

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:15.11.2022

+ **W.P.(C) 3616/2013**

ACTION COMMITTEE UNAIDED RECOGNIZED
PRIVATE SCHOOL

..... Petitioner

versus

DIRECTOR (EDUCATION) & ANOTHER

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Kamal Gupta, Mr. Sparsh Aggarwal and
Mr. Yash Yadav, Advs.
Mr. Khagesh B. Jha and Ms. Shikha Sharma
Bagga, Advs. for Impleadment Applicant.

For the Respondents: Mr. Santosh Kr. Tripathi, SC (Civil) GNCTD
with Mr. Arun Panwar, Ms. Mehak Rankawat
and Mr. Pradeep, Advs.

CORAM

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The petitioner, an umbrella association of more than 500 private unaided schools in Delhi, has filed the present writ petition seeking mandamus to declare that the rules contained in Part B of Chapter XIII of the Delhi School Education Rules, 1973 (hereafter '**the Rules**'), does not apply to private unaided recognized schools. In the alternative, the petitioner prays that the Rules be declared as unconstitutional. The

petitioner also challenges the order dated 11.02.2013 passed by Respondent No.1/ Department of Education (hereafter 'the **DoE**'), pursuant to the order dated 05.12.2012, passed by this Court in W.P.(C) No. 4487 of 2010, directing Ramjas School to refund the excess amount of fine charged against the late payment of fees.

2. The DoE has passed the order dated 11.02.2013 holding that in terms of Rule 166 of the Rules which fall in Part B of Chapter XIII, the school cannot charge any fine in excess of five *paise* per day on account of late payment of fees by the student.

Facts

3. The Delhi School Education Act (hereafter '**the Act**') as well as the Rules were framed and notified by the Central Government to regulate education being imparted in recognized schools functioning in Delhi. The Act and Rules apply to both Government/aided as well as unaided private schools. The Act and the Rules are divided into various chapters. Apart from the provisions, which are applicable to all the schools in Delhi, there are Chapters and provisions, which specifically apply to a particular category of schools. For example, Chapter IV of the Act specifies the terms and conditions of service for employees of recognized private schools contained in Sections 8 to 12. Similarly, Chapter V of the Act applies to unaided minority schools.

4. Chapter VI of the Act governs admission to schools and the fees to be charged by the schools wherein Section 17 of the Act reads as under:

“17. Fees and other charges.

(1) No aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director.

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

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

5. Section 18 of the Act provides for a fund to be maintained by schools. Additionally, Section 18(1) of the Act applies in relation to aided schools; Section 18(3) of the Act applies to a recognized unaided school. Section 18 of the Act reads as under:

“18. School Fund.—(1) In every aided school, there shall be a fund, to be called the “School Fund”, and that shall be credited thereto—

- (a) any aid granted by the Administrator,*
- (b) income accruing to the school by way of fees, charges or other payments, and*
- (c) any other contributions, endowments and the like.*

(2) The School Fund and all other funds, including the Pupils’ Funds established with the approval of the Administrator, shall be accounted for and operated in accordance with the rules made under this Act.

(3) In every recognised unaided school, there shall be a fund, to be called the “Recognised Unaided School Fund”, and there shall be credited thereto income accruing to the school by way of—

(a) fees,

(b) any charges and payments which may be realised by the school for other specific purposes, and

(c) any other contributions, endowments, gifts and the like,

(4) (a) Income derived by unaided schools by way of fees shall be utilised only for such educational purposes as may be prescribed; and

(b) charges and payments realised and all other contributions, endowments and gifts received by the school shall be utilised only for the specific purpose for which they were realised or received.

(5) The managing committee of every recognised private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed.”

6. The Rules have been framed to carry out the provisions of the Act. They too are divided into different Chapters. A plain reading of the Rules indicates that some of the Chapters and Rules are applicable to both Government/aided as well as private unaided schools, whereas, the others are applicable to a particular category of schools.

7. Rule 166 falls in Part B of Chapter XIII of the Rules, under the heading “Fine for late payment of fees, etc.”. In terms of Rule 166, a school is entitled to charge the student, a fine at the rate of five *paise* for every day of delay after the tenth day of the month, that is, the last day for payment of fees for the month it becomes due.

8. Rule 166 reads as follows:

“166. Fine for late payment of fees, etc.—(1)A fine for late payment of the fees or contributions due to a school shall be charged from the student at the rate of five paise for every day, after the 10th, for which the default continues.

(2) The head of the school may, if satisfied that the delay in payment of the fees and contributions was unavoidable, remit the whole or any part the fine referred to in sub-rule (1).”

9. By an order dated 05.12.2012 passed in WP(C) No. 4487 of 2010, the DoE was directed to ensure that the order dated 11.02.2010 as well as the order dated 22.03.2010 are complied with. By the said order, the DoE was directed to decide the question as to whether the unaided institutions are bound by Rule 166 of the Rules or not.

10. On 11.02.2013, the Director of Education passed an order holding that Rule 166 of the Rules, which prescribes a fine of five *paise* per day on late fee payment, should also be applicable to private unaided schools. The DoE accepted that charging five *paise* as the late fees is illogical in present times and that the same should be reviewed. The DoE however, stated that amending the Rules would require the previous approval of the Central Government and until then, all recognized schools must follow the provisions of Rule 166 of the Rules.

11. Subsequently, in a writ petition [WP(C) No.1128 of 2010], a Single Judge of this Court considered the question whether a private recognized unaided school is entitled to ask fees for more than one month together; in other words, can a private recognized unaided school charge fees in advance for more than one month at one point of time.

By a judgment dated 10.04.2013, the learned Single Judge held that Part B of Chapter XIII of the Rules, especially Rules 165 and 166, apply to all private unaided recognized schools in Delhi. This led to the filing of the present writ petition challenging the applicability of Part B of Chapter XIII of the Rules to private unaided schools.

Arguments

12. The learned counsel appearing for the petitioner, contends that Part B in general and Rule 166 specifically, is not applicable to private unaided schools. The learned counsel has argued in the alternative that in case it is held that the said rule is applicable even to private unaided schools, then the same be declared as unconstitutional on the ground of being completely illogical, arbitrary, unreasonable and meaningless in the present times. It is contended that even the DoE in its impugned order dated 11.02.2013, acknowledges the same to be illogical, however, holds the same to be mandatory in terms of Rule 166 of the Rules.

13. The learned counsel appearing for the respondent, states that neither the Act nor the Rules aver that Chapter XIII of the Rules in whole or Parts B and C thereof or Rules 165 and 166 contained in Part B thereof shall apply only to aided recognized schools. He contends that the law-making authority has itself used specific terminology to bring out the distinction between various categories of schools in different provisions. The applicability of provisions that are equally applicable to all categories of schools cannot be restricted to a particular category.

14. The learned counsel further states that the order dated 11.02.2013 has been passed on detailed examination of provisions of the Act and the Rules by which all recognized schools are governed as per the terms and conditions of recognition accorded thereto.

Reasoning

15. The fee to be charged by private unaided schools has been a matter of debate in many cases, and is also the subject matter of various judgments pronounced by the Hon'ble Apex Court as well as this Court. Starting from *T. M. A. PAI Foundation v. State of Karnataka: (2002) 8 SCC 481*, followed subsequently in *Modern School v. Union of India: (2004) 5 SCC 583*; *P.A. Inamdar v. State of Maharashtra: (2005) 6 SCC 537*; *Unaided Private Schools of Delhi v. Director of Education: (2009) 10 SCC 1*; *Modern Dental College & Research Centre v. State of M.P.: (2016) 7 SCC 353* and *Action Committee v. Directorate of Education: W.P.(C) 4374/2018*, the Hon'ble Apex Court has held that the autonomy being given to the institutions in its management and administration is an essence of a private educational institution. This Court has followed the said view in *Abhibhavak Mahasangh v. GNCTD: 2011 SCC OnLine Del 3394*.

16. The Courts have recognised that there is difference in the administration of private unaided institutions *vis-à-vis* the government-aided institutions, and the bureaucratic or governmental interference in the administration of private institutions has been held to undermine their independence. The private institutions provide better working

conditions in order to attract better teachers and more amenities to ensure that more students seek admission to their institutions. Thus, the private institutions bear an extra cost in terms of money and therefore, have been left to determine their own fee structure to be charged from the students. The Courts have held that each institute must have the freedom to fix its own fee structure after taking into account, their needs for the purpose of running the institution, which necessarily include the facilities provided for the benefit of students.

17. It is now well settled that in the matter of determination of fee, unaided educational institutions have been given a great autonomy in terms of deciding the fee to be charged, keeping in mind their investment and expenditure. However, the commercialisation of education is prohibited. Even though they are entitled to fix their own fee structure, which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution; schools are not permitted to indulge in profiteering.

18. Bearing the above noted principle in mind, we now examine the issue raised in the present writ petition. The unaided educational institutions have the freedom to fix its own fee structure; however, in so far as the collection of fees is concerned, the same is governed by Section 17 of the Act and other applicable rules. Section 17(1) of the Act applies in relation to aided schools and provides that no aided school shall levy any fee or collect any other charge or receive any other payment except those specified by the Director. As discussed above, private unaided schools are free to charge the fee from students within

the parameters set by the Hon'ble Apex Court, however, in terms of Section 17(3) of the Act, which is applicable to every recognised school, be it aided or private, it shall, before the commencement of each academic session, file with the Director, a full statement of fees to be levied during the ensuing academic session and except with the prior approval of the Director, shall not charge during that academic session, any fee in excess of the fee specified by its Manager in the said statement. In terms thereof, no school whether aided or private, can change the fee structure after the start of the academic year. The Hon'ble Apex Court, in the case of *Modern School v. Union of India* (*supra*), clarified that in terms of Section 17(3) of the Act, every school is required to file statement of fees, which they are likely to charge during the ensuing academic year. Therefore, even though private unaided schools are entitled to fix the fees to be payable by the students, in terms of Section 17 (3) of the Act, the full statement of the fees to be levied during the ensuing academic session has to be filed with the Director before the commencement of each academic session.

19. In case the fee fixed by the institution is not paid by the student, Rule 35 of the Rules empowers the Head of the School to strike off the name of the student from the rolls, on account of non-payment of fees.

20. Chapter XIII of the Rules, the interpretation of which is the subject matter of present writ petition, is divided into three parts. Part 'A' specifically says "*Fees and Other Charges In Aided Schools*". By its very heading/head note, it is clear that the rules contained in Part 'A' are meant to apply only in relation to aided schools. Part A contains

Rules 146 to 155 of the Rules. Rule 146 of the Rules defines admission fees to be charged by an aided school for admission to any class upto Class 8 and thereafter, to Senior Secondary stage. Rule 147 of the Rules specifies the tuition fees, which can be charged by the aided school from the students. Similarly, additional fees for classes concerning science, music, etc.; provision for Pupils' fund; and development fees have been specified under Rules 148 and 149 of the Rules respectively. This is in contradistinction to the autonomy given to private unaided schools in relation to charge of fees from the students. Therefore, the collection of tuition fees or any other additional fee for science, music etc. is governed by the provisions of Sections 17(1) and 17(2) of the Act read with Part A of Chapter XIII of the Rules in relation to aided schools only. Similarly, other Rules contained in Part A of Chapter 13 are not disputed to be applicable in relation to aided schools only.

21. Part 'B' of Chapter XIII starts with a headnote, "*Fee Concessions*". Part B contains Rules 157 to 170. Rule 157 of the Rules defines "Fee". The aforementioned definition includes science fee, music fee or any other fee which may be levied and collected from the student. As mentioned above, additional fee for science, music etc. is defined in Rule 148 of the Rules, which is required to be paid by the student in an aided school. Therefore, even though the Rule 157 of the Rules does not specifically use the word 'aided school', it is apparent from the perusal of other provisions that the same is applicable for aided schools alone.

22. Rule 158 of the Rules describes various concessions, which the Head of the School may give to the deserving students. The provision clearly seems to apply in relation to aided/ Government schools for the reason that private schools have substantial autonomy in relation to charge of fees and, they are not proscribed or restricted from granting concessions in the matter of fee charged from students. The private unaided schools are free to give concessions in the form of scholarships etc., however, the same is not mandatory as under Rule 158(2) of the Rules, which requires that the exemption made to any student 'shall' be renewed so long as the conditions for eligibility for exemption are fulfilled.

23. Rule 159 of the Rules provides for certain concessions if the siblings study in the same school. The said rule, however, specifically mentions the same in relation to Government or aided schools.

24. Rule 160 of the Rules provides that no fees shall be charged from the children or wards of employees of an aided school.

25. Rule 161 of the Rules gives power to withdraw the exemption granted on the ground of misconduct/ irregular attendance etc. As discussed above, such exemptions cannot be imposed upon private unaided schools and are meant for aided schools only.

26. Rule 162 of the Rules talks about contribution to Pupils' fund, which is defined under Part A under Rule 149 of the Rules and is meant for aided schools only.

27. In terms of Rule 163 of the Rules, students, who hold scholarship become ineligible for exemption from payment of any fees unless such exemption is sanctioned by the Director. The provision however, does not specify the category of school regarding which the rule applies, but it is apparent, from the discussion above, that the same applies to aided/ Government schools because any such limitation on private unaided schools would amount to curtailing the autonomy in the matter of fees, which is also recognised by the Hon'ble Apex Court.

28. Rule 164 of the Rules provides that all the fees and funds shall be charged for a full period of twelve months at the rate specified in the Rules. The rule only uses the word 'student' and does not specify the applicability of provision to any category of schools. The scheme, however, has to be gathered from the context and words appearing in the provision. Rule 164(c) of the Rules states that "*a second fee for the same month shall not be charged from a student on transfer from one Government or aided school to another Government or aided school*".

29. Rule 165 of the Rules prescribes that "*all fees and contributions payable to a school by a student shall be payable by the tenth day of the month in which they are due*". This rule, by its very language, cannot be read to apply in relation to private unaided schools because that would amount to imposing restrictions in the matter of fee and the right of the schools to manage its activities. As an illustration, if a private school allows the student, grace period for payment of fees by allowing them to pay fees by the 20th day of the month in which they are due, the

Legislature cannot impose a condition as mentioned in Rule 165 of the Rules and curtail their freedom.

30. Rule 166 of the Rules, thereof, specifies the fine for late payment of the fees, which the school is entitled to charge. It gives power to the school to charge, from the student five *paise* for everyday of delay in payment of the fees after the tenth of the month for which the payment becomes due. The charge of five *paise* for everyday of delay is commensurate with the fee, which aided schools are allowed to charge in terms of Rule 147 of the Rules. Rule 167 of the Rules, thereof, gives power to the school to strike off the name of the student from its rolls, on non-payment of fees. In terms of Rule 167 of the Rules, no discretion is provided to the Head of the School. He is required to strike off the name of the student from the school's roll, on account of non-payment of fees. The same is evident from the use of the word, 'shall'. The said rule is in contradistinction to Rule 35 of the Rules, which gives discretion to the school as is apparent from the use of the words 'may be'.

31. Thus, discretion is given to the school, in Rule 35 of the Rules, whether to strike off the name of the student, on account of non-payment of fees or to continue him/her on the rolls. In terms of Rule 167 of the Rules, however, no such discretion is available and the name of the student is liable to be struck off on account of non-payment of fees. The rule specifically says, "*his name shall be struck off*". It is apparent from the perusal of Rule 35 and Rule 167 that both are inconsistent to the aforesaid extent and cannot be meant to apply

together. As discussed above, the Hon'ble Apex Court, after considering the provisions of the Act, has given great autonomy to the private unaided schools in relation to its management and administration which is held to be the essence of private educational institutions. Therefore, no such rule which mandates the schools to strike off the name of the student on account of non-payment of fees applies in relation to private unaided schools. When the legislature has specifically incorporated Rule 35, which gives discretion to the schools on whether to strike off the name of the student on account of non-payment of fees or to continue his name on the rolls, the contrary Rule, that is, Rule 167 has to necessarily meant to be applicable to an aided school only.

32. As can be seen from the scheme discussed above, rules that complement each other fall in the same Chapter. Making Rule 166 or other rules falling in Part 'B' of Chapter XIII of the Rules, applicable to private institutions, thereby, mandating these institutions to compulsorily charge an amount of five *paise* for everyday of delay and, also requiring that the name of the student be struck off on account of non-payment of fees would be inconsistent with their right to carrying on their affairs in the manner they deem fit. It would fall foul of principle of autonomy, which has been recognised by the Apex Court. Therefore, it cannot be accepted that Rule 167 of the Rules, which complements Rule 166 of the Rules, is not applicable to the students of private unaided schools but Rule 166 of the Rules would apply to private unaided schools. The principles of statutory interpretation

provides that a provision has to be read in a meaningful manner and has to be interpreted in a manner so as to save from being declared unconstitutional. It would be inherently inconsistent to suggest that the schools are free to levy the fee after taking into account the need to generate funds but will have to levy a fine for late payment at the rate of five *paise* per day. It is an admitted case that fee charged from students in a private unaided school is much higher than the fee charged from a student in an aided school. This is because the fee charged by private unaided school is guided by various other factors as well, as explained and noticed by the Hon'ble Apex Court in various judgments cited above. Moreover, by applying the statutory mandate, the Legislature cannot compel a private unaided school to cancel the admission given to a student on non-payment of fees.

33. It can be thus seen that every rule in a Chapter is an aid of each other and compliments each other. Therefore, the Chapter, which starts with the rule defining fees to be collected by aided schools and, thereafter, specifying various rules in relation to such fees collected by the aided schools cannot be applied to private unaided institutions solely for the reason that some of the rules do not expressly specify that they are applicable to 'aided schools'. The rules, therefore, which from their perusal and necessary implications are applicable in relation to aided schools cannot be made applicable in relation to affairs of private unaided schools.

34. Even otherwise, Rule 166 of the Rules, which is a subject matter of dispute in the present writ petition, falls in Part 'B', which starts with

Rule 157. Rule 157 of the Rules states “*the expression, “Fees” includes science fee, music fee etc..*”, which is required to be paid by the students in an aided school. A holistic reading of Chapter XIII of the Rules leaves no doubt that the said chapter, in its entirety, is applicable in relation to fee and other charges collected by aided schools.

35. Part ‘C’ of Chapter XIII of the Rules talks about constitution of the Pupils’ Fund Advisory Committee. As referred above, school fund is defined under Section 18 of the Act. In terms of Section 18(1), fund in relation to every aided school is called ‘school fund’. Section 18(2) then refers to other funds including Pupils’ Fund established with the approval of administrator. The said sub-section, however, does not mention whether such other fund is to be established by which category of schools. Section 18(3), however, specifically recognises the establishment of a fund in relation to unaided schools to be called ‘recognised unaided school fund’. The Pupils’ Fund is then described and referred in Rule 149 of the Rules under Part A of the Chapter 13 which specifically says to be established and maintained by aided schools. The manner and maintenance of the fund is provided in Rule 173(4), which falls in Chapter XIV of the Rules. Therefore, even though Rule 171, falling in Part ‘C’ of Chapter XIII of the Rules, refers to Pupils’ Fund in all recognised schools but the same cannot be interpreted to apply in relation to unaided schools. The rules are made in aid of the provisions of the Act. Section 18 of the Act categorically defines the fund to be maintained by recognised unaided schools; the same cannot be altered by giving a different meaning under the rules.

Thus, the interpreting Rule 171, falling in Part 'C' of Chapter XIII of the Rules, to be applicable to private unaided schools, will render it *ultra vires* Section 18 of the Act. It is settled law that delegated legislation has to necessarily conform to the statute under which it is made. If it is repugnant, the principal enactment is liable to be struck down. The power delegated by a statute is always subordinate to its objects. Therefore, any such interpretation of Rule 171 of the Rules, which requires maintenance of the Pupils' Fund mandatory for private unaided schools, would be inconsistent with Section 18(3) of the Act (*Re: State of Tamil Nadu Vs. P Krishna Murthy: (2006) 4 SCC 517*). Moreover, when Rule 149 specifically says that the Pupils' Fund is to be maintained and established by aided schools, the said definition cannot be extended in relation to private unaided schools only for the reason that Rule 171, which provides for establishment of Pupils' Fund Advisory Committee, does not specifically mention the same to be applicable to aided schools and uses the words 'in all recognised schools'.

36. It is settled law that clauses contained in a statute are to be construed in reference to the context in relation to the other provisions in order to make them consistent with the statute and the subject matter of the Act. The Court has to ascertain the intention of the legislature and it does not have to merely look at the language used in the clauses but has to see the entire statute and the laws declared from time to time. If the literal interpretation gives rise to anomaly or absurdity, the same has to be avoided. The statute has to be read in a reasonable manner by

the court by placing itself in the chair of a reasonable legislature / author (*Re: New India Assurance Co. Ltd. Vs. Nusli Neville Wadia, 2008 3 SCC 279*).

37. The Court is required to interpret the provisions of a statute in a manner to avoid absurd, unworkable, inconsistent or impracticable results. The Apex Court in *Union of India Vs. Ranbaxy Laboratories: 2008 7 SCC 502*, held that the court has not only to take a pragmatic view while interpreting a statutory provision but must also consider the practical aspect of it. The courts are empowered to invoke the doctrine of purposive construction for the purpose of giving effect to the statutory provisions and interpret in manner that would carry forward the objective of the statute and also protect the interest of the parties. The intention of the legislature has to be ascertained from not merely reading the provisions in a disjunctive manner but are required to be construed by reading the statute as a whole.

38. The Apex Court in the case of *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill: (2012) 2 SCC 108* held as under :

19. This Court would have to apply the principle of purposive interpretation in preference to textual interpretation of the provisions of Section 126 of the 2003 Act. We shall shortly discuss the meaning and scope of the expressions used by the legislature under these provisions. At this stage, suffice it to note that this Court would prefer to adopt purposive interpretation so as to ensure attainment of the object and purpose of the 2003 Act, particularly, of the provisions of Section 126 in question.

20. We may usefully refer to the judgment of this Court in Balram Kumawat v. Union of India [(2003) 7 SCC 628] wherein this Court

discussed various tenets of interpretation and unambiguously held that these principles could be applied even to the interpretation of a fiscal or a penal statute. This Court held as under : (SCC pp. 634-37, paras 20-23 & 25-26)

“20. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-à-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of ex visceribus actus should be resorted to in a situation of this nature.

21. In State of W.B. v. Union of India [AIR 1963 SC 1241 : (1964) 1 SCR 371] the learned Chief Justice stated the law thus : (AIR p. 1265, para 68)

‘68. ... The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.’

22. The said principle has been reiterated in R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] , AIR p. 89.

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25. A statute must be construed as a workable instrument. Ut res magis valeat quam pereat is a well-known principle of law. In Tinsukhia Electric Supply Co. Ltd. v. State of Assam [(1989) 3 SCC 709 : AIR 1990 SC 123] this Court stated the law thus : (SCC p. 754, paras 118-20)

“118. The courts strongly lean against any construction, which tends to reduce a statute to a futility. The provision of a statute must be so construed as to make it effective and operative, on the principle ut res magis valeat quam pereat. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co. [(1900) 2 Ch 352] Farwell, J. said : (Ch pp. 360-61)

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21. Further, in Supdt. and Remembrancer of Legal Affairs to Govt. of W.B. v. Abani Maity [(1979) 4 SCC 85 : 1979 SCC (Cri) 902], this Court held as under : (SCC p. 90, para 18)

“18. Exposition ex visceribus actus is a long recognised rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation. For instance, the use of the word ‘may’ would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, ‘of an ineffectual angel beating its wings in a luminous void in vain’. ‘If the choice is between two interpretations’, said Viscount Simon, L.C. in Nokes v. Doncaster Amalgamated Collieries Ltd. [1940 AC 1014 : (1940) 3 All ER 549 (HL)] : (AC p. 1022)

‘... the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result’.”

39. The Hon’ble Apex Court in the case of ***New India Assurance Co. Ltd. v. Nusli Neville Wadia***, (2008) 3 SCC 279 held as under:

51. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court inter alia in Ashoka Marketing Ltd. [(1990) 4 SCC 406]

40. The Apex Court in the case of *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*: (2008) 13 SCC 30 held as under:

137. Furthermore, the court while interpreting a statute will put itself in the armchair of the reasonable legislature, all statutes must be presumed to be reasonable. It is now trite law that literal interpretation should be avoided when it leads to absurdity. If it is to be held that once the compulsory licence is granted in respect of a sound recording, the Board loses its jurisdiction for all time to come, it will lead to an absurdity. The statute does not contemplate such a position. The statute on the one hand not only in terms of the General Clauses Act but also having regard to the individual complaints which a person may have as regards the unreasonableness of the terms imposed upon him by the owner of the copyright must be held to be entitled to approach the Board as and when any cause of action arises therefor. It therefore must be held that sub-section (2) of Section 31 is relatively directed to clause (a) and not clause (b).

41. The Apex Court in *N. Kannadasan v. Ajoy Khose*: (2009) 7 SCC 1 held as under:

55. Construction of a statute, as is well known, must subserve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down (although sparingly and rarely).

58. In *Bhudan Singh v. NabiBux* [(1969) 2 SCC 481] this Court held: (SCC p. 485, para 9)

“9. ... The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on Statutory Constructions that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or

suggested meaning of the statute, was not the one intended by the lawmakers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent.”

59. *This Court in Atma Ram Mittal v. Ishwar Singh Punia [(1988) 4 SCC 284] held: (SCC p. 289, para 9)*

“9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. See Commentaries on the Laws of England (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). (emphasis in original)

42. As discussed above, in the matter of charging fees, substantial autonomy is provided to the private unaided schools. This is in contradistinction to the fee leviable by the aided schools, which is governed by Chapter XIII of the Rules. The private unaided schools are free to fix their fee structure, which in our opinion, not only includes the tuition fees but also other charges and contributions payable by the student.

43. It is, however, necessary to observe that the amount collected by the private unaided schools, is governed by other provisions of the Act and Rules, for example, in terms of Rule 175, the accounts are maintained as to exhibit, clearly the income accruing to the school by way of fees, fines, income from building, etc.

44. From perusal of the provisions contained in Chapter XIII of the Rules, and keeping in mind the principles of purposive interpretation as discussed above, we have no hesitation to hold that the provisions of Chapter XIII of the Rules are applicable only in relation to aided schools.

45. Even though we are of the view that Rule 166 is not applicable in relation to private unaided schools, it is relevant to note that way back in 2013, when the impugned order dated 11.02.2013 was passed, the DoE had mentioned that the Committee has been set up for review of the said provision. We expect that the respondent would expedite the process and make the recommendations, as expeditiously as possible, within a period of eight weeks from date.

46. The order dated 11.02.2013 passed by the DoE is, accordingly, set aside. The petition is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

NOVEMBER 15, 2022

SS/KDK