for any type of commercial/institutional activity."*

The Municipal Corporation, Chandigarh, again requested the

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Secretary, Local Government, Chandigarh Administration, to issue fresh notification for levy of property tax @ 2% instead of 5% of the rateable value of commercial, industrial and institutional lands and buildings. The request was declined.

The case of the respondents further is, that vide notification dated 16.10.2003, the Administrator, UT Chandigarh, while exercising powers conferred by sub-section (4) of Section 90 of the Act was pleased to impose higher tax under Clause (b) of sub-section (1) of Section 91 of the Act on the buildings/shops/factories in the Union Territory, Chandigarh.

Vide resolution dated 12.11.2003, the Municipal Corporation, Chandigarh, passed the following resolution: -

> *"Considered and resolved that the resolution of the House passed at its 61st meeting held on 29.1.2003 levying property tax @ 2% of rateable value and its resolution passed at its 11th meeting on 18.9.1997 levying property tax @ 10% be and are hereby withdrawn."*

The Chandigarh Administration thereafter directed the Corporation to withdraw this resolution with immediate effect. Vide notification dated 22.11.2004, the Administrator, UT Chandigarh, specified the tax on commercial, industrial and institutional lands and buildings to be assessed and collected @ 3% of the rateable value of such lands and buildings within the limits of the Municipal Corporation, Chandigarh and vide notification the service charges were also specified @ 2.25% of the tax collected on the building to be levied on the Government buildings of the Union Government, Chandigarh Administration and the State Governments, not being used for

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commercial purpose. Thereafter, a corrigendum was issued to the notification dated 22.11.2004, to amend the figure “2.25%” as “75%”. Thus, it is pleaded that due process was followed.

On merits, the averments made were answered in terms of the submissions noted above.

Mr. M.L. Sarin, learned senior counsel, and Mr. I William Gosain, learned counsel, appearing on behalf of the petitioners, contended, that impugned notifications imposing rate of tax and also framing of bye-laws, are without jurisdiction, as the power has been exercised by the Administrator, whereas under Section 90(3) of the Act it is the Government which by notification can assess the tax.

The contention raised was, that the Government is to be read as “Central Government”, and not the “Administrator”, therefore, the notifications, as well as the framing of bye-laws, being without jurisdiction are liable to be quashed.

This contention of the learned counsel for the petitioners cannot be accepted. As already observed above, as per Schedule to the Punjab Municipal Corporation Act, 1976, as extended to the Union Territory, Chandigarh, it has been clarified that the Government in the Act is to be read as the “Administrator”, therefore, no fault can be found with the issuance of the notifications under Section 90(3) or approval and publication of the bye-laws by the Administrator, UT Chandigarh, as he is the Government, for the purpose of the Act.

Next contention of the learned counsel for the petitioners was, that the bye-laws have been framed by the UT Administration, whereas the power to frame the bye-laws vests only with the Municipal

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Corporation, Chandigarh.

In support of this contention reference was made to the bye-laws, wherein it is mentioned **that in exercise of powers conferred by sub-section (1) of Section 399 of the Act, the Administrator, Union Territory, Chandigarh, hereby makes the following bye-laws, namely**........

There is force in this contention, as under Section 399 of the Act, the power was with the Municipal Corporation, Chandigarh, and not the Administrator to frame the bye-laws. The record produced in this Court showed that, in fact, the bye-laws were framed by the Municipal Corporation, Chandigarh, and were approved and thereafter sent to the Administrator for the purpose of publication and notification in the official gazette. The power under Section 399(2) of the Act vests with the Government to frame the bye-laws within one year of formation of the Municipal Corporation, subject to approval of the Municipal Corporation. The bye-laws were not framed within one year of formation of Municipal Corporation, therefore, Section 399(2) of the Act has no application.

Mr. Sanjay Kaushal, learned senior standing counsel for UT Chandigarh, on the other hand contended, that bye-laws were framed by the Municipal Corporation and were forwarded to the UT Administration for taking action under Section 401 of the Act, under which bye-laws framed by the Corporation cannot take effect until they have been approved by the Government and published in the official gazette.

The power is given to the Government to approve the bye-

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laws, by making changes therein, which were necessary, therefore, this notification was issued in exercise of powers under Section 401 of the Act.

This plea of the learned senior standing counsel cannot be accepted. The bye-laws may have been proposed, but according to the notification dated 3.6.2006, they have been stated to have been framed by the Administrator, UT Chandigarh, which is not permissible under the statute.

The right of approval by modification will not give right to the Administrator to usurp the right of the Municipal Corporation to frame the bye-laws. In order to interpret a notification, the necessity to look into the proceedings etc. arises only to clarify the doubt, otherwise, simple interpretation is to be given to the notification. The reading of the notification shows that the bye-laws have been framed by the Administrator, which was not within the jurisdiction of the Government, but that of the Corporation.

It is not the case of the respondents, that these were framed by the Administrator/Government, and thereafter approved in exercise of powers under Section 399(1) read with Section 399(2) of the Act as contended by the learned senior standing counsel for UT Chandigarh.

The second contention of the learned counsel for the petitioners was, that imposition of tax cannot be sustained in law, as it was within the jurisdiction of the Municipal Corporation, Chandigarh, to impose tax on the lands and buildings, and in absence of any resolution of the Municipal Corporation, no tax could be imposed.

The contention of the learned counsel for the petitioners was,

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that power under Section 90(4) of the Act, could only be exercised after issuance of notice to the Municipal Corporation, and further on their failure to impose tax as directed, but no such notice was issued or placed on record, which could entitle the Administrator to impose the tax.

This contention was refuted by the learned senior standing counsel appearing on behalf of the Chandigarh Administration, by contending that it was not the Administrator who imposed the tax.

The tax was imposed by the Municipal Corporation by passing the resolution referred to above. It was only the fixation of rate of tax as proposed by the Municipal Corporation, that was done by the Government. The notification was not beyond its jurisdiction, as under Section 90(1) of the Act, the Municipal Corporation, Chandigarh, could decide to impose the tax, and the rate of tax was to be fixed by the Government i.e. the Administrator by issuing necessary notification. Therefore, the notification issued after passing of resolution by the Municipal Corporation, Chandigarh, cannot be held to be bad or illegal.

On consideration, I find force in the contention raised by the learned senior standing counsel appearing on behalf of the UT Chandigarh. The proceedings produced before this Court show that, in fact, the decision was taken by the Municipal Corporation to impose the tax on the lands and buildings. It cannot be said that the tax was not imposed as per the provisions of Section 90 of the Act, as contended by the learned counsel for the petitioners. The reliance by the learned counsel for the petitioners on the judgment of this Court in ***CWP No.19714 of 2006 titled The Sukhjit Starch & Chemicals Ltd., Sukhjit Road, Phagwara Vs. State of Punjab & others*** (supra) is misplaced.

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Most important question for consideration in this case is, whether any tax was imposed on the institutions, to cover the schools of the petitioners, for imposition of the tax. The reading of the resolution passed by the Municipal Corporation, Chandigarh, in imposing tax, shows that the tax was imposed on commercial lands and buildings including industrial units, residential house used for commercial purposes and that of Central Govt., Chandigarh Admn., State Govt., Semi Govt. and autonomous body used for commercial purposes.

The word “institutional land” was not included in the resolution. The word “institutional land” was mentioned for the first time in the notification issued in exercise of powers under Section 90(3) of the Act, where while fixing the rate of tax as imposed by the Municipal Corporation , the word “institutional lands and buildings” was added.

The contention of the learned counsel for the petitioner was, therefore, correct that the word “institutional land” is not defined either in the Act, or the bye-laws, but for the first time added in the self-assessment scheme.

The notification shows that the bye-laws were framed by the Administrator, and not the Municipal Corporation, which would mean that though the draft bye-laws were there before the Municipal Corporation, but the Administrator in his wisdom decided to frame the bye-laws of his own and did not approve the bye-laws with modification, as envisaged under Section 401 of the Act.

The word “institution” in absence of definition, is to be governed by the ordinary dictionary meaning, which means “large

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organization founded for a particular purpose such as college, bank etc." whereas "institutional" means "like an institution". It forms a separate class from the one notified and decided by the Municipal Corporation, under Section 90 of the Act.

Learned senior standing counsel appearing for the UT Chandigarh vehemently contended, that in order to interpret the resolution passed by the Municipal Corporation what is required to be seen is the agenda item, which did include institutional land.

The contention of the learned senior standing counsel was that while discussing the word "commercial" the institutions like that of petitioner were under consideration by Municipal Corporation.

Therefore, the resolution be interpreted keeping in view the intention in passing the resolution imposing the tax. The attending circumstances while issuing notification, and the subsequent action shows, that institutional lands/institutions were included in the resolution passed by the Municipal Corporation, Chandigarh.

The contention raised by the learned senior standing counsel for the UT Chandigarh cannot be accepted. The reading of the resolution shows, that in spite of the fact, that agenda item did stipulate the imposition of tax on institutions/institutional lands, but in the resolution passed the words "institutional lands/institutions" were specifically excluded, meaning thereby, that the Corporation had not imposed any property tax on institutions/institutional lands.

The Administrator while exercising power under Section 90(3) of the Act while fixing the rates, could not, therefore, include the institutional lands/institutions for the purpose of taxation.

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In case, the Administrator was not satisfied with the resolution, the procedure envisaged under Section 90(4) of the Act was required to be followed, directing the Municipal Corporation, Chandigarh, to impose tax on institutions/institutional lands. Having not done so, it was not open to impose property tax by framing bye-laws, as the bye-laws are not source of imposition of tax. Bye-laws can be framed to regulate the procedure for imposition of tax, which cannot override the basic resolution passed by the Municipal Corporation.

It is further to be seen that even in the bye-laws framed the word "institution" was not defined. This would, however, not make a difference, as in that event the ordinary English meaning would be given to the word, which would also cover the case of the petitioners and no benefit could have been taken, for want of definition.

The writ petitions deserve to succeed, for the reason, that in the resolution passed under Section 90(1) of the Act, the Municipal Corporation, Chandigarh, had not imposed tax on institutions/institutional lands. The properties left by the Corporation while exercising powers under Section 90(1) of the Act, could not be included, either under Section 90(3) of the Act, while fixing the rate of tax nor could it be included in the bye-laws or self-assessment scheme.

In view of the pleaded facts and findings recorded above and in view of the settled law, that the taxing statute is to be strictly construed and, that in case, two views are possible, then the one in favour of the assessee, is to be preferred to that of revenue, the conclusions, which are arrived at in this case, are: -

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"(1) That under Section 90(1) of the Act it is the Municipal Corporation, which can impose tax on the lands and buildings. The Government, on failure of the Municipal Corporation to impose tax, can invoke the provisions of Section 90(4) of the Act. In the present case, there is no tax imposed on institutions/institutional lands/buildings by the Municipal Corporation, Chandigarh, nor any power exercised under Section 90(4) of the Act by the Government.

(2) That the powers under Section 399 of the Act to frame bye-laws, can be exercised by the Municipal Corporation alone and not by the Government/Administrator by invoking the provisions of Section 401 of the Act. The Government/Administrator can only modify and publish the bye-laws so framed, but the notification is required to record that the bye-laws are framed by the Municipal Corporation.

(3) That while fixing the rate of tax under Section 90(3) of the Act it is not open to the Government/Administrator to include the properties/lands, which have not been taxed by the Municipal Corporation in exercise of powers vested under Section 90(1) of the Act."

In view of the conclusion referred to above, these writ petitions succeed, the notification fixing the property tax on institutional lands is quashed being beyond the powers of the Administrator, for want of resolution under Section 90(1) of the Act, and resultantly, the notices issued demanding tax from the petitioners are also ordered to be quashed.

However, it is made clear that the resolution passed by the Municipal Corporation and the fixing of rate with regard to the properties covered under the resolution of the Municipal Corporation, Chandigarh, are upheld.

The bye-laws and the self-assessment scheme as framed are

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ordered to be quashed, as these have been shown to have been framed by the Administrator, who had no jurisdiction to frame bye-laws under Section 399(1) of the Act as mentioned in the notification framing the bye-laws.

Writ petitions are allowed in above-said terms, but with no order as to costs.

(Vinod K. Sharma)
Judge

September 24, 2010
R.S.

HIGH COURT OF PUNJAB AND HARYANA

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