

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF DECEMBER 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S. VISHWAJITH SHETTY

W.P. No.27432 OF 1995 (EDN)

C/W

W.P. No.35431 OF 2011 (EDN-RES)

W.P. No.5271 OF 2012 (EDN-RES)

W.P. No.38868 OF 2012 (EDN-RES)

W.P. No.40148 OF 2012 (EDN-RES)

W.P. No.19006 OF 2014 (EDN-RES)

IN W.P. No.27432 OF 1995

BETWEEN:

KARNATAKA UNAIDED SCHOOLS
MANAGEMENTS' ASSOCIATION
OFFICE AT: No.427, 1ST CROSS
2ND MAIN ROAD, VIDYAPEETHA LAYOUT
T.R. NAGAR, BANGALORE-560028
REP. BY ITS SECRETARY
A. MARIYAPPA.

... PETITIONER

(BY MR. K.V. DHANANJAY, ADV.,)

AND:

STATE OF KARNATAKA
 REP. BY SECRETARY
 DEPARTMENT OF EDUCATION
 M.S. BUILDING, BANGALORE-560001.

... RESPONDENT

(BY MR. LAXMI NARAYANA, AGA)

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THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO STRIKE DOWN SECTIONS 6, 7, 30, 41, 42, 44, 48, 67(1), 90(3), 123 AND 141 OF THE KARNATAKA EDUCATION ACT, 1993 AND DIRECT THE RESPONDENT NOT TO ENFORCE THESE PROVISIONS AGAINST ANY UNAIDED PRIVATE EDUCATIONAL INSTITUTIONS.

IN W.P. No.35431 OF 2011

BETWEEN:

M/S. PARACHUTE REGIMENT SCHOOL PARENTS
 WELFARE ASSOCIATION (REGD.)
 NO.9, IST MAIN ROAD, IST CROSS
 MOTHINAGAR, (NEAR KABIR ASHRAM
 MANJU FINANCE BUIDLING)
 R.T. NAGAR, BANGALORE 32
 REP. BY ITS SECRETARY
 M. GIRI KUMAR.

... PETITIONER

(BY MR. M. SUBRAMANYA BHAT, ADV., (ABSENT))

AND:

1. STATE OF KARNATAKA
 DEPARTMENT OF EDUCATION
 M.S. BUIDLNIG, BANGALORE 1
 REP. BY ITS SECRETARY.

2. ARMY PUBLIC SCHOOL
PARACHUTE REGIMENT CENTRE
J C NAGAR, NEAR MEKHRI CIRCLE
BANGALORE 6
REP.BY ITS CHAIRMAN.
3. CENTRAL BOARD OF SECONDARY EDUCATION
HEAD OFFICE PS-1-2
INSTITUTIONAL AREA
I P EXTENSION, PATPARGANJ
NEW DELHI 110 092
REP.BY ITS CHAIRMAN.
4. ARMY WELFARE EDUCATION SOCIETY (AWES)
ADJUTANT GENERAL'S BRANCH
INTERGRATED HEAD QUARTERS OF
MoD (ARMY), FDRC BUIDLING
NO.202, SHANKAR VIHAR
(NEAR APS) DELHI CANTT 110 010
REP.BY ITS CHAIRMAN.
5. REGISTRAR OF SOCIETIES
BANGALORE URBAN DISTRICT
(NORTH RANGE) NO.146, 3RD MAIN RAOD
8TH CROSS, MARGOSA ROAD
MALLESHWARAM, BANGALORE 560 003.
6. KARNATAKA CHILD RIGHTS COMMISSION
KRISHI BHAVAN, HUDSON CIRCLE
BANGALORE 2
REP. BY ITS CHAIRPERSON.

... RESPONDENTS

(BY MR. LAXMI NARAYANA, AGA FOR R1 & R5
MR. B.M. ARUN, ADV., FOR R2 & R4
MR. M.R. SHAILENDRA, ADV., FOR R3
MR. A. LOBO, ADV., FOR R4
MR. H.T. VASANTHA KUMAR, ADV., FOR R6)

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THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE 1ST RESPONDENT TO TAKE OVER THE MANAGEMENT OF THE 2ND RESPONDENT. DIRECT THE 6TH RESPONDENT TO TAKE APPROPRIATE ACTION FOR VIOLATING THE CHILD RIGHTS. GRANT AN INTERIM ORDER TO APPOINTING ADMINISTRATOR TO ADMINISTER THE DAY-TO-DAY AFFAIRS PENDING DISPOSAL OF THE WRIT PETITION AND FURTHER THE RESPONDENT NO.2 BE DIRECTED NOT TO TARGET OR HARASS THE CHILDREN.

IN W.P. No.5271 OF 2012

BETWEEN:

M/S. PARACHUTE REGIMENT SCHOOL PARENTS
WELFARE ASSOCIATION (REGD)
NO.9, 1ST MAIN ROAD, 1ST CROSS
MOTHINAGAR, (NEAR KABIR ASHRAM MANJU
FINANCE BUILDING)
R T NAGAR, BANGALORE-560032
REP. BY ITS SECRETARY
M. GIRIKUMAR.

... PETITIONER

(BY MR. M. SUBRAMANYA BHAT, ADV., (ABSENT))

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF EDUCATION
M S BUILDING, BANGALORE-560001
REP. BY ITS SECRETARY.
2. PARACHUTE REGIMENT SCHOOL
ARMY PUBLIC SCHOOL
PARACHUTE REGIMENT CENTRE
J C NAGAR, NEAR MEKHRI CIRCLE
BANGALORE-560006
REP BY ITS CHAIRMAN.

3. CENTRAL BOARD OF SECONDARY EDUCATION
HEAD OFFICE: PS-1-2
INSTITUTIONAL AREA
I P EXTENSION PATPARGANJ
NEW DELHI-110092
REP. BY ITS CHAIRMAN.
4. ARMY WELFARE EDUCATION SOCIETY (AWES)
ADJUTANT GENERAL'S BRANCH
INTEGRATED HEAD QUARTERS OF MoD (ARMY)
FDFC BUILDING NO.202, SHANKAR VIHAR
(NEAR APS) DELHI CANTT-110010
REP BY ITS CHAIRMAN.
5. REGISTRAR OF SOCIETIES
BANGALORE URBAN DISTRICT
(NORTH RANGE), NO.146, 3RD MAIN ROAD
8TH CROSS, MARGOSA ROAD
MALLESWARAM, BANGALORE-560003.

... RESPONDENTS

(BY MR. LAXMI NARAYANA, AGA FOR R1 & R5
MR. B.M. ARUN, ADV., FOR R2
MR. M.R. SHAILENDRA, ADV., FOR R3
MR. ANDREW LOBO, ADV., FOR R4)

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THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH ANNEX-C DTD.11.2.12 ISSUED BY THE R2. GRANT INTERIM ORDER TO STAY ANNEX-C DTD.11.2.12 PENDING DISPOSAL OF THE WP.

IN W.P. No.38868 OF 2012

BETWEEN:

1. KUMARI. B.S. PAVANIKA
D/O B.S. SHIVANANJAPPA
AGED ABOUT 14 YEARS

REPRESENTED BY HER FATHER
B.S. SHIVANANJAPPA
RESIDING AT NO.9, 1ST CROSS, 1ST MAIN
MOTHINAGAR, R.T. NAGAR POST
BANGALORE-560 032.

2. KUMARI ROHINI M
D/O MOHAN BABU B
AGED ABOUT 14 YEARS
REPRESENTED BY HER FATHER
MOHAN BABU B
RESIDING AT NO.62, 5TH C MAIN
2ND BLOCK, R.T.NAGAR
BANGALORE-560 032.
3. MASTER RAHUL RANJITH
S/O PUSHPA RANJITH
AGED ABOUT 14 YEARS
REPRESENTED BY HIS MOTHER
PUSHPA RANJITH, RESIDING AT NO.5
1ST FLOOR, 1ST D MAIN, GANGANAGAR EXTN.
BANGALORE-560 032.
4. MASTER D.N. SHASHANK
S/O D.A. NARASIMHA MURTHY
AGED ABOUT 14 YEARS
REPRESENTED BY HIS FATHER
D.A. NARASIMHA MURTHY
RESIDING AT NO.45/1, SAMPIGE ROAD
MALLESWARAM, BANGALORE-560 003.
5. MASTER ISAAC MELQUIER
S/O MELQUIER CELESTINE
AGED ABOUT 14 YEARS
REPRESENTED BY HIS FATHER
MELQUIER CELESTINE
RESIDING AT NO.16
1ST A CROSS, MUTHAPPA BLOCK
BANGALORE-560 032.

6. KUMARI AKANKSHAA
D/O TULSIRAM PRAJAPATI
AGED ABOUT 14 YEARS
REPRESENTED BY HER MOTHER
DAMAYANTI PRAJAPATI
RESIDING AT NO.7, 2ND FLOOR, 1ST MAIN
MATADAHALLI, R.T. NAGAR
BANGALORE-560 032.
7. KUMARI GLORIA SANCHEZ
D/O RAVI JOHN BOSCO
AGED ABOUT 14 YEARS
REPRESENTED BY HER MOTHER
MARIA RATHNA, RESIDING AT NO.16
1ST A CROSS, MUTHAPA BLOCK
GANGANAGAR, BANGALORE-560 032.
8. MASTER HARSHAVARDHAN REDDY .G
S/O LATE SURYANARAYAN REDDY
AGED ABOUT 15 YEARS
REPRESENTED BY HIS GUARDIAN
GANGAHANUMAIHAH, RESIDING AT NO.26
7TH CROSS, GANGANAGAR EXTN.
BANGALORE-560 032.
9. MASTER DHANANJAI RAO L.R.
S/O N. LAKSHMINARAYANA
AGED ABOUT 13 YEARS
REPRESENTED BY HIS FATHER
N. LAKSHMINARAYANA
RESIDING AT NO.127, 5TH MAIN
S.B.M. COLONY
ANANDANAGAR, HEBBAL POST
BANGALORE-560 024.
10. KUMARI KRITTIKA K.C.
D/O KRISHNAMURTHY D CHILLAL
AGED ABOUT 13 YEARS
REPRESENTED BY HER FATHER
KRISHNAMURTHY D CHILLAL
RESIDING AT G5, 2163

HIMA PRIYA APARTMENT
MARIYANNANAPALYA, NEAR HEBBAL
COFFEE BOARD LAYOUT
BANGLAORE-560 024.

11. KUMARI RUTHVIKA M. CHAVAN
D/O MAHENDRA KUMAR
AGED ABOUT 13 YEARS
REPRESENTED BY HER FATHER
MAHENDRA KUMAR
RESIDING AT NO.13, 1ST CROSS
5TH MAIN, BHUVANESHWARI NAGAR
BANGALORE-560 032.
12. KUMARI ANJALI S
D/O N. SUKENDHAR
AGED ABOUT 13 YEARS
REPRESENTED BY HER FATHER
N. SUKENDHAR
RESIDING AT NO.35, 1ST MAIN
S.B.M. COLONY, ANANDANAGAR
HEBBAL POST, BANGALORE-560 024.
13. KUMARI SAKSHI DWIVEDI
D/O SATISH DWIVEDI
AGED ABOUT 12 YEARS
REPRESENTED BY HER FATHER
SATISH DWIVEDI, RESIDING AT NO.93
PARIS CORNER BUILDING, KILARI ROAD
BANGALORE-560 053.
14. KUMARI. SAKSHI PRAJAPATI
D/O TULSIRAM PRAJAPATI
AGED ABOUT 12 YEARS
REPRESENTED BY HER MOTHER
DAMAYANTI PRAJAPATI
RESIDING AT NO.7, 2ND FLOOR
1ST MAIN, MATADHAHALLI
R.T.NAGAR, BANGALORE-560 032.

15. KUMARI LIABA FAHEEM
D/O MOHAMMED FAHEEM
AGED ABOUT 12 YEARS
REPRESENTED BY HER MOTHER
BILKISH FAHEEM
RESIDING AT NO.4, 1ST MAIN
APPANNA BLOCK, R.T.NAGAR
BANGALORE-560 032.
16. MASTER SHUBHAM DWIVEDI
S/O SATISH DWIVEDI
AGED ABOUT 11 YEARS
REPRESENTED BY HIS FATHER
SATISH DWIVEDI, RESIDING AT NO.93
PARIS CORNER BUILDING, KILARI ROAD
BANGALORE-560 053.
17. KUMARI N. POOJA
D/O V. NAGARAJU
AGED ABOUT 11 YEARS
REPRESENTED BY HER FATHER
V. NAGARAJU, 16/1, 6TH MAIN, 7TH CROSS
PILLAPPA BLOCK, GANGANAGAR
BANGALORE-560 032.
18. MASTER PARAM B.V.
S/O VENKATESH R
AGED ABOUT 10 YEARS
REPRESENTED BY HIS FATHER
VENKATESH R
RESIDING AT NO.23, DASAPPA
GARDEN HMT LAYOUT
BANGALORE-560 032.
19. KUMARI. D.N. GRUHITHA
D/O D.A. NARASIMHA MURTHY
AGED ABOUT 11 YEARS
REPRESENTED BY HER FATHER
D.A. NARASIMHA MURTHY
RESIDING AT NO.45/1, SAMPIGE ROAD
MALLESWARAM, BANGALORE-560 003.

20. MASTER SHAHBAZ KHAN
S/O ALEEM KHAN
AGED ABOUT 11 YEARS
REPRESENTED BY HIS MOTHER
REHANA FATHIMA, RESIDING AT
NO.13/1, 5TH CROSS
DINNUR, R.T.NAGAR, BANGALORE-560 032.
21. MASTER JACOB MELQUIER
S/O MELQUIER CELESTINE
AGED ABOUT 10 YEARS
REPRESENTED BY HIS FATHER
MELQUIER CELESTINE
RESIDING AT NO.16
1ST A CROSS, MUTHAPPA BLOCK
BANGALORE-560 032.
22. KUMARI AFREEN FATHIMA
D/O ZIAULLA BAIG
AGED ABOUT 10 YEARS
REPRESENTED BY HER GUARDIAN
DR. MD. AHMED ALMAS
RESIDING AT NO.41,
3RD CROSS, 1ST MAIN ROAD
KANAKA NAGAR, R.T.NAGAR
BANGALORE-560 032.
23. KUMARI TAYYABA FAHEEM
D/O MOHAMMED FAHEEM
AGED ABOUT 10 YEARS
REPRESENTED BY HER MOTHER
BILKISH FAHEEM
RESIDING AT NO.4, 1ST MAIN
APPANNA BLOCK, R.T.NAGAR
BANGALORE-560 032.
24. KUMARI SAARAAH THANSIN
D/O N. MD. SHABAZ KHAN
AGED ABOUT 10 YEARS
REPRESENTED BY HER FATHER
N. MD. SHABAZ KHAN

RESIDING AT NO.824, 1ST MAIN
CHINNANNA LAYOUT, KAVAL BYRASANDRA
R.T.NAGAR POST, BANGALORE-560 032.

25. MASTER ABDUL LUMAIL
S/O ABDUL SIRAJ PASHA
AGED ABOUT 10 YEARS
REPRESENTED BY HIS FATHER
ABDUL SIRAJ PASHA, RESIDING AT NO.7
3RD CROSS, KHM BLOCK, GANGANAGAR
BANGALORE-560 032.
26. MASTER MANISH NAIR
S/O VIJAYKUMAR
AGED ABOUT 10 YEARS
REPRESENTED BY HIS FATHER
VIJAYKUMAR, RESIDING AT NO.130
C/O.NAGARAJ'S VENKATAPPA MILL
KAVALBYRASANDRA, R.T.NAGAR POST
BANGALORE-560 032.
27. MASTER RAHUL M CHAVAN
S/O MAHENDRA KUMAR
AGED ABOUT 10 YEARS
REPRESENTED BY HIS FATHER
MAHENDRA KUMAR, RESIDING AT NO.13
1ST CROSS, 5TH MAIN, BHUVAHESHWARI NAGAR
BANGALORE-560 032.
28. KUMARI R. YAMINI
D/O M. RAGHU
AGED ABOUT 10 YEARS
REPRESENTED BY HER FATHER M. RAGHU
RESIDING AT NO.1, 1ST MAIN
BEHIND BINNY MILL, GANGANAGAR EXTN.,
BANGALORE-560 032.
29. MASTER KISHAN YADAV .J
S/O JAGADEESHA .G
AGED ABOUT 9 YEARS
REPRESENTED BY HIS FATHER

JAGADEESHA. G, RESIDING AT NO.36
5TH MAIN 4TH CROSS, CPV BLOCK
GANGANAGAR EXTN. BANGALORE-560 032.

30. MASTER N. NITHIN RAJU
S/O V. NAGARAJU
AGED ABOUT 9 YEARS
REPRESENTED BY HIS FATHER
V. NAGARAJU 16/1, 6TH MAIN
7TH CROSS, PILLAPPA BLOCK
GANGANAGAR, BANGALORE-560 032.
31. MASTER SYED KHALANDER
S/O SYED ABDUL AZEEM
AGED ABOUT 11 YEARS
REPRESENTED BY HIS FATHER
SYED ABDUL AZEEM
RESIDING AT NO.480, 3RD CROSS
1ST MAIN, BHUVANESHWARI NAGAR
SULTAN PALYA, BANGALORE-560 032.
32. MASTER BRUTO JOSHUA
S/O MARAN
AGED ABOUT 9 YEARS
REPRESENTED BY HIS MOTHER
KAVITHA MARAN, RESIDING AT 54/1
1ST CROSS, GMP ROAD, J.C.NAGAR
BANGALORE-560 006.
33. MASTER SMARAN .S
S/O SREENIVASIAH
AGED ABOUT 8 YEARS
REPRESENTED BY HIS FATHER
SREENIVASIAH, RESIDING AT NO.14
4TH MAIN, KHM BLOCK
R.T.NAGAR, BANGALORE-560 032.
34. KUMARI SAI SRUSHTI .T.
D/O R. TEEKARAM
AGED ABOUT 8 YEARS
REPRESENTED BY HER FATHER

- R. TEEKARAM, RESIDING AT NO.73
EX-SERVICE MEN COLONY
R.T.NAGAR, BANGALORE-560 032.
35. KUMARI ASIYA DANISH
D/O DR. MD. AHMED ALMAS
AGED ABOUT 8 YEARS
REPRESENTED BY HER FATHER
DR. MD. AHMED ALMAS
RESIDING AT NO.41, 3RD ROSS
1ST MAIN ROAD, KANAKA NAGAR
R.T.NAGAR, BANGALORE-560 032.
36. MASTER ANURAAG S
S/O N. SUKENDHAR
AGED ABOUT 7 YEARS
REPRESENTED BY HIS FATHER
N. SUKENDHAR, RESIDING AT NO.35
1ST MAIN, S.B.M. COLONY, ANANDANAGAR
HEBBAL POST, BANGALORE-560 024.
37. KUMARI SYEDA INSHIRAAH
D/O SYED ABDUL HAFEEZ
AGED ABOUT 7 YEARS
REPRESENTED BY HER FATHER
SYED ABDUL HAFEEZ
RESIDING AT 417, 3RD MAIN
BHUVANESHWARI NAGAR, SULTAN PALYA
BANGALORE-560 032.
38. KUMARI SANIA FATHIMA
D/O ALEEM KHAN
AGED ABOUT 7 YEARS
REPRESENTED BY HER MOTHER
REHANA FATHIMA, RESIDING AT
NO.13/1, 5TH CROSS
DINNUR R.T.NAGAR, BANGALORE-560 032.
39. KUMARI ARCHANA NAIR
D/O VIJAYKUMAR
AGED ABOUT 7 YEARS

REPRESENTED BY HER FATHER
VIJAYAKUMAR, RESIDING AT NO.130
C/O. NAGARAJ'S VENKATAPPA MILL
KAVALBYRASANDRA, R.T.NAGAR POST
BANGALORE-560 032.

40. MASTER NIKHIL REDDY
S/O LAKSHMIPATHY REDDY
AGED ABOUT 7 YEARS
REPRESENTED BY HIS FATHER
LAKSHMIPATHY REDDY
RESIDING AT NO.3, 4TH "A" CROSS
KANAKANAGAR, R.T NAGAR POST
BANGALORE-560 032.
41. MASTER DARSHAN A
S/O ADINARAYANA REDDY
AGED ABOUT 7 YEARS
REPRESENTED BY HIS FATHER
ADINARAYANA REDDY
RESIDING AT NO.3, 4TH "A" CROSS
KANAKANAGAR, R.T.NAGAR POST
BANGALORE-560 032.
42. MASTER TUSHAR V ARADHYAMATH
S/O VISHWARADHYA M ARADHYAMATH
AGED ABOUT 8 YEARS
REPRESENTED BY HIS MOTHER
M.G.GANGAMBIKA, RESIDING AT NO.15
3RD CROSS, 5TH MAIN, C.P.V. BLOCK
GANGANAGAR EXTENSION
BANALORE-560032.

... PETITIONERS

(BY M/S. SUBBARAO & CO., ADVS., (ABSENT))

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF EDUCATION

M.S.BUILDING, BANGALORE-560 001
REPRESENTED BY ITS SECRETARY.

2. PARACHUTE REGIMENT SCHOOL
ARMY PUBLIC SCHOOL
PARACHUTE REGIMENT TRAINING CENTRE
J.C.NAGAR, NEAR MEKHRI CIRCLE
BANGALORE-560 006
REPRESENTED BY ITS CHAIRMAN.
3. ARMY WELFARE EDUCATION SOCIETY (AWES)
ADJUTANT GENERAL'S BRANCH
INTEGRATED HEADQUARTERS OF MoD (ARMY)
FDRC BUILDING NO 202, SHANKAR VIHAR
(NEAR APS) DELHI CANTT-110 010
REPRESENTED BY ITS CHAIRMAN.
4. CENTRAL BOARD OF SECONDARY EDUCATION
HEAD OFFICE:
"SHIKSHA KENDRA" 2
COMMUNITY CENTRE, PRET VIHAR
NEW DELHI-110 301
REPRESENTED BY ITS CHAIRMAN.
5. UNION OF INDIA
REP. BY SECRETARY
DEPARTMENT OF HUMAN
RESOURCE DEVELOPMENT.

... RESPONDENTS

(BY MR. LAXMI NARAYANA, AGA FOR R1
M/S. RAVI & RAVI FOR R2 & R3)

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THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE FEE
STRUCTURE AS PER ANN-G, ISSUED BY THE R2 SCHOOL &
DIRECT THE R2 TO FOLLOW THE FEE STRUCTURE
PRESCRIBED BY THE STATE. DIRECT THE STATE GOVT. TO
TAKE APPROPRIATE ACTION AGAINST THE R2 IN

ACCORDANCE WITH LAW. GRANT INTERIM ORDER TO STAY
THE FEE HIKE AS PER ANN-G.

IN W.P. No.40148 OF 2012

BETWEEN:

1. SRI. SHASHEENDRA VIDYA SAMSTHE ®
GARAGADAHALLI, KADUR TALUK
CHIKMAGALUR DISTRICT
REP BY ITS PRESIDENT.
2. SRI. SIDDARAMESHWARA VIDYA SAMSTHE ®
SRUJANA VIDYA MANDIRA
HIGHER PRIMARY SCHOOL
SOG COLONY. DAVANAGERE
REP BY ITS SECRETARY.
3. SRI. T.C. DINESH
S/O CHANDRAIAH
AGED ABOUT 39 YEARS
HEAD MASTER
SRI. BASAVESHWARA HIGH SCHOOL
KENCHAPURA GATE, BIRUR RANGE
TARIKERE TALUK, CHIKMAGALUR DISTRICT.
4. SRI. M. NAGARAJ
S/O MYLARAPPA
AGED AOBUT 36 YEARS
HEAD MASTER
SRI. VEJENDRA HIGH SCHOOL
MALLADEVIHALLI, KADUR TALUK
CHIKMAGALUR DISTRICT.
5. SRI. RAVI NAIK P.
S/O PUTTA NAIK
AGED ABOUT 27 YEARS
HEAD MASTER
SRI. BAYALU SEEME VIDYA SAMSTHE ®
MARUTHI HIGH SCHOOL, TANGLI
KADUR TALUK, CHIKMAGALUR DISTRICT.

6. SRI. J.M. SHIVAKUMAR
S/O MUDDAMALLAPPA
AGED ABOUT 41 YEARS
HEAD MASTER
SRI. NARASIMHA SWAMY HIGH SCHOOL
YAGATI, KADUR TALUK
CHIKMAGALUR DISTRICT.
7. SRI. K.S. NAGARAJU
S/O LATE SHIVALINGAIAH
AGED ABOUT 43 YEARS
HEAD MASTER
KUVEMPUR HIGH SCHOOL
LINGADALLI (BIRUR RANGE)
TARIKERE TALUK
CHIKMAGALUR DISTRICT.

... PETITIONERS

(BY MR. HARISH KUMAR M.C. ADV., (ABSENT))

AND:

1. STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY
TO EDUCATION DEPARTMENT
M.S. BUILDING, BANGALORE-01.
2. THE COMMISSIONER OF PUBLIC INSTRUCTIONS
NRUPATHUNGA ROAD, BANGALORE-01.
3. THE DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS
CHIKMAGALUR DISTRICT, CHIKMAGALUR.
4. THE DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS
DAVANAGERE DISTRICT, DAVANAGERE.
5. THE BLOCK EDUCATION OFFICER
BIRUR , KADUR TALUK
CHIKMAGALUR DISTRICT.

6. THE BLOCK EDUCATION OFFICER
KADUR
CHICKMAGALUR DISTRICT.
7. THE BLOCK EDUCATION OFFICER
DAVANAGERE
DAVANAGERE DISTRICT.

... RESPONDENTS

(BY MR. LAXMI NARAYANA, AGA FOR R1-R7)

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THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENT TO TREAT THE DATE OF COMMENCEMENT OF THE VIOLATIVE OF ARTICLE 14 & 16 OF CONSTITUTION OF INDIA. DIRECT THE RESPONDENTS TO PROVIDE GRANT-IN-AID TO THE PETITIONERS INSTITUTIONS SINCE THE PETITIONERS ARE IMPARTING PRIMARY EDUCATION 8TH, 9TH & 10TH STANDARDS IN VIEW OF ARTICLE 21-A OF THE CONSTITUTION & RIGHT TO EDUCATION ACT 2012 WHICH HAS BEEN GIVEN EFFECT FROM 1.4.12. & ETC.

IN W.P. No.19006 OF 2014

BETWEEN:

1. BEL EDUCATIONAL INSTITUTIONS
MANAGEMENT COMMITTEE
JALAHALLI, BANGALORE-560013
REPRESENTED BY ITS SECRETARY
SRI. SUDHEENDRA
AGED ABOUT 50 YEARS.
2. SRI. M.R. HEGDE
S/O R.V. HEGDE
AGED ABOUT 59 YEARS
VICE-PRINCIPAL

BEL COMPOSITE PU COLLEGE
(HIGH SCHOOL SECTION)
JALAHALLI, BANGALORE-560013.

... PETITIONERS

(BY MS/MRS. VIDYA R. GOWDA, ADV., FOR
MR. SHARATH GOWDA G.B. ADV.,)

AND:

1. STATE OF KARNATAKA
REP. BY ITS PRICIPAL SECRETARY
EDUCATION DEAPRTMENT
VIDHANA SOUDHA
BANGALORE-560001.
2. THE DIRECTOR (SECONDARY EDUCATION)
COMMISSIONER'S OFFICE
DEPARTMENT OF PUBLIC INSTRUCTION
GOVERNMENT OF KARNATAKA
NRUPATUNGA ROAD, BANGALORE-560001.
3. THE DEPUTY DIRECTOR (ADMINISTRATION)
COMMISSIONER'S OFFICE
DEPARTMENT OF PUBLIC INSTRUCTION
GOVERNMENT OF KARNATAKA
NRUPATUNGA ROAD, BANGALORE-560001.
4. THE BLOCK EDUCATION OFFICER
NORTH RANGE-2, GANDHINAGAR
BANGALORE-560009.
5. COMMISSIONER OF PUBLIC INSTRUCTIONS
DEPARTMENT OF PUBLIC INSTRUTIONS
GOVERNMENT OF KARNATAKA
NRUPATUNGA ROAD, BANGALORE.

... RESPONDENTS

(BY MR. LAXMI NARAYANA, AGA FOR R1-R5)

THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS. STRIKE DOWN RULES 10[3][a][i] AND 10[3][b][i] OF THE KARNATAKA EDUCATIONAL INSTITUTIONS [CLASSIFICATION, REGULATION AND PRESCRIPTION OF CURRICULA, etc.] RULES 1995 AS UNCONSTITUTIONAL. QUASH THE GOVERNMENT ORDER DATED 12.5.2000 VIDE ANN-U AS UNCONSTITUTIONAL. QUASH THE GOVERNMENT ORDER DATED 12.5.2002 AS REFLECTED IN ANN-T AS UNCONSTITUTIONAL. QUASH THE ORDER DATED ORDER DATED 11.11.2013 PASSED ON THE FILE OF THE R-5 VIDE ANN-Q & ETC.,

THESE W.Ps. HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.11.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

COMMON ORDER

The petitioner is an Association of private unaided schools in the State of Karnataka (hereinafter referred to as 'Association'). The members of the Association administer 2500 unaided educational institutions in the State of Karnataka. The petitioner had assailed the validity of Sections 3(2)(a to h), 7(1)(a to i), 38, 41(2)(b)(iii), 41(5), 42, 43, 44, 48, 67, 128 and 145 of the Karnataka Education Act, 1983 (hereinafter referred to as 'the 1983 Act') on the ground that the said provisions violate the fundamental rights guaranteed to the petitioner under Article 14, 19(1)(c) and (g), 29(1) and 30 of the Constitution of India.

2. The aforesaid writ petition was dismissed by a Division Bench of this Court by an order dated 11.10.1996 **(ASSOCIATED MANagements OF**

**PRIMARY AND SECONDARY SCHOOLS AND ORS.
VS. STATE KARNATAKA AND ANR.)¹.**

3. Against the aforesaid order, a special leave petition was preferred by the petitioner in which, on 26.02.2004, following order was passed:

"Having looked at the Karnataka Education Act, 1983, it prima facie appears to us that the Government requires to reconsider various provisions of the Act in light of the Judgment of this Court in the case of T.M.A.Pai Education v. State of Karnataka, reported in (2002) 8 SCC 481. The Government is directed to do so within a period of four months from today. The appellants are at liberty to make their suggestions to the Government. We are sure that the Government, in taking a decision, will keep those suggestions in mind.

Adjourned for four months."

¹ ILR 1996 KAR 3669

4. However, it appears that State Government did not reconsider the provisions of 1983 Act. Thereafter, by an order dated 11.02.2010, the special leave petition was disposed of by the Supreme Court. The order reads as under:

"This Court in similar cases in State of Karnataka versus Dr.T.M.A.Foundation and others (2003 (6) SCC 790) disposed of the appeals in the following manner:

"The several questions raised in these matters are covered by the decision of a Constitution Bench of this Court in T.M.A.Foundation v. State of Karnataka and the connected batch of cases decided on 31.10.2002. Since larger questions have been decided by this Court, it become necessary for the High Court to re-examine the matters which have been decide and which are in appeal before this Court. The orders of the High Court are, therefore, set aside without expressing any opinion on merits and the matters are remitted to the High Court for fresh consideration in accordance with law."

Following the said judgment these appeals also are disposed of setting aside the impugned order with a request to the High Court to re-examine the matter. We do not express any opinion whatsoever on the merits since the High Court is required to consider the matter afresh in accordance with law. Liberty to the parties to amend their pleadings.

Appeals are, accordingly, disposed of. No order as to costs."

5. In pursuance of the liberty granted by the Supreme Court, the petitioner has amended the writ petition and has now assailed the validity of the following provisions:

(1) Section 5 of the 1983 Act.

(2) Section 7(5)(b) of the 1983 Act and Rule 19(3) of Karnataka Educational Institution (Classification, Regulation and Prescription of

Curricula etc.) Rules, 1995 (hereinafter referred to as '1995 Rules')

(3) Section 7(1)(e) of the 1983 Act and Rule 18(2) and (3) of 1995 Rules.

(4) Section 41(3) of the 1983 Act.

(5) Section 7(1)(f) of the 1983 Act and Rule 4 of the Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999 (hereinafter referred to as the '1999 Rules').

(6) Rule 10(3)(c)(ii) of the 1995 Rules.

(7) Rule 10(3)(a) of 1995 Rules and Rule 4(4) of 1999 Rules.

(8) Section 38(1)(a) of the 1983 Act.

(9) Rule 3(b) of the Karnataka Educational Institutions (Certain Terms and Conditions of Service of Employees in Private Unaided Primary and Secondary and Pre-University Educational

Institutions, Rules 2005 (hereinafter referred to as the '2005 Rules').

6. From perusal of averments in paragraphs 22 and 23 of the writ petition, it is axiomatic that the challenge in the writ petition is limited to the extent the impugned provisions of law insofar as they apply to school education.

7. Learned counsel for the petitioner has taken through the averments made in the writ petition and has submitted that on the basis of the averments made in the writ petition, the petitioner has sought the relief of quashment of the provisions of the Act in the light of law laid down by 11 Judge Bench of Supreme Court in ***T.M.A. PAI FOUNDATION AND OTHERS V. STATE OF KARNATAKA AND OTHERS***².

² (2002) 8 SCC 481

8. Learned Additional Government Advocate has submitted that the provisions of the Act neither constitute infraction of fundamental rights of the petitioner nor constitute an unreasonable restriction on the exercise of regulatory power of the private educational institution.

9. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of decision of Supreme Court in **T.M.A.PAI FOUNDATION** *supra*. In the majority opinion, the answer to the questions formulated for consideration in the judgment are recorded as under:

"ANSWERS TO ELEVEN QUESTIONS:

Q.1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganisation of the State in India has been on linguistic lines, therefore, for the purpose of determining the minority the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise.

Q.2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.3(a) What are the indicia for treating an educational institution as a minority

educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q3(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?

A. Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

Q.4 Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the

State Government or by the University to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions, viz., schools and undergraduates colleges where the scope for merit-based selection is practically nil, cannot be regulated by the concerned State or University, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards. The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the

matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The concerned State Government has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided

professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.

Q5(a) Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to

mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Q5(b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the state qua non-minority students. The merit may be determined either through a common entrance test conducted by the concerned University or the Government followed by counselling, or on the basis of an entrance

test conducted by individual institutions--the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

Q5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principal including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are

concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge. The State or other

controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the state, without interfering with the overall administrative control of the management over the staff. Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

Q6(a) Where can a minority institution be operationally located? Where a religious or linguistic minority in State 'A' establishes an educational institution in the said State, can such educational institution grant preferential admission/reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q6(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-/-vis such institution?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.7 Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?

A. This question need not be answered by this Bench; it will be dealt with by a regular Bench.

Q.8 Whether the ratio laid down by this Court in the St. Stephen's case (St. Stephen's College v. University of Delhi) is correct? If no, what order?

A. The basic ratio laid down by this Court in the St. Stephen's College case is correct, as indicated in this judgment. However, rigid percentage cannot be stipulated. It has to be left to authorities to prescribe a reasonable percentage having regard to the type of institution, population and educational needs of minorities.

Q.9 Whether the decision of this Court in Unni Krishnan J.P. v. State of A.P. (except where it holds that primary education is a fundamental right) and the scheme framed thereunder required reconsideration/ modification and if yes, what?

A. The scheme framed by this Court in Unni Krishnan's case and the direction to impose the same, except where it holds that primary education is fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of

facilities does not, however, amount to profiteering.

Q.10 Whether the non-minorities have the right to establish and administer educational institution under Article 21 and 29(1) read with Articles 14 and 15(1), in the same manner and to the same extent as minority institutions? And Q.11 What is the meaning of the expressions "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

A. The expression "education" in the Articles of the Constitution means and includes education at all levels from the primary school level upto the post-graduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where "education" is as understood hereinabove.

The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, to minorities specifically under Article 30.

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment."

10. Article 21A provides that State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine. Thus, Article 21A is an enabling provision. The State Government has therefore, enacted 1983 Act which is an Act, enacted with an object to provide land for development of educational

institutions, inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organization discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education.

11. It is trite law that foundational facts have to be clearly pleaded and without any factual foundation, a statutory provision cannot be declared *ultra vires*. (**See: SOUTHERN PETRO CHEMICAL INDUSTRIES CO. LTD. Vs. ELECTRICITY INSPECTOR AND ETIO³ and SEEMA SILK AND SAREES Vs. DIRECTORATE OF ENFORCEMENT⁴.**)

³ (2007) 5 SCC 447

⁴ (2008) 5 SCC 480

12. We shall now deal with the challenge made to the provisions of the 1983 Act and the 1995, 1999 and 2005 Rules *ad-seritum*.

(1) Section 5:

Section 5 reads as under:

"Section 5: Promotion of education of the weaker sections and the handicapped: The State Government shall endeavour to promote the education of the handicapped, backward classes and the weaker sections of the society including the economically weaker sections thereof and in particular of the Scheduled Castes, Scheduled Tribes with special care by adopting towards that end such measure as may be appropriate.

13. Section 5 of the 1983 Act deals with promotion of education of weaker sections and the handicapped. Section 5 mandates that State Government shall endeavour to promote the education of handicapped backward classes and weaker sections

of the society including economically weaker section thereof and in particular Scheduled Caste and Scheduled Tribes by adopting towards that end such measures as may be appropriate. The petitioner has not placed on record any order or any measure taken by the State Government which provides for reservation for Scheduled Caste, Scheduled Tribes or other backward classes including economically weaker section of students in relation to private unaided schools. The challenge to the aforesaid provision on this ground is therefore unfounded and misconceived. Section 5 of the 1983 Act which applies to the educational institutions established by the State Government or any local authority or any other authority designated or sponsored by the State Government as well cannot be said to be *ultra vires*. Even otherwise, Article 15(5) which has been

incorporated by Constitution 93rd Amendment Act, 2005 w.e.f. 20.01.2006 reads as under:

"(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

14. Thus, the Constitution itself mandates the State to make any special provision by law for advancement of socially and educationally backward classes of citizens or for advancement of Scheduled Caste and Scheduled Tribe insofar as special provision relate to their admission to educational institutions including private educational institutions. It is

relevant to mention that validity of Article 15(5) has been upheld by a Constitution Bench of Supreme Court in ***PRAMATI EDUCATIONAL AND CULTURAL TRUST (REGISTERED) AND OTHERS Vs. UNION OF INDIA AND OTHERS***⁵. Therefore, if any measure is taken by the State Government in terms of Section 5 of the 1983 Act it shall be in consonance with Article 15(5) of the Constitution of India. In any case, in the absence of any order under Section 5 of the 1983 Act in relation to private unaided schools, Section 5 of the 1983 Act cannot be held to be *ultra vires*, at the instance of the petitioner, it cannot be said to be aggrieved.

15. As far as the averment made in the petition that in view of Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the '2009 Act') which

⁵ (2014) 8 SCC 1

provides mode of reservation of seats in favour of weaker sections and disadvantage group, provision of Section 5 of the 1983 Act needs to be taken to be impliedly overridden is concerned, the same is without substance. The petitioner has miserably failed to demonstrate that provisions of Section 5 of the 1983 Act have been made applicable to private unaided schools. Section 5 of the 1983 Act is a provision which applies to a school run by State Government or any local authority or any authority designated or sponsored by the State Government as well. Section 12(1)(c) of the 2009 Act is a provision enacted in consonance with Article 15(5) of the Constitution of India.

16. The Supreme Court while dealing with doctrine of implied repeal in **MUNICIPAL COUNCIL,**

PALI Vs. T.J.JOSEPH⁶ has held that there is a presumption against an implied repeal. The concept of implied repeal applies under two exigencies: (1) if the dominant legislature proposes to occupy the entire field, what is popularly called as "doctrine of occupied field", (2) if the special law is enacted in respect of the field in which general law occupies (**See: K.T.PLANTATION PVT. LTD. Vs. STATE OF KARNATAKA**)⁷. It is pertinent to note that 1983 Act is a prior special law whereas 2009 Act is a later general law. The 2009 Act is not a special law and therefore, it is not a case where special law is enacted in respect of a field where general law occupies. Therefore, 2009 Act not being a special law does not occupy the field in respect of the subject matter for which 1983 Act is enacted. Therefore, the contention that Section 5 has

⁶ AIR 1963 SC 1561

⁷ (2011) 9 SCC 1

been impliedly overridden is misconceived and hence dismissed.

17. (2) Section 7(5)(b) of the 1983 Act and Rule 19(3) of the 1995 Rules:

Section 7 of the 1983 Act and Rule 19(3) of the 1995 Rules read as under:

Section 7. Government to prescribe curricula, etc.- (1) Subject to such rules as may be prescribed, the State Government may, in respect of educational institutions, by order specify,-

- (a) the curricula, syllabi and text books for any course of instruction;*
- (b) the duration of such course;*
- (c) the medium of instruction;*
- (d) the scheme of examinations and evaluation;*
- (e) the number of working days and working hours in an academic year;*
- (f) the rates at which tuition and other fees, building fund or other*

amount, by whatever name called, may be charged from students or on behalf of students;

(g) the staff pattern (teaching and non-teaching) and the educational and other qualifications for different posts;

(h) the facilities to be provided, such as buildings, sanitary arrangements, playground, furniture, equipment, library, teaching aid, laboratory and workshops;

(i) such other matters as are considered necessary.

(2) The curricula under sub-section (1) may also include schemes in respect of,-

(a) moral and ethical education;

(b) population education, physical education, health education and sports;

(c) socially useful productive work, work experience and social service;

(d) innovative, creative and research activities;

(e) promotion of national integration;

(f) promotion of civic sense ; and

(g) inculcation of the sense of the following duties of citizens, enshrined in the Constitution namely:-

(i) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(ii) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(iii) to uphold and protect the sovereignty, unity and integrity of India;

(iv) to defend the country and render national service when called upon to do so;

(v) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women;

(vi) to value and preserve the rich heritage of our composite culture;

(vii) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(viii) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(ix) to safeguard public property and to abjure violence;

(x) to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

(3) The prescription under sub-section (1) may be different for the different categories of educational institutions.

(4) (a) The objectives of education at the primary level shall be universalisation of education at the primary level by comprehensive access by both formal and non-formal means and by improving retention and completion rates with curriculum development and teacher education to help children attain the required level of achievement in the following basic purposes:-

(i) development of 'basic skills' in literacy in the mother tongue and Kannada (where mother tongue is not Kannada), numeracy and communication;

(ii) development of 'life skills' for understanding of and meaningful interaction with the physical and social environment, including study of Indian culture and history, science, health and nutrition;

(iii) introduction of 'work experience' or socially useful productive work to provide children with the ability to help themselves, to orient them to the work processes of society and to develop right attitudes to work;

(iv) promotion of values including moral values; and

(v) development of good attitudes towards further learning.

(b) The main objective of education at the secondary level shall be to impart such general education as may be prescribed so as to make the pupil fit either for higher academic studies or for job-oriented vocational

courses. The general education so imparted shall, among others, include,-

- (i) the development of linguistic skills and literary appreciation in the regional language;*
- (ii) the attainment of prescribed standards of proficiency in any two other selected languages among classical or modern Indian languages including Hindi and English;*
- (iii) the acquisition of requisite knowledge in mathematics and physical and biological sciences, with special reference to the physical environment of the pupil;*
- (iv) the study of social sciences with special reference to history, geography and civics so as to acquire the minimum necessary knowledge in regard to the State, country and the world;*
- (v) the introduction of 'work experience' or 'socially useful productive work' as an integral part of the curriculum; and*
- (vi) training in sports, games, physical exercises and other arts.*

(5) In every recognised educational institution,-

(a) the course of instruction shall conform to the curricula and other conditions under sub-section (1); and

(b): no part of the working hours prescribed shall be utilized for any purpose other than instruction in accordance with the curricula."

(emphasis supplied by us)

Rule 19(3): Educational institutions following state syllabus any other pattern shall strictly adhere to the Curricula and text books prescribed by the concerned Competent Authority. The institution shall not specify any additional curricula or text books of whatever nature.

18. From perusal of Section 7 of the 1983 Act in the entirety, it is evident that Section 7(1) empowers the Government to prescribe the matter mentioned therein namely curricula, syllabi and text book etc. Sub-section (2) of Section 7 provides for contents of

the curricula. The petitioner is not aggrieved by power to prescribe curricula. Therefore, once power to prescribe curricula is not challenged, no grievance can be made by the petitioner that petitioner is prevented from expanding the curricula. In any case, a provision of law cannot be declared to be *ultra vires* on this ground. On the same analogy, no fault can be found with Rule 19(3) of the 1995 Rules.

19. **(3) Section 7(1)(e) of the 1983 Act and Rule 18(2) and (3) of 1995 Rules.**

Section 7(1)(e) of the 1983 Act and Rule 18(2) and 18(3) of 1995 Rules read as under:

Section 7(1)(e): *the number of working days and working hours in an academic year;*

Rule 18(2) and 18(3):

(2) All educational institutions from pre-primary to secondary education shall work for 5 1/2 hours a day excluding the duration of interval and 5 1/2 days in a week from

Monday to Saturday, Saturdays being half-days having morning classes.

(3) The timing of working hours in any educational institution shall be determined by the concerned school authority taking into consideration the convenience of the students and prevailing local conditions. The Department shall be informed accordingly.

20. From a careful perusal of aforesaid Rule 18(3), it is evident that concerned school authority has the power to determine the timing of working hours of any educational institution taking into account the convenience of the students and prevailing local conditions. Thus, the educational institutions have been given the liberty to determine the timing of working hours. Therefore, the grievance of the petitioner that Section 7(1)(e) of the 1983 Act and Rule 18(2) and 18(3) of 1995 Rules are *ultra vires* and cannot be sustained.

21. The Supreme Court in **T.M.A.PAI FOUNDATION**, *supra*, in paragraphs 50 and 61 has held as under:

"Para 50. *The right to establish and administer broadly comprises of the following rights:-*

(a) to admit students:

(b) to set up a reasonable fee structure:

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any employees.

Para 61. *In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admission on the basis of merit. It is no secret that the examination results at all*

levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that state-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtaining the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the state has to provide the difference which, therefore, brings us back in a vicious circle to the original problem, viz., the lack of state funds. The solution would appear to lie in the States not using their scanty resources to prop up institutions that are able to

otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidizing the fees payable by the students there. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such institutions are established. The fear that if a private school is allowed to charge fees commensurate with the fees affordable, the degrees would be "purchasable" is an unfounded one since the standards of education can be and are controllable through the regulations relating to recognition, affiliation and common final examinations."

The decision rendered in **T.M.A PAI FOUNDATION**, *supra* was quoted with approval by a Three Judge Bench of the Supreme Court in **SOCIETY FOR UNAIDED PRIVATE SCHOOLS OF RAJASTHAN**

Vs. UNION OF INDIA AND ANOTHER⁸ while dealing with challenge to the provisions of 2009 Act. The Supreme Court, in the said decision, after taking note of the ratio laid down in **P.A.INAMDAR & ORS. Vs. STATE OF MAHARASHTRA⁹**, in paragraph 12 held as under:

"Para 12 :P.A. Inamdar holds that right to establish and administer educational institution falls in Article 19(1)(g). It further holds that seat-sharing, reservation of seats, fixing of quotas, fee fixation, cross-subsidization, etc. imposed by judge-made scheme in professional/ higher education is an unreasonable restriction applying the principles of Voluntariness, Autonomy, Co-optation and Anti- nationalisation, and, lastly, it deals with inter-relationship of Articles 19(1)(g), 29(2) and 30(1) in the context of the minority and non-minority's right to establish and administer educational institutions."

⁸ (2012) 6 SCC 1

⁹ (2005) 6 SCC 537

22. Thus, it is evident that right to establish and administer an educational institution comprises right to admit students, to set up a reasonable fee structure, to appoint staff teaching and non-teaching etc. It has further been held that reservation of seats, fixation of quotas is an unreasonable restriction in the context of minority and non-minority's right to establish and administer educational institutions. However, the Supreme Court applying the principle of severability as laid down in **R.M.D. CHAMARBAUGWALLA Vs. UNION OF INDIA**¹⁰, instead of striking down the provisions, held that the offending provisions of 2009 Act do not apply to unaided minority educational institutions.

(4) Section 41(3) of the 1983 Act.

Section 41 of the 1983 Act reads as under:

¹⁰ 1957 SCR 930

41. Management of recognised educational institutions.-

(1) No recognised private educational institutions shall be managed except in conformity with the rules which the State Government may frame for such institutions after previous publication.

(2) The rules under sub-section (1) may, inter alia, include,- (a) qualification for posts of teaching and non-teaching employees; (b) the manner of recruitment of the teaching and non-teaching employees; (c) scales of pay and allowances admissible; (d) leave, pension, provident fund, insurance and such other benefits; (e) maintenance and enforcement of discipline of employees; (f) powers, functions and responsibilities of the management; (g) duties and responsibilities of the Secretary; and (h) maintenance and submission of records, accounts and other returns to the prescribed authority.

(3) While recruiting the teaching and non-teaching employees, every recognised educational institution shall comply with the

orders issued by the State Government from time to time for reservation of posts to Scheduled Castes, Scheduled Tribes and other backward classes of citizens and the weaker sections of people.

(4) The Governing Council shall have the power to appoint the head of the institution and also to take disciplinary action against him according to the prescribed rules.

(5) If there is a change in the Governing Council of the institution or change in the location of the institution a fresh application for recognition shall be made as if it were a newly started institution.

(emphasis supplied by us)

The unaided educational institution have a right to appoint staff - teaching and non-teaching in view of law laid down by Supreme Court in **T.M.A.PAI FOUNDATION**, *supra*. Section 41(3) of the 1983 Act curtails the aforesaid right. Thus, applying the principle of severability, it is held that Section 41(3) of the 1983 Act does apply to private unaided schools.

23. On the touch stone of aforesaid principles, we may advert to the challenge of the petitioner to other provisions.

(5) Section 7(1)(f) of the 1983 Act and Rule 4 of the 1999 Rules

Section 7(1)(f) of the 1983 Act and Rule 4 of the 1999 Rules read as under:

Section 7(1)(f) : *the rates at which tuition and other fees, building fund or other amount, by whatever name called, may be charged from students or on behalf of students;*

Rule 4:

[4. Fee in unaided private educational institutions. - (1) Every private unaided educational institutions shall disclose within 31st December of every calendar year its fee structure for the ensuing academic year starting in the next calendar year, the audit report of its finances in the previous financial year ended on 31st March, details of

teaching resources, result in the public examination and a statement showing computation and compliance of the fee structure as per the rules on the website of Primary and Secondary Education Department in the manner specified through a notification.

(2) A Private unaided educational institution shall be allowed to collect fees not exceeding the fee structure disclosed by the institutions in the manner specified under sub-rules (1):

Provided that, no fee shall be collected from the students admitted under clause (c) of the sub-section (1) of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009).

(3) Notwithstanding anything contained in any rules made in this behalf the tuition fee to be charged by a private unaided educational Institution under sub-clause (ii) of clause (b) of sub-rule (3) of Rule 10 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of

Curricula, etc.) Rules, 1995 in the ensuing academic year shall not exceed the value determined in the following manner, namely:-

(i) The normative total expenditure for the ensuing academic year shall be computed based on the actual salary, expenditure incurred on teaching and non-teaching staff, including outsourced staff, in the previous financial year ended on 31st March plus an additional amount towards contingency, operation and maintenance costs, rent, debt servicing, depreciation, etc. and the likely cost increase during the period between the previous financial year and the ensuing academic year.

Explanation.- For the purpose of this sub-rule, the salary expenditure may include as applicable.-

(a) Contribution towards Provident Fund, ESI made by the management.

(b) Encashment benefit, medical allowance, conveyance allowance and other such allowance, if any, given to the staff of the institution,; and

(c) *Concessions to weaker sections or any special activity related to academic or extra co-curriculum improvements.*

(ii) *The additional amount shall not be more than the value arrived on applying such percentage on the actual salary expenditure in the previous financial year ended on 31st March referred in clause (i) as specified in column (3) of the Table below, based on geographical location of the institution specified in column (2) thereof:*

Sl.No.	Geographical Location of Institution and Areas	Percentage of additional amount on Actual Salary Expenditure
(1)	(2)	(3)
1	Grama Panchayat/Town Panchayat/Town Municipal Council	Seventy per cent
2	City Municipal Council	Eighty per cent
3	Municipal corporation other than BBMP	Ninety per cent
4	Bengaluru Bruhat Mahanagara Palike	One hundred per cent

(iii) *The Normative Net Expenditure (NNE) for the ensuing academic year shall be computed based on the Normative Total*

Expenditure (NTE) under clauses (i) and (ii) of sub-rule (3) minus the total of:-

(a) any money received under sub-rule (3) of Rule 6 for the purpose of supporting recurring expenditure on teaching activities;

(b) the term fee collected under sub-clause (ii) of clause (a) of sub-rule (3) of Rule 10 during the previous financial year ended on 31st March and.

(c) the special development fee collected under clause (c) of sub-rule (3) of Rule 10 during the previous financial year ended on 31st March.

(iv) The total tuition fee proposed to be charged from all the students put together, other than the students admitted under item (c) of sub-section (1) of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009) as per the fee structure disclosed under sub-rule (1) shall not exceed the Normative Net Expenditure (NNE), computed under item (iii) of sub-rule (3):

Provided that the total number of students for purpose of this sub-rule shall be the maximum number of students, other than the students admitted under clause (c) of sub-section (1) of Section 12 of Right of Children to Free and Compulsory Education, Act, 2009 (Central Act 35 of 2009), on the rolls of the educational institution during the previous academic year ended on 31st May.

(v) The total tuition fee proposed to be charged from all the students put together, other than the students admitted under clause (c) of sub section (1) of Section 12 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009), in the ensuing academic year shall not be more than fifteen per cent over and above the total tuition fee charged during the current academic year.

(vi) Subject to compliance with clauses (iv) and (v) above, a private unaided educational institution shall have the flexibility to opt for varying tuition fee for different classes.

(4) *In addition to the tuition fee, a private unaided educational institution may charge a term fee under sub-clause (ii) of clause (a) of sub-rule (3) of Rule 10, not exceeding ten per cent of the tuition fee. Such term fee will cover all co-curricular activities, examination fee, lab fee, sports fee, culture event fee, fee for activities complementary to regular teaching and any other activity specified by notification.*

(5) *Notwithstanding the disclosure made by a private unaided educational institution under sub-rule (1), Primary and Secondary Education Department may cause a special audit of the finances and fee computations of the institution in the manner specified through a notification.]*

Thus, in view of well settled legal position referred to *surpa* in paragraphs 50 and 61 of the **T.M.A.PAI FOUNDATION**, *supra*, it is held that provisions of said Section do not apply to unaided private educational

institutions. Rule 4 of the 1999 Rules permits the unaided private educational institutions to fix its fee structure. Therefore, Rule 4 does not suffer from any infirmity. The same is held to be *ultra vires*.

24. **(6) Rule 10(3)(c)(ii) of the 1995 Rules:**

Rule 10(3)(c)(ii) of the 1995 Rules read as under:

Rule 10(3)(c)(ii): *in the case of a recognised unaided educational institution upto a maximum of Rs.600/- per year.*

In view of law laid in **T.M.A.PAI FOUNDATION**, *supra*, in paragraphs 50 and 61 referred to *supra*, the aforesaid Rule cannot be sustained in the eye of law. The same is therefore struck down.

25. **(7) Rule 10(3)(a) of 1995 Rules and Rule 4(4) of 1999 Rules.**

Rule 10(3)(a) of 1995 Rules and Rule 4(4) of 1999 Rules read as under:

Rule 10(3)(a): *Term Fees,- (i) No term fees shall be collected from pre-primary and lower primary students; (ii) In upper primary and higher classes, term fees shall be collected at the rate specified by the State Government or the Competent Authority authorised in this behalf through a notification and shall be collected only for the items listed in the said notification.*

(iii) Term fees collected by the recognised educational institutions for each term from the students shall be subject to exemptions made by the State Government from time to time in this regard.

Rule 4(4): *In addition to the tuition fee, a private unaided educational institution may charge a term fee under sub-clause (ii) of clause (a) of sub-rule (3) of Rule 10, not exceeding ten per cent of the tuition fee. Such term fee will cover all co-curricular activities, examination fee, lab fee, sports fee, culture event fee, fee for activities complementary to regular teaching and any other activity specified by notification.*

Applying the principles laid down by a Three Judge Bench of the Supreme Court in **SOCIETY FOR UNAIDED PRIVATE SCHOOLS OF RAJASTHAN**, *supra*, the aforesaid provisions are held to be not applicable in respect of private unaided schools. Private unaided educational institutions are entitled to fix their fee structure which may be reasonable. Rule 4(4) of the 1999 Rules is struck down as the same is violative of the law declared by the Supreme Court in **T.M.A.PAI FOUNDATION**, *supra*.

26. (8) Section 38(1)(a) of the Act:

Section 38(1)(a) of the Act read as under:

38(1)(a): *Notwithstanding anything contained in section 36,- (a) educational institutions established and run by the State Government or by any authority sponsored by the Central or State Government or by a local authority and approved by the competent authority in accordance with such*

conditions as may be prescribed shall be deemed to be educational institutions recognised under this Act;

The provisions of Article 14 are attracted if equals are sought to be treated as unequal. A private educational institution cannot claim parity with an institution run by a Central or State Government or a local authority. Therefore, the contention that Section 38(1)(a) of the Act is violative of Article 14 is misconceived as Section 38(1)(a) creates a deeming provision in respect of recognition under the 1983 Act in relation to educational institution run by the State Government or by a local authority. The challenge therefore to Section 38(1)(a) of the 1983 Act is repelled.

27. (9) Rule 3(b) of the 2005 Rules:

Rule 3(b) of the 2005 Rules read as under:

Rule 3(b): *Salary.-The salary of the employees in the educational institutions of*

namely, the unaided Primary, Secondary and Pre-University educational institutions shall not be less than the minimum of the basic of the scale of pay of the corresponding post held by an employee in a Government educational institution and shall be disbursed through Account payee cheques drawn in favour of such employee.

Rule 3(b) of the 2005 Rules provides that salary of employees of educational institutions namely unaided Primary, Secondary and Pre-University educational institutions shall not be less than minimum of the basic of the scale of pay of the corresponding post held by an employee in a Government educational institution incorporates the salutary principle of equal pay for equal work which is in consonance with Article 39(d) of the Constitution of India. Therefore, the same cannot be said to be violative of the right of the management of private unaided institutions to administer the

institution. Therefore, it is held that challenge to Rule 3(b) of the 2005 Rules is misconceived.

28. In view of preceding analysis, it is held as follows:

(i) Section 5, Section 7(5)(b), Section 7(1)(e) and Section 38(1)(a) of the Karnataka Education Act, 1983, Rule 18(2), 18(3) and Rule 19(3) of Karnataka Educational Institution (Classification, Regulation and Prescription of Curricula etc.) Rules, 1995 and Rule 4 of the Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999, are *ultra vires*.

(ii) Sections 7(1)(f) and 41(3) of the Karnataka Education Act, 1983 does not apply to private educational institutions.

(iii) Rule 10(3)(c)(ii) and Rule 10(3)(a) of Karnataka Educational Institution (Classification, Regulation and Prescription of Curricula etc.) Rules,

1995 and Rule 4(4) of the Karnataka Educational Institutions (Regulation of Certain Fees and Donations) Rules, 1999 insofar as it pertains to private unaided educational institutions are struck down.

(iv) Rule 3(b) of the Karnataka Educational Institutions (Certain Terms and Conditions of Service of Employees in Private Unaided Primary and Secondary and Pre-University Educational Institutions), Rules 2005 is struck down.

In the result, the writ petitions are disposed of in terms indicated above.

**Sd/-
JUDGE**

**Sd/-
JUDGE**