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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 14th February, 2019
Pronounced on: 27th March, 2019

+ W.P.(C) 13143/2018 & CM No.51010/2018

FEDERATION OF EDUCATIONAL
PUBLISHERS IN INDIA

..... Petitioner

Through: Mr. Sidharth Luthra, Sr. Adv.
with Mr. Kumar Vaibhav,
Ms. Aayushi Sharma and
Mr. Manoj Kumar, Advs.

versus

DIRECTORATE OF EDUCATION & ANR Respondents

Through: Mr. S. K. Tripathi, ASC
(GNCTD) with Mr. Rishabh
Ostwal and Mr. Shashank
Tiwari, Advs. for Govt. of NCT
of Delhi
Mr. Vivek Goyal, CGSC with
Mr. Pawan Pathak, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. On 29th November, 2018, the Directorate of Education, Government of National Capital Territory of Delhi (hereinafter referred to as “the DoE”), issued a Circular, which forms the subject matter of controversy in the present writ petition. The Circular primarily addressed the concern of school children, in primary and secondary schools, having to carry school bags which were

excessively heavy, thereby causing detriment to their health and well-being. The Circular, therefore, stipulated maximum weights, of school bags to be carried by children in various classes from Class I to Class X, as well as the number of textbooks and notebooks which the students would be required to carry. Various other remedial measures, to assuage these concerns, were also prescribed in the said Circular.

2. The grievance of the petitioner is essentially directed against the following stipulations, figuring in the aforementioned Circular:

“... All the schools running on the Directorate of Education have to follow the textbooks prescribed by the SCERT, NCERT and CBSE.

Three textbooks have been prescribed for classes I and II i.e. Hindi, English and Mathematics. There shall not be any homework for these classes as circular already issued *vide* No. DE/10/Nur. Br./Misc./2017/Vol-II/137 dated 14.09.2018. As per the prescribed curriculum six textbooks have been prescribed for classes VI to X i.e. three textbooks for three languages and one for Maths, Science and Social Studies.”

3. It is relevant to note, at this juncture, that the writ petition assails the impugned Circular, not only with respect to the stipulation, therein, to the effect that all schools were required to follow the textbooks prescribed by the SCERT (the State Council of Educational Research & Training), the NCERT (the National Council for Educational Research & Training) and the CBSE (Central Board of Secondary Education), but also with respect to the proscriptions regarding the maximum weight of school bags which children would

be allowed to carry. Notice was, however, issued, by me, in the writ petition, on 5th December, 2018, limited to the challenge, by the petitioner, to the stipulation, in the impugned Circular, mandatorily requiring schools to follow textbooks published by the NCERT, the SCERT, or the CBSE, holding that the petitioner, as an association of text book manufacturers, completely lacked locus to ventilate any grievance against the weight of school bags, as prescribed by the impugned Circular. The petitioner has, apparently, accepted my view, and Mr. Siddharth Luthra, learned Senior Counsel appearing for the petitioner, limited his submissions, in court, to the challenge, by the petitioner, to the proscription, as contained in the impugned Circular, to schools following textbooks other than those prescribed by the NCERT or the SCERT.

4. This judgment, therefore, limits itself to the challenge, by the petitioner, to the stipulation, in the impugned Circular dated 29th November, 2018, as extracted in paragraph 2 *supra*, and the merits thereof.

5. The issue being purely legal in nature, the necessity of any factual narrative stands obviated. One may proceed, therefore, to the submissions, by learned Counsel appearing on either side, regarding the impugned stipulation, in the Circular dated 29th November, 2018, as extracted in paragraph 2 *supra*.

Submissions of Mr. Siddharth Luthra

6. The primary submission of Mr. Luthra revolved around the jurisdiction and competence, of the DoE, to issue the impugned Circular, or prescribe, therein, the textbooks to be followed by schools. Mr. Luthra first drew my attention, in this context, to Section 3 of the Delhi School Education Act, 1973 (hereinafter referred to as “the DSE Act”), which empowered the Administrator to regulate education, in all schools in Delhi, in accordance with the DSE Act and the Delhi School Education Rules, 1973 (hereinafter referred to as “the DSE Rules”). The Administrator, by virtue of clause (a) of Section 2 of the DSE Act, is the Hon’ble Lieutenant Governor of Delhi, and, on this, there is no dispute.

7. Proceeding, next, to the DSE Rules, Mr. Luthra highlighted Rule 18 thereof, which reads as under:

“18. Courses of study –

(1) The courses of study for primary and middle stages shall be such as may be specified by the Director in consultation with the Committee and the text books for such courses of study shall be such as may be recommended by the Director in consultation with the Committee: Provided that in suitable cases, a school may be permitted by the Director to draw its own courses of instruction for the primary or middle stage subject to such courses being approved by the Director in consultation with the committee.

(2) The course of study and text books for the secondary stage and senior secondary stage shall be such as may be specified or recommended by the Affiliating Board.”

8. The Affiliating Board is the CBSE, and Mr. Luthra draws attention, next, to the Affiliation Bye-Laws of the CBSE, of which Clause 2.4.7 reads thus:

“2.4.7 Books

(a) The School may prescribe NCERT text books in the classes and subjects in which these have been published by the NCERT. Extreme care should be taken in the selection of books of private publishers so that there is no objectionable content that hurts the feeling of any class, community, gender or any religious group in society.

(b) The School shall put up a list of prescribed books on its website with the written declaration duly signed by the Manager and the Principal to the effect that they have gone through the contents of the books prescribed by the school and own the responsibility. If a school is found prescribing a book having any objectionable content, the responsibility for such content shall lie with the school and action will be initiated against the School by the Board.”

9. Mr. Luthra premises four submissions on the aforesaid Clause in the Affiliation Bye-Laws of the CBSE. Firstly, he submits that, by virtue of Rule 18(2) of the DSE Rules, the textbooks, for the secondary and senior secondary stage, were to be such as were

prescribed by the CBSE. Secondly, he points out that Clause 2.4.7 *supra* empowered the Schools – and not the DoE – to prescribe the textbooks to be used or followed. Thirdly, he stresses the use of the word “may”, in the opening part of Clause 2.4.7, to emphasize that there was no binding requirement, even on the School, to use NCERT/SCERT textbooks even where they were available. Fourthly, Mr. Luthra points out that Clause 2.4.7 advises against using books of private publishers only where they contained objectionable content, and not in other cases. Ergo, Mr. Luthra would submit, the DoE was overstepping the boundaries of its jurisdiction and authority in making usage of NCERT/SCERT textbooks, by schools, mandatory, *vide* the impugned Circular.

10. The Right of Children to Free and Compulsory Education Act, 2009 (referred to, hereinafter, by its commonly employed acronym “the RTE Act”) came into force on 26th August, 2009, and Mr. Luthra would seek to contend that, even under the regime of the RTE Act, the position was no different, insofar as the authority of the DoE to issue a circular, such as the one impugned, and to introduce, therein, a stipulation such as the one impugned, was concerned. Mr. Luthra first invites attention, in this connection, to Section 7(6)(a) of the RTE Act, which reads as under:

“7. Sharing of financial and other responsibilities –

(6) The Central Government shall –

(a) develop a framework of national curriculum with the help of academic authority specified under section 29;”

Section 29 of the RTE Act, for its part, reads thus:

“29. Curriculum and evaluation procedure. –

(1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:-

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child’s knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centric manner;
- (f) medium of instructions shall, as far as practicable, be in child’s mother tongue;
- (g) making the child free of fear, from an anxiety in helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child’s understanding of

knowledge and his or her ability to apply the same.”

11. Both sides are *ad idem* that the NCERT and SCERT are the “academic authorities”, notified under Section 29(1) of the RTE Act. Notification, dated 28th June, 2012, issued by the Hon’ble Lieutenant Governor, declaring the SCERT as the “academic authority”, for the purposes of Section 29 of the RTE Act has also been handed over, across the bar, by Mr. Luthra. Mr. Luthra draws attention to paragraph 4.6.1 of the National Curriculum Framework 2005 (hereinafter referred to as “the NCF 2005”) issued by the NCERT, which reads as under:

“4.6.1 Texts and Books

Popular perception treats the textbook as the prime site for curriculum designing. Though curriculum planning is a much wider process, curriculum reform seldom goes beyond changing the textbook. **Improved textbooks** that are carefully written and designed, professionally edited and tested, offering not merely factual information but also interactive spaces for children are important. But curriculum reform can go much farther if textbooks are accompanied by several other kinds of materials. Subject **dictionaries**, for instance, can relieve the main textbook from becoming encyclopedic, burdened by carrying definitions of technical terms, and instead allowing the teacher to focus on understanding concepts. The triangular relationship between high-speed classroom teaching, heavy homework and private tuition, which is a major source of stress, can be weakened if textbook writers focus on elaboration of concepts, activities, spaces for wondering about problems, exercises encouraging reflective thinking and small-group work, leaving the definition of technical terms to a subject dictionary.

Supplementary books, workbooks and extra reading, come next. In certain subjects, such as languages, the importance of such material needs no fresh recognition, but the concept of such material does call for fresh thinking. Current textbooks contain uninteresting content covering different genres, and workbooks simply repeat exercises of the type already found in textbooks. In mathematics, and the natural and social sciences, such supplementary materials still need to be developed. Such books could draw children's attention away from the text to the world around them. Indeed, for subjects like art, workbooks may form the main classroom material. There are fine examples of such materials produced for the study of the environment, introducing children to the observation of trees, birds and the natural habitat. Such resources need to become available to the teacher and for use in the classroom.

Atlases have a similar role to play in enriching the child's understanding of the Earth, both as a natural and as a human habitat. Atlases of stars, flora and fauna, people and life patterns, history and culture, etc. can greatly enlarge the scope of geography, history and economics at all levels. Posters on these areas of knowledge, as well as other matters of concern on with general awareness needs to be promoted, can also enhance learning. Some of these concerns include gender bias, inclusion of children with special needs, and Constitutional values. Such material could be available in a resource library and at the cluster level to be borrowed by schools for use, or they could be placed in the school library, or made available by teachers.

Manuals and resources for teachers are just as important as textbooks. Any move to introduce a new set of textbooks or a new kind of textbook should include the preparation of handbooks for teachers. These handbooks should reach principals and teachers before the new textbooks do. Teachers' handbooks can be designed in

many different ways. They need not cover the content of the textbook chapter -wise though that can be 1 of the approaches. Other formats can be equally valid: offering a critique of established methods and suggesting new ones, and including lists of resource materials, audio and video materials and sites on the Internet. These would provide tips for teachers, which they could use for lesson planning. Such sourcebooks need to be available during in-service training of teachers and during meetings when they plan their teaching units.”

12. Drawing attention to the above extracted passages from the NCF 2005 released by the NCERT itself, Mr. Luthra points out that it does not suggest, far less mandate, at any point, exclusive use, by schools, of textbooks published by the NCERT or the SCERT. Where, therefore, the academic authority, duly notified under the RTE Act, itself does not do so, how, Mr. Luthra would seek to query – “to himself”, as it were – can the DoE do so?

13. Mr. Luthra places reliance on the judgment, of a coordinate Single Bench of this Court, in *Association of School Venders v. Central Board of Secondary Education, 2018 SCC Online Del 7345*. Mr. Luthra seek to submit that the Circular, of the CBSE, issued on 1st April, 2017, stipulating that “the parents should not be coerced to buy the textbooks of private publishers/additional textbooks by the school authorities and the schools must mandatorily use the NCERT textbooks in their schools” was quashed by the said judgment. The issue in controversy in the present case, therefore, Mr. Luthra would contend, is no longer *res integra*. In connection with, and in

continuance of, this submission, Mr. Luthra also relies on Circular No. 08/2018, dated 21st June, 2018, issued by the CBSE, as a sequel to the said judgment. The merits of this submission would be examined later in the course of this decision.

14. Lastly, Mr. Luthra draws my attention to paragraph 7 of the counter-affidavit, filed by the DoE in the present case, which reads thus:

“That, therefore, NCERT and SCERT, only are being empowered by the Right to education act, 2009 to decide the curriculum for the children as being Academic Authority, which accordingly have prescribed and published the curriculum and study materials under its own strict supervision so that, child may be restrained from burdening to read unnecessary study materials/references. Accordingly the Delhi government under the guidelines of Academic Authority has decided to go ahead with prescribed materials only as mentioned in the impugned notification.”

Therefore, Mr. Luthra submits, the DoE is on the same page as him, inasmuch as paragraph 7 of its counter-affidavit acknowledges that the exclusive authority to decide the curriculum (and, therefore, the textbooks) to be prescribed and followed by schools, in the RTE regime, is the NCERT/SCERT. The NCERT/SCERT not having insisted on schools following the textbooks published by it, the DoE, too, Mr. Luthra would seek to submit, could not have done so. Even on merits, therefore, Mr. Luthra’s submission is that the mandate, in the impugned Circular dated 29th November, 2018, to schools, to

necessarily follow textbooks published by the NCERT/SCERT, cannot sustain the scrutiny of law.

15. Responding to Mr. Luthra's submissions, Mr. Santosh Kumar Tripathi, learned Standing Counsel appearing for the DoE submits, at the outset, that the reliance, by Mr. Luthra, on the judgment in *Association of School Vendors (supra)*, is completely misplaced, as the said decision did not examine, or deal with, the legality of the prescription regarding the textbooks which were required to be followed by schools, but limited itself to the prohibition on sale of textbooks, other than those prescribed by the NCERT or the SCERT, in tuck shops set up in the schools. The issue in controversy in the present case, Mr. Tripathi would point out, was not regarding sale of "non-NCERT" or "non-SCERT" textbooks in schools, but regarding the following of such textbooks by the schools, while imparting education.

16. Mr. Tripathi would seek to trace the power, of the DoE, to issue the impugned stipulation, regarding usage of textbooks by schools, to Rule 18 of the DSE Rules, read with Clause (iii) of Rule 50 thereof. Clause (iii) of Rule 50 stipulates that "no private school shall be recognised, or continue to be recognised, by the appropriate authority, unless ... the school follows approved courses of instructions as provided elsewhere in these rules". Thus, Mr. Tripathi would contend, Rule 50 relates back to Rule 18, whereunder the appropriate authority, to prescribe the textbooks, for primary and middle stages, is the DoE

and the appropriate authority, to prescribe the course of study and textbooks, for secondary and Senior secondary stages is the CBSE. The authority of the DoE to issue the impugned instruction cannot, therefore, Mr. Tripathi would seek to contend, be gainsaid.

17. Mr. Tripathi also places reliance on a judgment, of the High Court of Madras in *M. Purushothaman v. The Secretary, Ministry of Civil Aviation, 2016 SCC Online Mad 18841*.

18. Finally, Mr. Tripathi submits that uniformity, in the textbooks to be used by schools, is in the interest of the students and their all round development and that, therefore, no cause, for interference therewith, at the hands of this Court, can be said to exist.

Analysis and Conclusion

19. In my considered opinion, the whole grievance, in the writ petition, is essentially a non-issue, and is premised on a fundamental misreading of the Circular, and the impugned stipulation therein.

20. What does the stipulation, in the Circular, with which the petitioners claim to be so seriously aggrieved, state? It merely states that all schools, which are subject to the control of the DoE, have to follow textbooks *prescribed by the SCERT, NCERT and CBSE*. It does not state that the schools are required to follow textbooks

*published by the SCERT, NCERT and CBSE. The power and authority, of the NCERT, the SCERT and the CBSE, to prescribe the textbooks to be followed by schools is acknowledged by both sides and, indeed, formed the fulcrum of the submissions of Mr. Luthra. According to Mr. Luthra, under the regime of the DSE Act, the CBSE, as the affiliating body, could prescribe the textbooks to be followed by the schools affiliated to it, and, later, under the RTE Act regime, such authority stood conferred on the “academic authorities”. The impugned Circular does no more than affirm this fact. Once the jurisdiction, of the CBSE, and the academic authorities, i.e. the NCERT and the SCERT, to prescribe the textbooks to be followed by schools, is conceded, the entire foundation of the petitioner’s grievance ceases to exist, as the Circular merely requires schools to follow the textbooks prescribed by *these statutory bodies, whose authority to prescribe the textbooks to be followed by the schools is conceded even by the petitioners.* It is impossible, consequently, to comprehend how the petitioners can even claim to be aggrieved by the impugned stipulation – unless, of course, they seek to contend that they are not bound to follow the textbooks prescribed even by the authorities who, according to their own stand, are empowered to do so. Mercifully, such an extreme contention has neither been urged in the petition, nor canvassed in the court.*

21. In order to avoid any ambiguity, however, it would be appropriate to examine the relevant provisions, to which learned counsel have invited my attention, as already noted hereinabove.

The DSE Act and the DSE Rules

22. Preambularly, the DSE Act is “an Act to provide for better organisation and development of school education in the Union territory of Delhi and for matters connected therewith or incidental thereto.” Section 3 thereof empowers the Administrator, i.e. the Hon’ble Lieutenant Governor, to regulate education in all schools in Delhi in accordance with the provisions of the DSE Act and the DSE Rules. “School” is defined, in clause (u) of Section 2, as including “a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education”. *All schools in Delhi*, therefore, come within the coverage of the DSE Act, without exception.

23. Section 4 of the DSE Act deals with “recognition of schools”, and empowers the “appropriate authority” to, on application, recognize any private school. “Private school” is defined, in clause (r) of Section 2, as “a school which is not run by the Central Government, Administrator, a local authority or any other authority designated or sponsored by the Central Government, Administrator or a local authority”, and “appropriate authority” is defined, in clause (e) of Section 2, as meaning

- “(i) in the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government, that authority;
- (ii) in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf;
- (iii) in the case of a school recognised or to be recognised by the Municipal Corporation of Delhi, that Corporation; and
- (iv) in the case of any other school, the Administrator or any other officer authorised by him in this behalf.”

24. The proviso to Section 4 prohibits recognition of any school, unless specified conditions are fulfilled, which includes, *inter alia*, the requirement that the school “provides for approved courses of study and efficient instruction”.

25. Section 19 of the DSE Act deals with “affiliations”. Sub-section (1) thereof mandates that “for the purpose of any public examination every recognised higher secondary school shall be affiliated to one or more of the Boards or Council conducting such examination and shall fulfil the conditions specified by the Board or Council in this behalf.”

26. Clause 2.4.7 of the Affiliation Bye-Laws of the CBSE stipulates that “the School may prescribe NCERT text books in the classes and subjects in which these have been published by the NCERT”. Mr. Luthra has sought to stress on the use of the word “may” to contend that this clause not only confers authority on the individual school(s) to prescribe the textbooks, but also grants the school(s) discretion, even where the NCERT has published textbooks in the subjects taught in the school, to prescribe, or not to prescribe, such text books.

27. Section 28 of the DSE Act contains the power to make rules. Sub-rule (1) thereof authorizes the Administrator to make rules to carry out the provisions of the DSE Act, and sub-rule (2) postulates, “without prejudice to the generality of the foregoing power”, that such rules may provide for any of the matters enumerated thereunder, which include (a) the manner in which education may be regulated by the Administrator in Delhi, (b) the conditions which every existing school shall be required to comply, and (c) the facilities to be provided by a school to obtain recognition. Clause (y) of Section 28(2) also empowers the making of rules providing for “any other matter which is to be, or may be, prescribed under this Act”.

28. Proceeding to the DSE Rules, Rule 18, which stands reproduced hereinabove, prescribes separate regimes for primary and middle schools, and for secondary and senior secondary schools. “Primary stage”, “middle stage”, “secondary stage” and “senior secondary stage” of school education stand defined, in clauses (i), (f),

(jj) and (kk) of Rule 2 as meaning “a stage of education from classes I to V (both inclusive)”, “a stage of school education from classes VI to VIII (both inclusive)”, “a stage of a school education from Class IX to Class X (both inclusive)” and “a stage of school education above class X”, respectively. Sub-rule (1) of Rule 18 clearly states that the text books for the primary and middle stages, i.e., for Classes I to VIII, *shall be* such as may be recommended by the Director (of the DoE) in consultation with the Committee (which is defined, in clause (c) of Rule 2 as meaning the Curriculum Committee, as constituted under Rule 22 of the Rules), whereas sub-rule (2) of Rule 18 states, with equal clarity, that the text books for the secondary and senior secondary stages, i.e. for Classes IX and above, *shall be* such as may be specified or recommended by the Affiliating Board (in this case, the CBSE). Rule 18 is, therefore, clear and unambiguous in conferring power and jurisdiction, on the Director, to recommend the textbooks for Classes I to VIII (albeit in consultation with the Curriculum Committee) and on the CBSE, to recommend the textbooks for Classes IX and above. The use of the words “shall be”, in either case, make it clear that the recommendation of the Director (in the cases of Classes I to VIII), and of the CBSE (in the case of Classes IX and above), qua the textbooks to be followed by the schools, is binding. This is underscored by clause (iii) in Rule 50, which deals with the “Conditions for recognition”, and stipulates the following of the approved courses of instructions as a mandatory condition, for a private school to be granted recognition.

29. The DSE Act and the DSE Rules, therefore, require schools, mandatorily, to follow the textbooks prescribed, in the case of Classes I to VIII, by the DoE and, in the case of Classes IX and above, by the CBSE. Additionally, as per the Affiliation Bye-Laws of the CBSE, in the case of subjects, for which textbooks published by the NCERT are available, these textbooks would be required to be followed.

The RTE Act

30. The RTE Act came into force on 1st April, 2010, being the date notified under Section 1(3) of the said Act. The preamble to the RTE Act declares that it is an “Act to provide for free and compulsory education to all children of the age of six to fourteen years.” “Child” is, in fact, defined, in clause (c) of Section 2 of the said Act as “meaning a male or female child of the age of six to fourteen years”. In the case of children who have crossed the age of 14, therefore, the RTE Act has no applicability.

31. Chapter V of the RTE Act deals with “Curriculum and Completion of Elementary Education”. Sub-section (1) of Section 29, therein, stipulates that the curriculum and evaluation procedure for elementary education shall be laid down by the academic authority, to be notified by the appropriate Government. “Appropriate Government” is defined, in clause (a) of Section 2 as meaning, in relation to a school established, owned or controlled by the Central Government, or by the Administrator of the Union territory having no

legislature, the Central Government and, in relation to a school, other than such a school, established within the territory of a State, or of the Union Territory having a legislature, the Government of the Union Territory. It is not in dispute that the NCERT and the SCERT have been notified as the “academic authorities” under Section 29(1) of the RTE Act. Sub-section (2) of Section 29 enumerates the considerations, which are required to guide the academic authority, in discharging his duty of laying down the curriculum and evaluation procedure, under sub-section (1).

32. Mr. Luthra sought to read Section 29 of the RTE Act in conjunction with Section 7(6)(a) thereof, and, in that context, emphasized Paragraph 4.6.1 of the NCF 2005 issued by the NCERT, that Section 7(6)(a) has to be read in conjunction with Section 29 cannot be gainsaid, as Section 29 empowers the appropriate Government to notify the “academic authority”, and Section 7(6)(a) empowers the Central Government to develop a frame of the NCF with the help of the academic authority. The NCF is, therefore, accorded statutory pre-eminence.

33. Having said that, however, I am unable to discern, in the NCF 2005, or in Paragraph 4.6.1 thereof (extracted in paragraph 11 *supra*), anything which could be of assistance in the present matter. The said paragraph, firstly, is essentially advisory, rather than directory, much less mandatory, in nature. What it proposes to advise is that (i) textbooks ought to be accompanied by other material, such as

dictionaries, supplementary books, workbooks and atlases, (ii) teachers are required to focus on elaboration of concepts and activities, providing spaces for wondering about problems, and encouraging of reflective thinking and small-group work, and (iii) training of teachers is as important as teaching of the students.

34. One may conveniently delineate the two issues arising for consideration, in the present case, as

(i) whether the DoE had the competence and authority to issue the impugned Circular, to the extent it stipulates that all schools, under the DoE, have to follow textbooks prescribed by the SCERT, NCERT and CBSE, and

(ii) if it does, whether, given the factual and legal position, such a stipulation could be justified.

35. In adjudicating on these issues, it needs to be made clear, at the outset, that this Court is neither called upon, nor competent, to pronounce on the comparative merits, or demerits, of textbooks published by the NCERT/SCERT/CBSE, *vis-à-vis* those published by “private” publishers. Mr. Luthra, too, was customarily fair in submitting that his brief was not to disparage publications of the NCERT/SCERT, or eulogise those of his clients, but merely to question the validity, in law, of the impugned stipulation.

36. The impugned Notification having been issued during the regime of the RTE Act, it is, needless to say, the said Act which must first engage our attention. The RTE Act has remained substantially altered, in its pristine form as originally conceptualized and enacted in 2009, except for some minor amendments effected by the Right to Children to Free and Compulsory Education (Amendment) Act, 2012, which do not concern the present controversy.

37. The “appropriate Government” under the RTE Act is, by virtue of clause (a) of Section 2 thereof, the Central Government, in relation to a school established, owned or controlled by the Central Government, or the Hon’ble Lieutenant Governor, and, in the case of other schools, the State Government, where the school is established within the territory of a State, and in the case of school established within a Union Territory, the Government of the Union Territory. The impugned Notification having been issued by the DoE only with regard to “schools running under the Directorate of Education” – a trifle clumsily worded – it would not apply to schools owned or controlled by the Central Government.

38. Clause (h) in Section 2 of the RTE Act defines “local authority” as meaning “a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such authority or body having administrative control

over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village”.

39. Chapter III of the RTE Act sets out the “Duties of appropriate Government, Local Authority and parents”, and encompasses Sections 6 to 11 of the said Act. Section 6 requires the appropriate Government to establish a school, within the area of limits of the neighbourhood, within three years from the commencement of the RTE Act. Sub-sections (1) to (5) of Section 6 deal with providing of funds, and the interplay of the Central and State Governments in that regard. Sub-section (6) of Section 6 requires the Central Government to “(a) develop a framework of national curriculum with the help of academic authority specified in Section 29; (b) develop and enforce standards for training of teachers; (c) provide technical support and resources to the State Government, for promoting innovations, the searches, planning and capacity building.”

40. Section 8 sets out, in its various clauses, the “duties of appropriate Government”, of which clauses (g) and (h) require the appropriate Government to “ensure good quality elementary education conforming to the standards and norms specified in this Schedule (to the RTE Act)” and to “ensure timely prescribing of curriculum and the courses of study for elementary education”. Interestingly, the same duties, i.e. to “ensure good quality elementary education conforming to the standards and norms specified in the Schedule” and to “ensure timely prescribing of curriculum and the courses of study for

elementary education” are cast on the “local authority”, by Section 9 of the RTE Act. This indicates that the RTE Act does not pigeonhole the duties and responsibilities of various authorities, as conceptualised thereunder.

41. Section 12 deals with the duties of schools to provide free and compulsory education, and Section 13 prohibits schools from, while admitting students, receiving capitation fee or subjecting children, or their parents, to any screening procedure. Various other responsibilities of schools are conceptualised in Sections 14 to 17, with which the present judgment need not be burdened. Section 18 prohibits schools from functioning without obtaining certificates of recognition, and deals with the characteristics and indicia of recognition. Sections 20 to 22 deal with other responsibilities of schools, and Section 24 deals with the duties of teachers and provides for the grievances against defaults committed by teachers. Section 25 deals with the required pupil-teacher ratio, and Sections 26 to 28 also proceed to set out the responsibilities of teachers.

42. Section 29, on which both learned Counsel at the bar placed reliance, and which stands reproduced in paragraph 10 hereinabove, deals with the curriculum and evaluation procedure for “elementary education” which is defined, in clause (f) of Section 2 as “education from first class to eighth class”. The curriculum and evaluation procedure for elementary education, i.e. for education from the first to the eighth class is required, by Section 29 (1), to be laid down by an

academic authority to be specified by the appropriate Government by notification. Sub-section (2) of Section 29 sets out the considerations to be borne in mind, by the said “academic authority”, while laying down the curriculum and evaluation procedure under sub-section (1). As noted hereinabove, the NCERT and the SCERT have been notified as “academic authorities”, by Notification, dated 28th June, 2012, issued by the Hon’ble Lieutenant Governor, for the State of Delhi, under Section 29(1).

43. Undoubtedly, therefore, Section 29 of the RTE Act confers power, on the NCERT/SCERT, to prescribe the textbooks for Classes I to VIII.

44. The RTE Act does not, however, cover Classes IX and X, in which respect, therefore, the DSE Act, and the DSE Rules, would continue to apply.

45. It is also significant to note that the RTE Act does not expressly supersede, or repeal, the DSE Act. While, by operation of Article 254(1) of the Constitution of India, any provision of the DSE Act, which may be repugnant to the provisions of the RTE Act, would necessarily have to cede place to the latter, in all other respects, the DSE Act would continue to apply.

46. A scan of the DSE Rules reveals that, for secondary stage and senior secondary stage, the course of study and the textbooks “shall be

such as may be specified or recommended by the Affiliating Board”. For Classes IX and X, therefore, the authority, to prescribe the textbooks, remains with the CBSE. In this context, a visit to the website of the CBSE reveals that the CBSE has limited the prescription of curricula and textbooks only to Classes IX to XII with separate links provided, for the curricula and textbooks for Classes IX and X, and for Classes XI and XII. By way of example, the prescribed textbooks, for mathematics, for Classes IX and X, as available on the website of the CBSE, are reflected thus:

“PRESCRIBED BOOKS:

1. Mathematics - Textbook for class IX - *NCERT Publication*
2. Mathematics - Textbook for class X - *NCERT Publication*
3. Guidelines for Mathematics Laboratory in Schools, class IX - *CBSE Publication*
4. Guidelines for Mathematics Laboratory in Schools, class X - *CBSE Publication*
5. Laboratory Manual - Mathematics, secondary stage - *NCERT Publication*
6. Mathematics exemplar problems for class IX, *NCERT Publication.*
7. Mathematics exemplar problems for class X, *NCERT Publication.”*

47. The website of the CBSE also reveals four important Circulars, issued by the CBSE, in the context of prescribed text books for use by affiliated Schools, for classes I to X. The first of these is Circular No.

20/2014, dated 6th February, 2014, of which Clause R, titled “Books in School”, read thus:

“ xxx xxx xxx

R. Books in School

Rule 15.1(d): -

“The school will follow the syllabus on the basis of curriculum prescribed by NCERT/CBSE and text books publishing by NCERT/CBSE for the Middle Classes as far as practicable or exercise extreme care by selecting books of private publishers. The content must be scrutinised to preclude any objectionable content that hurts the feeling of any class, community, gender, religious group in society. If found prescribing books having such content, the school will have to take responsibility of such content.

Provided that the school would put a list of such books prescribed by it on its website with the written declaration duly signed by the Manager and the Principal to the effect that they have gone through the contents of the books prescribed by the school and own the responsibility.”

48. The remaining three Circulars may be reproduced thus:

(i) Circular No Acad-07/2017 dated 14th February, 2017:

CBSE/ACAD/CIR/2017/2017

Circular No. Acad-07/2017

Date: 14.02.2017

All the Heads of Schools affiliated to the CBSE.

**Sub: NCERT textbooks/publications in
CBSE affiliated Schools before
commencement of the academic session
2017-18**

“ *A review of the use of the NCERT books in CBSE affiliated schools was taken in the Ministry in a meeting chaired by Hon'ble Minister for HRD, Govt of India. With the view to have a collaborative approach, following arrangements are being made for supply of NCERT books to CBSE affiliated schools for the Academic Year 2017-18:*

- 1) NCERT will be printing and supplying adequate quantity of NCERT text books for all classes (from I to XII) through its empanelled 680 distribution vendors spread over across this country. The NCERT books will also be available at NCERT Sale Counters at Ahmedabad, Ajmer, Bengaluru, Bhopal, Bhubaneshwar, Kolkata, Mysore, Shillong and at NCERT HQ, Delhi.

- 2) A link has been created by the CBSE on its website www.cbse.nic.in for raising on-line INDENT for requirement of NCERT books (class-wise and title-wise) for the entire school. Schools will log in using existing credentials and place their

demands. On-line request will be treated as schools demand for NCERT books for AY 2017-18.

- 3) Link will be active from 15.02.2017 to 22.02.2017 and requirements will be submitted only once. Partial placement of on-line demand will not be allowed. Care may be taken to ensure that on-line requirements placed by the schools are consistent with the data furnished through OASIS.
- 4) CBSE will share this on-line INDENT with NCERT on dynamic basis for supply of books through the vendors/sales counters.
- 5) Rates, discount etc. shall be as per NCERT policy. Supply of Books to Schools through the vendors empanelled by NCERT and payment to NCERT by Schools will be as per the arrangements made by the NCERT.

Heads of the schools are requested for needful accordingly.

(Manoj. K. Srivastava)
Jt. Secretary & Incharge (ART&I)

- (ii) Circular No Acad-09/2017, dated 23rd February, 2017:

“CBSE/ACAD/CIR/2017/

Circular No: ACAD-09/2017

Date: 23.02. 2017

All the Heads of Schools affiliated to the CBSE

Sub: Availability of NCERT books for session 2017-18 and Extension of date for on-line demand of NCERT books.

This is in continuation to our Circular No Acad-07/2017 dated 14.2.2017 regarding arrangements made by NCERT for ensuring supply of NCERT books in time. With the view to facilitate the process, a link was created by CBSE for schools for uploading the demand for NCERT books. We wish to share with you that the NCERT is making special arrangements for supply of NCERT books for Classes I-VIII in CBSE affiliated schools through their vendors.

2. You may be aware that one of the recommendations of Committee headed by Prof. Yashpal was related to a reduction in number of textbooks for different classes and would agree that prescribing too many books may not be educationally sound. However, from the learner's point of view, *a child always has an option to refer to additional textual materials if he/she so desires.*
3. *CBSE has been drawing the attention of all affiliated schools for use of NCERT text books as far as practicable as reiterated in CBSE's Circular No 20/2014 dated 06/02/2014 under heading Adherence of Provisions of the Affiliation Bye-Laws of CBSE by the Educational Institutions affiliated to the Board.* The circular is

available on the CBSE website at the link **cbseaff.nic.in**.

4. NCERT books are reasonably priced, scientifically designed and are in conformity with National Curriculum Framework 2005, they also keep in view the integrated nature of learning from Class I onwards.
5. Heads of schools affiliated with CBSE are hereby requested to furnish their requirements on the CBSE website. Keeping in view the large number of on-line indents coming from schools, **the date for on-line demand of NCERT books has been extended till 28th Feb, 2017.**

(Manoj. K. Srivastava)
Jt. Secretary & Incharge (ART&I)”

(iii) Circular No. Acad-29/2017 dated 9th August, 2017:

“CBSE/ACAD/CIR/2017/

Date: August 09, 2017

Circular No: ACAD-29/2017

All the Heads of Schools affiliated to the CBSE

Sub: Requisition of Textbooks published by NCERT for the academic session 2018-19

The response of schools affiliated to CBSE on circulars no Acad 07/2017 and Acad 09/2017 regarding indent for textbooks published by NCERT for the academic session 2017-18 was very encouraging, which enabled NCERT to mobilise its inventory in a more rational way to

different parts of the country to ensure timely availability of textbooks specially catering the demand of schools affiliated to CBSE.

For raising online indent for requirement of NCERT books (class-wise and title-wise) for the entire school, NCERT has created a link www.ncertbooks.ncert.gov.in. Schools may register and place their demands for the academic session 2018-19.

On the basis of indent placed by the affiliated schools on NCERT portal, NCERT will supply textbooks for all classes through its empanelled distribution vendors spread over across the country. Heads of the schools may raise one time requirements of NCERT Books through the above said portal by 8th September 2017 to enable NCERT to make appropriate planning for printing of books.

Rates, discount and payment to NCERT for such requirements of NCERT Books by schools shall be as per NCERT policy.

(Dr Biswajit Saha)
Additional Director (ART&I)

49. The takeaway, from the above analysis, is self-evident. Insofar as Classes IX and X are concerned, the power to prescribe the textbooks remains with the CBSE, under Rule 18 of the DSE Rules, and the appropriate textbooks stand, in fact, prescribed by the CBSE, as already noted hereinabove. For Classes I to VIII, the issue of whether the textbooks could be prescribed by the NCERT, or by the CBSE, really pales into insignificance, inasmuch as the CBSE has itself directed that the textbooks published by the NCERT are

required, “as far as practicable”, to be used by the schools. On the website of the NCERT, the prescribed textbooks for Classes I to VIII are available. As is noted in the impugned Circular dated 29th November, 2018, one finds that there are, indeed, three textbooks prescribed for Classes I and II, for Hindi, English and Mathematics and six books prescribed for Classes VI to X, three for three languages and one each for Maths, Science and Social Studies. Electronic copies of the textbooks are also easily available online.

50. It is nobody’s case that the CBSE or the NCERT has, at any time, acted in excess of the authority conferred on it by law. The ire of the petitioner is directed entirely against the DoE. But what, exactly, does the impugned Circular, of the DoE, do? It merely states that schools, functioning under its aegis, have to follow the textbooks prescribed by the SCERT, NCERT and CBSE. This is merely a reiteration of the position which obtains from the DSE Act, the DSE Rules and the RTE Act. It cannot be said, by any stretch of imagination, that the DoE lacked the power, or the authority, to so specify and clarify what the law, otherwise, unambiguously dictates.

51. No occasion arises, therefore, for this Court to adjudicate on whether the DoE has any independent power to prescribe textbooks and the Court, therefore, refrains from returning any opinion thereon.

52. Considerable reliance was placed, by Mr. Luthra, on Clause 2.4.7 of the Bye-Laws of the CBSE, and on what, according to his

contention, was the liberty, granted to Schools, under the said Clause, to prescribe textbooks. A holistic reading of the said Clause does not, however, support the reliance, of Mr. Luthra, thereon. The very first stipulation, in sub-clause (a) of Clause 2.4.7 is that, in subjects in which textbooks have been published by the NCERT, “the School may prescribe NCERT text books”. The subsequent stipulation, that, in the selection of books of private publishers, extreme care should be taken, to ensure that there is no objectionable content, in my view, cannot detract from this mandate. Though the clause uses the word “may”, in my view, the stipulation has to be regarded as mandatory as, read otherwise, it would become totally toothless and, in fact, would stand reduced to a redundancy. If, even in subjects for which textbooks have been published by the NCERT, absolute liberty were to be granted, to schools, to prescribe textbooks, the very purpose of stipulating that the School may prescribe NCERT textbooks in classes and subjects in which these have been published by the NCERT, would stand totally defeated.

53. In *Sarla Goel v. Kishan Chand*, (2009) 7 SCC 658, the Supreme Court, dealing with the usage of the word “may”, and as to whether such usage implied, necessarily, that the provision was only directory in nature, held thus:

“28. From a conjoint reading of this provision referred to hereinabove and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the legislature how the rent can be deposited if it was refused to have been received or to

grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. *It is well settled that whether the word “may” shall be used as “shall”, would depend upon the intention of the legislature. It is not to be taken that once the word “may” is used by the legislature in Section 27 of the Act, would not mean that the intention of the legislature was only to show that the provisions under Section 27 of the Act were directory but not mandatory.*

29. In other words, *taking into consideration the object of the Act and the intention of the legislature and in view of the discussions made hereinafter, we are of the view that the word “may” occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word “may”, in our view, was used by the legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a canon of construction is certainly warranted because otherwise intention of the legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them.”*

(Emphasis supplied)

54. The following words, from the judgment of K. Ramaswamy, J., in *Mohan Singh v. International Airport Authority of India, (1997) 9 SCC 132*, neatly encapsulate the legal position:

“XXX

XXX

XXX

If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory

whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice.”

(Emphasis supplied)

55. In the ultimate eventuate, therefore, what matters is the intention of the legislature. It is not given to us to psychoanalyse, however, and, in divining the nebulous “intention of the legislature”, one must, of needs, adopt a “Heydonian” attitude, keeping in mind the mischief which the statute seeks to avoid – or, positively expressed, the purpose which it seeks to espouse. The “new golden rule” of interpretation, as held by the Supreme Court in *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*, (2016) 3 SCC 619 and *Richa Mishra v. State of Chattisgarh*, (2016) 4 SCC 179, is the role of purposive interpretation, rather than that of literal reading of the statute.

56. The intention, behind the stipulation, in Clause 2.4.7 of the Affiliation Bye-Laws of the CBSE, to the effect that, in classes and subjects in which textbooks have been published by the NCERT, the School may prescribe the said textbooks, is, in my opinion, apparent. The advisability of the material, being taught by schools to students who are studying in schools affiliated to a common Board, and governed by a common syllabus, being uniform, is self-evident. While discretionary autonomy must necessarily remain, to some extent, with

the teacher, to decide regarding the extent to which knowledge should be disseminated to the students under her, or his, tutelage, the basic textual material on which the students would be assessed, periodically or at the end of the academic year, must ideally be uniform. If schools are to be given an absolute discretion to decide the textbooks from which they will teach the students, it would result in the level of education, and the level of knowledge, being possessed by students of the same class, studying under the same Board and subject, ultimately, to the same examination, being different, which would result in a situation of chaos, ultimately inimical to the interests of the students themselves. It is obviously to attain this uniformity, to the extent possible, that the CBSE has prescribed, in its bye-laws, that, where the NCERT has published textbooks, those textbooks ought to be prescribed, as the basic material to be taught to the students, and on which the students would be assessed.

57. No doubt, it is only at the stage of Class X, and, thereafter, Class XII, that students of all schools, under the CBSE, are jointly evaluated. The educational journey of a student, till she, or he, reaches Class X, is, however, an evolutionary process, and, therefore, the assimilated knowledge of the student, by the time she, or he, reaches Class X, is the accumulated whole of the knowledge gained over the formative years in the earlier classes. When all the earlier classes are under the umbrella of a single Board, therefore, it is essential that the syllabi, and prescribed study materials, be uniform, so that there is no dissonance amongst the students by the time they reach Class X, and, later, Class XII.

58. Students, in our country, constitute a homogeneous whole. Uniformity of dissemination of education, among them, is a necessity, in order that they march together, matching step for step, on the path of knowledge and learning, towards the creation of a new and vibrant Bharat, for the ages to come. Dissonance in the ranks, which would be an inevitable sequitur, were each school to be given absolute authority to prescribe the books which it would teach its students, and on which they would be evaluated and assessed, is inimical not only to the interests of the students themselves, but would ultimately defeat national interest, of which the children of today are the strident sentinels of tomorrow.

59. Such uniformity would also obviate the requirement of monitoring the content of the material which individual schools may choose to teach their students. The mere observation, almost as a caveat, in the NCF, to the effect that schools should be careful to ensure that books published by private publishers should not contain any “objectionable content”, can hardly suffice in this regard, given the length and breadth of our country, and the number of schools which are imparting education, simultaneously. Besides, the concept of “objectionability” is also essentially fluid; what may be seen as objectionable by one may not be regarded as objectionable by another. Ours is a nation which prides itself on its linguistic, cultural, religious and regional diversity; but this diversity carries, with it, the pernicious threat of inculcation, of ideas and concepts, to children in their formative years, which may be dissonant with national interest,

and, on occasion, even national security. The sowing of extreme and fundamentalist seeds, in impressionable and innocent minds, is not an unknown phenomenon today, and prescribing of common educational media, to be scrupulously followed by schools under the common CBSE umbrella, is but a small step towards controlling this menace.

60. Thus viewed, the stipulation, in the impugned Circular dated 29th November, 2018, issued by the DoE, to the effect that the schools running under the aegis of the DoE have to follow textbooks prescribed by the SCERT, the NCERT and the CBSE, is only in consonance with the provisions of the DSE Act, the DSE Rules, the RTE Act as well as the Affiliation Bye-Laws of the CBSE. It has, therefore, to be regarded as mandatory.

61. Before parting with this judgment, I may only note that, in my view, the reliance, by Mr. Luthra, on the judgment of this Court in *Association of School Vendors (supra)* is completely misplaced. The issue in the case was entirely different from that which arises in the present case. The controversy, therefore, was whether there could be any legal embargo on vending of publications, other than those of the NCERT or the SCERT, in tuck shops which were permitted to operate in schools. This Court decided this issue in the negative, relying, for the said purpose, on Article 19(1)(g) of the Constitution of India. In that case, the court dealt with the right of textbook manufacturers to ply their trade, whereas the present case deals with the necessity of having uniform textbooks, in the interest of students studying in

schools affiliated to a common Board. The submissions of Mr. Tripathi, in this regard, are well taken. The two cases are as alike as chalk and cheese.

62. Before concluding, it does appear piquant that the torch-bearers, for the supposed interests of the students, in this case, are neither the students, nor their parents, nor even the schools who would be required to comply with the impugned Circular, but an association of private publishers of textbooks. For the nonce, I say no more.

63. The challenge to the impugned stipulation, in the Circular dated 29th November, 2018 is, therefore, repelled. This Court endorses the mandate, reflected in the said stipulation, to the effect that, in respect of subjects, for which textbooks have been prescribed by the CBSE, and published by the NCERT/SCERT/CBSE, the said prescription shall scrupulously be followed by all schools subject to the control of the DoE. The syllabi and textbooks, prescribed by the CBSE, shall constitute the basis of imparting of education, as well as evaluation, of all schools students, from Classes I to X. Needless to say, this would apply only to schools affiliated to the CBSE.

64. Should, however, any individual teacher desire to impart knowledge, to her, or his, students, in addition to that which is available in the said textbooks, needless to say, she/he would be at liberty to do so. It is important to distinguish between what is prescribed to be taught, by the competent authority, and what a

teacher may teach. A resourceful, knowledgeable, and competent, teacher may have, in her, or his treasury, a wealth of information and learning, transgressing what is contained in the prescribed textbooks, with which she, or he may desire to enlighten her students. No law can prevent her or him from doing so. Dissemination of knowledge is one of the most sacred duties of man, and there can be no curbs, thereon, by any law known to civilised society. We are concerned, in the present case, with the *prescribed textbooks*, i.e. the textbooks prescribed and which have, therefore, to be taught by the schools, to the students, and on which alone the students would be assessed and evaluated.

65. Subject to the caveat contained in paragraph 64 (*supra*), the writ petition is dismissed.

66. There shall be no order as to costs.

C. HARI SHANKAR, J

MARCH 27, 2019

HJ