Education Laws Through The Ages

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INTRODUCTION AND PURPOSE OF RESEARCH

The research basically tries to trace the various judgments relating to 'Secondary Education' in India, pronounced by Supreme Court of India and the different High Courts. Cases from 1990 to 2004 have been taken into consideration. The basic purpose of this research is to try and find out how our Courts have changed the course of secondary education in India.

SUMMARY OF CASES

FEE STRUCTURE

Case Name: Modern School v. Union of India 2004 SOL Case No. 381

Facts:

Delhi Abibhavak Mahasangh, a federation of parents association moved the Delhi High Court challenging the fee hike in various schools in Delhi. The grievance of the Mahasangh was that recognized private unaided schools in Delhi are indulging in large-scale commercialisation of education which was against public interest.

Contentions

Appellant: Modern School

1. Whether the Director of Education has the authority to regulate the quantum of fees charged by un-aided schools under section 17(3) of Delhi School Education Act, 1973?
2. Whether the direction issued on 15th December, 1999 by the Director of Education under section 24(3) of the Delhi School Education Act, 1973 stating *inter alia* that no fees/funds collected from parents/students shall be transferred from the Recognised Un-aided Schools Fund to the society or trust or any other institution, is in conflict with rule 177 of Delhi School Education Rules, 1973?
3. Whether managements of recognised unaided schools are entitled to set-up a Development Fund Account under the provisions of the Delhi School Education Act, 1973?

Respondents: Union of India

1. Whether there was excess of income over expenditure under the head 'tuition fee'?
2. Whether interest free loans of huge amount have been taken from parents for giving admission to the children?
3. Whether the huge amounts collected remained unspent under the 'building fund'?
4. Whether unaided recognised schools were indulging in commercialisation of education?

Judgment

1. Before analysing the provisions of the Delhi School Education Act, 1973 (1973 Act), the Court stated that it is now well settled by catena of decisions of the Supreme Court that in the matter of determination of the fee structure the unaided educational institutions exercises a great autonomy as, they, like any other citizen carrying on an occupation are entitled to a reasonable surplus for development of education and expansion of the institution.

2. Such institutions, it was held, have to plan their investment and expenditure so as to generate profit. But what the Court pointed out was the, prohibition of commercialisation of education.

3. Hence, there has to be a balance between autonomy of such institutions and measures to be taken to prevent commercialisation of education. However, in none of the earlier cases, the Court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of 1973 Act.

In the case of **TMA Pai Foundation v. State of Karnataka**[1] the Court said that, the scheme formulated by the Court in the case of **Unni Krishnan**[2] was held to be an unreasonable restriction within the meaning of Article 19(6)[3] of the Constitution as it resulted in revenue short-falls making it difficult for the educational institutions. Consequently, all orders and directions issued by the State in furtherance of the directions in **Unni Krishnan's**[4] case were held to be unconstitutional. Court observed in the said judgment that the right to establish and administer an institution included:-

- right to admit students
- Right to set up a reasonable fee structure
- Right to constitute a governing body
- Right to appoint staff
- Right to take disciplinary action

It was also held that Articles 19(1)(g)[5] and 26[6] confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1)[7] gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, right to establish an institution under Article 19(1)(g)[8] is subject to reasonable restriction (in terms of Article19(6)[9]). In the same judgment it was observed that

- Economic forces have a role to play in the matter of fee fixation
- The institutions should be permitted to make reasonable profit after providing for investment and expenditure
- Capitation fee and profiteering was held forbidden

Subject to the above observations, the Supreme Court in the **TMA Pai Foundation's**[10] case held that fees to be charged by the unaided educational institutions cannot be regulated.
In addition to the directions given by the Director of Education dated 15th December, 1999, we give further directions as mentioned herein below:

a) Every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organization/not-for-profit organization; In this connection, we *inter alia* direct every such school to prepare their financial statement consisting of Balance-sheet, Profit & Loss Account, and Receipt & Payment Account.
b) Every school is required to file a statement of fees every year before the ensuing academic session under section 17(3) of the said Act with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees in terms of rule 177(1). Such estimate will also indicate provision for donation, gratuity, reserve fund and other items under rule 177(2) and savings thereafter, if any, in terms of the proviso to rule 177(1);
c) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with. We are shown a sample letter of allotment issued by the Delhi Development Authority issued to some of

[1] (2002) 8 SCC 481
[2] (1993) 1 SCC 645
[3] Deals with freedom of speech
[4] *Supra.* n.2
[5] To practise any profession, or to carry on any occupation, trade or business
[6] Freedom to manage religious affairs
[7] Right of minorities to establish and administer educational institutions
[8] *Supra* n.5
[9] *Supra* n.3
[10] *Supra* n.1

the schools which are recognized unaided schools. We reproduce herein clauses 16 & 17 of the sample letter of allotment:

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

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

The Court directed the Director of Education to look into letters of allotment issued by the Government and ascertain whether they have been complied-with by the schools. This exercise shall be complied with within a period of three months from the date of communication of this judgment to the Director of Education. If in a given case, the Director finds non-compliance of the above terms, the Director shall take appropriate steps in this regard.

All civil appeals stand disposed of in terms of the above judgment, with no order as to costs.

Principles laid down:

⇒ In the matter of determination of the fee structure the unaided educational institutions exercises a great autonomy as, they, like any other citizen carrying on an occupation are entitled to a reasonable surplus for development of education and expansion of the institution.

⇒ Such institutions, it was held, have to plan their investment and expenditure so as to generate profit. But what the Court pointed out was the, prohibition of commercialisation of education.

⇒ There has to be a balance between autonomy of such institutions and measures to be taken to prevent commercialisation of education.

⇒ Articles 19(1)(g)[11] and 26[12] confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1)[13] gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. However, right to establish an institution under Article 19(1)(g)[14] is subject to reasonable restriction (in terms of Article19(6)[15]). In the same judgment it was observed that

⇒ Every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organization/not-for-profit organization;

⇒ In this connection, we *inter alia* direct every such school to prepare their financial statement consisting of Balance-sheet, Profit & Loss Account, and Receipt & Payment Account.

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

⇒ It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with. We are shown a sample letter of allotment issued by the Delhi Development Authority issued to some of the schools which are recognized unaided schools.

[11] To practise any profession, or to carry on any occupation, trade or business
[12] Freedom to manage religious affairs
[13] Right of minorities to establish and administer educational institutions
[14] *Supra* n.5
[15] *Supra* n.3

Case name: Father Thomas Shingare v. State of Maharashtra
(2002) 1 SCC 487

Facts
The complaint in brief are the following: The school authorities collected from the complainant a sum of Rs. 120/- in the month of July 1993, and another sum of Rs. 180/- in the month of November 1993 in the account of "School Maintenance" and on 13th July 1993 they collected another amount of Rs. 600/- in the account of "computer Fees". The said collection is in contravention of the provisions of the Act as the fees prescribed by the Government under the Act could not exceed Rs. 15/- per month. As the complainant did not want his daughter to continue to study in the same school, presumably on account of his opposition to the amount of fees collected, he wanted the Principal to issue transfer certificate to his daughter.

Contentions:

Appellant: Father Thomas Shingare

⇒ Whether the fee collected by the School on the pretext of 'computer fees' was in contrary to the provisions of the Maharashtra Educational Institutions Prohibition of Capitation Fee Act, 1987?

Respondent: State of Maharashtra
⇒ Whether the limit imposed by the Government regarding approved fees would hamper the right under Article 30(1) of the Constitution in so far as they apply to any unaided educational institution established and administered by the minorities?

Judgment
We do not think it necessary to make any final pronouncement on the right of the legislature in fixing an upper limit regarding the fees to be collected from the students by such institutions because the State Government has not fixed any such upper limit of approved rates of fees as for the unaided schools established and administered by the minorities in the State of Maharashtra. That question can be considered only if any such upper limit is fixed by the State in exercise of the powers under the Act.

Nonetheless, the complaint instituted by respondent No. 2 cannot be sustained so long as no offence under Section 7 of the Maharashtra Educational Institutions Prohibition of Capitation Fee Act, 1987 could be established by him. We therefore quash the criminal proceedings launched by him with the said complaint. This appeal and the writ petition are disposed of in the above terms.

Principles laid down
⇒ The right to administer cannot encompass the right to mall-administer.
⇒ No minority can legitimately claim immunity to carry on such practices (collecting fee in excess of prescribed limit stated in the Statute) under the cover of Article 30(1) of the Constitution.
⇒ If the legislature feels that the nefarious practice of misusing school administration for making huge profit by collecting exorbitant sums from parents by calling such sums either as fees or donations, should be curbed, the legislature would be within its powers to enact measures for that purpose.

HIGH COURT

Case name: Delhi Abhibhavak Mahasangh v. Union of India
1998(3) SLR (Delhi) (D.B.) 171

Facts

The writ petitioner claims that it is a federation to whom various Parents' Associations all over the country are affiliated. These parents' associations, it is claimed have more than 10,000 parents as Members whose children are studying in various unaided private schools in Delhi. The 'Mahasangh' is deeply interested to see that those who run schools do not run them commercially and exploit the students and their hapless parents by adopting various devices to extract huge amounts taking undue advantage of circumstances.

Contentions

Appellent: Delhi Abhibhavak Mahasangh

⇒ Whether the school can transfer huge amounts to the Society and /or to other schools being run by the same society?
⇒ Whether there is excess of income over expenditure under the head tuition fee, transportation etc.?
⇒ Whether huge amount have been collected and remained unspent under the head 'Building Fund'?
⇒ Whether the exorbitant increase in tuition fee, annual charges, admission fee and security deposit is justified?

Respondent: Union of India

⇒ Whether the Director of Education has the power to regulate the fees of private unaided schools?
⇒ Whether the increase in tuition fee, annual charges, admission fee etc. is justified on account of increase in expenses and in particular the obligation of schools to increase the salaries of its employees?
⇒ Whether on inspection of 16 schools out of hundreds in Delhi, a general order, namely, the one which has been impugned by the schools can be issued or the authorities can make an order only against a particular school which may be found to be violating the provisions of the Act and Rules?

Judgment

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

We, accordingly, appoint a Committee comprising of Ms. Justice Santosh Duggal, a retired Judge of this court as Chairperson with power to nominate two persons - one with the knowledge of Accounts and Second from field of education in consultation with Chief Secretary of NCT of Delhi to decide matters of fee and other charges leviable by individual schools in

terms of this decision. We request the Committee to decide the claims of individual schools as expeditiously as possible after granting an opportunity to the Schools.

Director of Education and a representative of the Parent Teachers Association and such other person as the Chairperson may deem fit. The terms and conditions including fees/honorarium payable and other facilities to be provided by the State Government to the Chairperson and other members of the Committee would be discussed by the Chief Secretary with the Chairperson and finalized within 10 days.

All the petitions are disposed of in the above terms leaving the parties to bear their own costs.

Principles laid down

⇒ The main obligation on the recognised schools is to file with the Director a full statement of fees to be levied by such school during the ensuing academic session.
⇒ It is the obligation of the Administrator and or Director of Education to prevent commercialisation and exploitation in private unaided schools including schools run by minorities.
⇒ The tuition fee and other charges are required to be fixed in a validly constituted meeting giving opportunity to the representatives of Parent Teachers Association and Nominee of Director of Education of place their viewpoints.
⇒ No permission from Director of Education is necessary before or after fixing tuition fee. In case, however, such fixing is found to be irrational and arbitrary there are ample powers under the Act and Rules to issue directions to school to rectify it before resorting to harsh measures. The question of commercialisation of education and exploitation of parents by individual schools can be authoritatively determined on thorough examination of accounts and other records of each school.
⇒ The Act and the Rules prohibit transfer of funds from the school to the society or from one school to another.
⇒ The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.
⇒ The inspection of the schools, audit of the accounts and compliance of the provisions of the Act and the Rules by private recognised unaided schools could have prevented the present state of affairs.
⇒ The schools/societies can take voluntary donations not connected with the admission of the ward.
⇒ The Government should consider extending Act and Rules with or without modifications to all schools from Nursery onward.

Case Name: N.R. Choudhary v. Ministry of Human Resource Development
MANU/DE/0088/2003

Facts

A challenge has been made to the decision taken by respondent to levy a differential tuition fee from the students studying in the Kendriya Vidyalaya NTPC, Badarpur.

Contentions

Appellant: N.R. Choudhary

⇒ Whether KV, NTPC, Badarpur can charge a tuition fees when no other KV is doing the same?

Respondent: Ministry of Human Resource Development

⇒ Whether the decision taken to allow these schools to charge fee from their students, to meet the cost of running the school, said to be arbitrary or unreasonable?

Judgment

From the fact that the Kendriya Vidyalaya established by the public sector undertakings, neither bears the capital cost incurred for establishing the school nor meets the annual expenditure for running and maintaining the school, the decision taken to allow these schools to charge fee from their students, to meet the cost of running the school, cannot be said to be arbitrary or unreasonable. There is no legal obligation upon any public sector to impart free education. As part of its larger social obligation, if a public sector undertaking establishes a school, it would be fully entitled to charge fee from the students of the school. Further, a decision clubbing the students of the school into two categories i.e. wards of the NTPC employees and wards of non-NTPC employees cannot be said to be arbitrary. The classification is fair and reasonable and is based on valid criteria.

Similar challenge was made to another public sector Kendriya Vidyalaya running in the State of Kerala. The Division Bench of the High Court of Kerala in CW No. 1905/2000 by its judgment dated 31st August, 2000 upheld the levy of tuition fee and further upheld the levy of tuition fee at a differential rate. We are in respectful agreement with the said judgment.
The Court found no merits in the writ petition. The same is accordingly dismissed. However, there shall be no order as to costs.

Principles laid down

⇒ There is no legal obligation upon any public sector to impart free education.
⇒ To allow these schools to charge fee from their students, to meet the cost of running the school, cannot be said to be arbitrary or unreasonable.
⇒ As part of its larger social obligation, if a public sector undertaking establishes a school, it would be fully entitled to charge fee from the students of the school.

Establishing educational institutions

Case Name: T.M.A. Pai Foundation v. State of Karnataka
(2002) 8 SCC 481

Facts

Since there is lack of quality education and adequate number of schools and colleges, private educational institutions have been established by educationalist, philanthropists and religious and linguistic minorities. The private educational institutions, both aided and unaided, established by minorities and non-minorities, in their desire to break free of the unnecessary shackles put on their functioning as modern educational institutions to impart quality education, have filed the present writ petition and appeals.
Contentions

Appellant: TMA Pai Foundation

⇒ The correct interpretations of the various provisions of the Constitution, as well as Article 29 and 30 of the Constitution of India, the minority institutions have a right to establish and administer educational institutions of their choice.
⇒ The provisions of the Constitution should be interpreted in a manner such that the rights of the private non-minority unaided institutions were same those of the minority institutions since secularism and equality are part of the basic structure of the Constitution.

Respondent: State of Karnataka

⇒ Whether Article 29(2) makes it obligatory even on the minority institutions not to deny admission on the ground of religion, race, caste, language or any of them?

Judgment
The following eleven questions were the subject matter requiring answers before the Hon'ble Supreme Court:

Q 1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?
A 1. Linguistic and religious minorities are covered by the expression "minority under" Article 30 of the Constitution. Since reorganization of the States 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 2. 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?
(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?
A 3. (a)This question need not be answered by this Bench; it will be dealt with by a regular Bench.
(b) 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 4. Admission of students to unaided minority educational institutions, viz., schools and undergraduate 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 fringed. 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.

Q 5. (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?
(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?
(c) Whether the statutory provisions which regulate the facets of the 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 5. (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.
(b) 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 merits, 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.

(c) 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.

Q 6. (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 the religious/linguistic group from other States where they are non-minorities?
(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-à-vis such institution?
A 6. (a) This question need not be answered by this Bench; it will be dealt with by a regular Bench.
(b) 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 7. 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 [(1992)1 SCC 558] is correct? If no, what order?

A 8. 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 need of minorities.

Q 9. Whether the decision of this Court in Unni Krishnan J.P. v. State of A.P. [(1993)1 SCC 645] (except where it holds that primary education is a fundamental right) and the scheme framed thereunder requires reconsideration/modification and if yes, what?
A 9. The theme framed by this Court in Unni Krishnan case and the direction to impose the same, except where it holds that primary education is a 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 Articles 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 expression "Education" and "Educational Institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?
A 10. & 11. 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 institution is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, and 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 will be 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.

Principles laid down
From the various arguments of the learned counsels, the five main issues specified below were framed for consideration which could encompass all the eleven questions answered above.

The main five issues for consideration
Is there a Fundamental Right to set up Educational Institutions and if so, under which provision?

Under the Constitution there are three Articles which allow establishment of Educational Institutions, namely, Article 19(1)(g), 26, and 30. Article 19(1)(g) of the Constitution employs four expressions namely, profession, occupation, trade and business. Their fields overlap, but each of them does have a content of its own.

Therefore religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious educational institutions.

Does Unni Krishnan's Case require reconsideration?

The restrictions imposed by the scheme, in Unni Krishnan's case, made it difficult, if not impossible, for the educational institutions to run efficiently. Such restrictions cannot be said to be reasonable. Affiliation and recognition have to be available to every institution that fulfils the conditions for the grant of such affiliation and recognition.
Therefore the decision in Unni Krishnan's case is so far as it framed the scheme relating to the grant of admission and the fixing of the fess, was not correct, and to that extent, the said decision and the consequent directions given to the UGC, AICTE, Medical Council of India, Central and State Government, etc., are overruled.

In case of Private Institutions, can there be Government Regulations and, if so, to what extent?
Private unaided non-minority Educational Institutions

(a) Kinds of rights to establish Educational Institution
- To admit students
- To set up a reasonable fee structure
- To constitute a governing body

- To appoint staff (teaching and non-teaching)
- To take action if there is dereliction of duty on the part of any employees.

(b) Education must be liberal

(c) Right of private unaided colleges to admit students of their choice and determine the scale of fee

It is to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee to be charged from the students.

(d) Prohibition of capitation fee and empowering the Government to issue regulations for excellence in education.
However, there can be a reasonable revenue surplus for the purpose of development of education and expansion of the institution.

(e) Excellence in Professional Education – Management of Unaided private schools to have maximum autonomy.

Private Unaided Professional colleges – Providing technical or professional education is not a commercial venture. The object of establishment and institution is to provide technical or professional education to the deserving candidates, and is not necessarily a commercial venture.

Private non-minority aided professional institution – Authority can prescribe conditions. Once aid is granted to a private professional institution, the Government or the State Agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution.

Other aided institutions – Autonomy of Private Unaided Institutions would be no greater that that of aided institutions. The autonomy of a private aided institution would be less than that of unaided institution.

In order to determine the existence of a religious or linguistic minority in relation to Article 30, what is to be the unit: -- The State or the country as a whole?

Article 30 – State to decide the majority or minority status

Article 30 – Language is the basis for fixing such status. The position with regard to minority, since both have been put at Parliament in the article 30 of the Constitution.

To what extent can the right of aided private minority institutions to administer be regulated?

Article 26 is a complementary to Article 25(1). While Article 25(1) grants the freedom of conscience and the right to freely profess, practice and propagate religion; Article 26 can be said to be a complementary to it, and provides for every religious denomination, or nay section thereof, to exercise the right to mention therein. Article 27 empowers the State to incur expenses for promoting religion. Article 28(1) permits moral education. The Right under Article 30(1) may not be subject or morality or public order. On a plain reading of Article 29(2), the State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community, cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

Article 26(1)(a) and Article 30 overlap inter se. the right to establish and administer a minority educational institution would be subject to any rules and regulations. Regulation that embarrassed and reconciled the two objectives, namely, that of ensuring the standards of excellence of the institution and preserving the right of the minorities to establish and administer their educational institutions, could be considered to be reasonable and a balance has to be kept between these two objectives. It is the correct approach to the problem.

Administration of minority educational institution is subject to law. There is no reason why regulations or conditions concerning the welfare of the students and teachers generally should not be made applicable, for providing proper academic atmosphere.

Article 30(1) ensures treatment between the majority and minority institutions, but the same cannot be such as to whittle down right under Article 30 of the Constitution.

Conditions for grant of aid should be uniform both for majority or minority educational institutions.

Denying admission to non-minority students in minority Educational Institutions to a reasonable extent amounts to infraction of Article 29(2).

Aided minority Educational Institutions should observe inter se merit among applicants for academic excellence.

Government framed Rules must be assumed to be lawful.

Articles 29 and 30 unite people of India for making one strong nation.

Essence of secularism.

Case Name: Islamic Academy of Education v. State of Karnataka
(2003) 6 SCC 697

Facts

The Supreme Court in the case of Unni Krishnan v. State of Andhra Pradesh [(1993) 1 SCC 645] laid down a Scheme. In terms of the said Scheme the self-financed institutions were entitled to admit 60% of students of their choice, whereas rest of the seats were to be filed in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including the Medical Council of India, University Grants Commission and All India Council for Technical Education made and/for amended regulations so as to bring them at par with the said Scheme.

The Islamic Academy of Education filed a writ petition in the year 1993 questioning the validity thereof. The said writ petition along with connected matters were placed before a Bench of five Judges, which was prima facie of the view that Article 30 of the Constitution of India did not clothe minority educational institutions with the power to adopt its own method of selecting students.

Contentions

Appellant: Islamic Academy of Education

1. Whether unaided professional institutions, are entitled to lay down their own fee structure?
2. Whether in view of the judgment of this Court in T.M.A. Pai Foundation (supra) private and unaided professional institutions are entitled to have their own admission programme?
3. Whether the State Governments are entitled to lay down the quota of total seats to be filled up by the management?

Respondent: State of Karnataka

4. Whether the right of citizens including the minority communities whether based on any religion or language contained in Article 19(1)(g) and Article 30(1) is not absolute and is subject to reasonable restrictions.
5. Whether regulations restricting the right of minority to admission of students are necessary for maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and for prevention of mal-administration
6. Whether merit is usually determined by either the marks of the students obtained at the qualifying examination or school leaving certificate stage followed by the interview or by a common entrance test conducted by the institution, the State while framing regulation has the requisite jurisdiction to issue necessary directions in this behalf so that merit is not sacrificed
7. Whether professional institutions must apply a more rigorous test, which would be subject to greater regulation by the State or by the University.
8. Whether the State while granting essentiality certificate is to consider the local needs and further guarantee smooth functioning of such institutions failing which the State has to adjust the students of the institutions to their own institutions, it has a great stake in the matter. Choice and selection of students in professional courses are directly linked with maintaining the standards of medical education.
9. It is a common knowledge that although not termed as capitation fee a large number of unaided institutions are selling their seats, which must not be allowed to continue, and must be curbed with heavy hands.
10. Whether in pursuit of its objective of State Policy having regard to Articles 38, 41, & 46 which are in terms of Article 37 thereof, which are fundamental in governance of the country it is necessary to provide for a common examination so that the rights of the inter se minorities and inter se weaker sections can be taken care.

Judgment

The Court made a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges. The subheading "Private unaided professional colleges" includes both minority as well as non minority professional colleges. It appears that this distinction has been made (between private unaided professional colleges and other educational institutions) as the Judgment recognises that it is in national interest to have good and efficient professionals. The Judgment provides that national interest would prevail, even over minority rights. It is for this reason that in professional colleges, both minority and non-minority merit has been made the criteria for admission. However a proper reading indicates that a further distinction has been made between minority and non minority professional colleges. It is provided that in cases of non minority professional colleges "a certain percentage of seats" can be reserved for admission by the management. The rest have to be filled up on bases of counselling by State agencies. The prescription of percentage has to be done by the Government according to local needs. Keeping this in mind provisions have to be made for the poorer and backward sections of the society. It must be remembered that, so far as, medical colleges are concerned, an essentiality certificate has to be obtained before the college can be set up. It cannot be denied that whilst issuing the essentiality certificate the respective State Governments take into consideration the local needs. These aspects have been highlighted in a recent decision of this Court in State of Maharashtra v. Medical Association and

Ors. [2002 (1) SCC 589]. Whilst granting the essentiality certificate the State Government undertakes to take over the obligations of the private educational institution in the event of that institution becoming incapable of setting of the institution or imparting education therein. In non minority professional colleges admission of students, other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests conducted by government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter.

There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, mere are statutes/regulations which govern the fixation of fees and as this Court had, not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAI's case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed 5. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge cither directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already, framed, where under if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.

Principles laid down

⇒ A difference is sought to be made as regards rules and regulations applicable to the aided institutions vis-à-vis unaided professional institutions. (This shows that the regulations relating to admission of students shall be less rigid for unaided institutions as compared to aided institutions);
⇒ While conceding autonomy to the unaided professional institutions (both minority and non-minority), it is mandatory that the principle of merit cannot be foregone or discarded (This shows that role played by merit must be given due importance);
⇒ The conditions may be laid, down by the University or the other statutory bodies entitled to grant recognition to provide for merit based selection. (The same, however, in my opinion, would not mean that no condition other than those imposed at the time of grant of recognition can be imposed by way of legislation or otherwise inasmuch as the field of imparting education in professional institutions is governed by statutes. To the said extent, it has to be read down) ;
⇒ The management of a private unaided professional colleges for the purpose of admitting students will have options:
    - To hold a common entrance test by itself; or
    - To follow the common entrance test held by the State or the University. The students belonging to the management quota may be admitted having regard to the common entrance test either held by the management or by the State/University although the test may be common. So far as students belonging to poorer or backward section of society are concerned their seats will have to be filled up on the basis of counseling by the State agency.
⇒ The percentage of management quota and the rest is required to be prescribed having regard to the local needs, (However, the percentage for minority unaided and non-minority unaided institutions may be different).

Case name: Unni Krishnan, J.P. v. State of Andhra Pradesh
(1993) 1 SCC 645

Contentions

Appellent: Unni Krishnan, J.P.
⇒ Whether a citizen has a Fundamental Right to education for a medical, engineering or other professional degree?
⇒ Whether the right to primary education, as mentioned in Article 45 of the Constitution of India, is a Fundamental Right under Article 21?

Respondent: State of Andhra Pradesh

⇒ Whether the right under Article 45 to be included within the ambit of Article 21?

Judgment
The Court basically answered the following three questions in the judgment –

Q. 1 Whether the Constitution of India guarantees a fundamental right to education to its citizens?
A. 1 Right to education is not stated expressly as a fundamental right in Part III. This Court has, however, not followed the rule that unless a right is expressly stated as a fundamental right, it cannot be treated as one. Freedom of press is not expressly mentioned in Part III, yet it has been read into and inferred from the freedom of speech and expression - (Express Newspapers v. Union of India, 1959 SCR 12). More particularly, from Article 21 has sprung up a

whole lot of human rights jurisprudence viz., right to legal aid and speedy trial (Hussain Ara Khatoon, 1979(3) SCR 532 to A.R. Antulay, 1992 (1) SCR 225, the right to means of livelihood (Olga Tellis, 1985 Suppl. (2)SCR 51), right to dignity and privacy (Kharak Singh, 1964(1) SCR 332), Right to health (Vincent v. Union of India, 1987(2) SCR 468), right to pollution-free environment (M.C. Metha v. Union of India, 1988(1) SCR 279) and so on.

Q. 2 Whether there is a fundamental right to establish an educational institution under Article 19(1)(g) ?
Q. 3 Does recognition or affiliation make the educational institution an instrumentality?
A. 2 & 3. (a) Conferring unconditional and unqualified right to education at all levels to every citizen involving a constitutional obligation on the State to establish educational institutions either directly or through State agencies is not warranted by the Constitution besides being unrealistic and impractical.
(b) When the Government grants recognition to private educational institution it does not create an agency to fulfil its obligations under the Constitution and there is no scope to import the concept of agency in such a situation.
(c) The principles laid down in Mohini Jain's case do require reconsideration.
(d) It would be unrealistic and unwise to discourage private initiative in providing educational facilities particularly for higher education. The private sector should be involved and indeed encouraged to augment the much needed resources in the field of education, thereby making as much progress as possible in achieving the Constitutional goals in this respect.
(e) At the same time, regulatory controls have to be continued and strengthened in order to prevent private educational institutions from commercialising education.

(f) Regulatory measures should be maintained and strengthened so as to ensure that private educational institutions maintain minimum standards and facilities.
(g) Admissions within all groups and categories should be based on merit. There may be reservation of seats in favour of the weaker sections of the society and other groups which deserve special treatment. The norms for admission should be pre-determined and transparent.

Article 19(1) (g) of the Constitution declares that all citizens of this country shall have the right "to practice any profession, or to carry on any occupation, trade or business". Clause (6) of Article 19, however, says :

"Nothing in sub-clause (g) of the said Clause shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said clause and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to or prevents the State from making any law relating to:

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) carrying on by the State, or by a corporation owned or controlled by the State or any trade, business, industry or service whether to the exclusion, complete or partial of citizens or otherwise."

While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g) - perhaps, it is - we are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive. Education has never

been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since times immemorial. It has been treated as a religious duty. It has been treated as a charitable activity. But never as trade or business. We agree with Gajendragadkar, J. that "education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words..." (See University of Delhi 1961 (1) SCR 703). Parliament too has manifested its intention repeatedly (by enacting the U.G.C. Act, I.M.C. Act and A.I.C.T.E. Act) that commercialisation of education is not permissible and that no person shall be allowed to steal a march over a more meritorious candidate because of his economic power. The very same intention is expressed by the Legislatures of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu in the Preamble to their respective enactments prohibiting charging of capitation fee.

For the purposes of these cases, it is enough to state that there is no Fundamental Right to education for a professional degree that flows from Article 21.

Principles laid down

⇒ The right to education flows from Article 21, but it is not an absolute right.
⇒ The right to free education is available only to children until they complete the age of 14 years
⇒ Right to education is subject to the limits of economic capacity and development of the State
⇒ Running private educational establishment is not an activity which can be called a profession within the meaning of Article 19(1)(g) of the Constitution
⇒ No citizen or institution has an absolute right much less a fundamental right, to affiliation or recognition or to claim grant-in-aid from State. It is subject to the laws made by the State in this behalf
⇒ State is competent to impose conditions for recognition and affiliation of the privately established educational institutions

Case name: St. Stephen's College v. The University of Delhi
AIR 1992 SC 1630

Facts

The selection procedure adopted by St. Stephen's College is arbitrary or not.

Contentions

Appellant: St. Stephen's College

⇒ Whether St. Stephen's College after being affiliated to the Delhi University had lost its minority character?
⇒ Whether St. Stephen's College as minority institutions is entitled to accord preference in favour of or reserve seats for candidates belonging to their own community and whether such preference or reservation would be invalid under Article 29(2) of the Constitution?

Respondent: The University of Delhi

⇒ Whether the admission procedure of St. Stephen's College is arbitrary?
⇒ Whether St. Stephen's College Admission Programme is a device to manipulate the merits and not a scientific test to assess performance of candidates?

Judgment

The admission solely determined by the marks obtained by students, cannot be the best available objective guide to future academic performance. The College Admission Programme of the St. Stephen's College on the other hand, based on the test of promise and accomplishment of candidates seems to the better than the blind method of selection based on the marks secured in the qualifying examinations. Therefore, the College Admission Programme is arbitrary. There is nothing on the record to suggest that the interview of students conducted by the College suffer from arbitrariness or there is any vice or lack scientific basis in the interview or in the selection. The interview confers no wide discretion to the Selection Committee to pick and choose any candidate of their choice. They have to select the best among those who are called for interview and the discretion is narrowly limited to select one out of every 4 or 5.

The St. Stephen's College is therefore not bound by the Circulars dated 5-6-80 and 9-6-80 of the Delhi University. The College need not follow the Programme for Admission laid down by the University nor need admit students solely on the basis of merit determined by the percentage of marks secured by the students in the qualifying examinations.

The right to administer does not include the right to mal-administer. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standard of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is privilege which is implied in the right conferred by Art.30(1).

The College seems to have compelling reasons to follow its own admission programme. The College receives applications from students all over the country. The applications ranging from 12000 to 20000 are received every year as against a limited number of 400 seats available for admission. The applicants come from different institutions with diverse standards. The merit judging by percentage of marks secured by applicants in different qualifying examinations with different standards may not lead to proper and fair selection. It may not also have any relevance to maintain the standards of excellence of education. As observed by this Court in D. N. Chanchala v. State of Mysore, 1971 Supp SCR 608.
St. Stephen's College is minority institution. Admissions are based on
(i) Marks secured in qualifying examination, plus
(ii) Marks obtained in the interview

This Procedure not arbitrary and the College need not comply with Delhi University Circulars

<u>Principles laid down</u>
⇒ Minority means distinct group of citizens of India identifiable with religion or language
⇒ There must exist some positive index to enable the educational institution to be identified with religious or linguistic minorities
⇒ Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and it is essential, to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional
⇒ The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee.

⇒ The right to administer is the right to conduct and manage the affairs of the institution
⇒ The University can lay down regulatory measures in respect of colleges which are affiliated or constituent of such University. If such measures are reasonable and conducive to making the educational institution an effective vehicle for education, the same cannot be challenged.

Readmission into 10+2

Case name: The Principal, Cambridge School and another v. Ms. Payal Gupta
AIR 1996 SC 118

Facts

According to the Appellants, the CBSE introduced 10+2 scheme of education in the year 1977 providing general education up to the level of 10+2 class, visualising two distinct stages one up to class X and the other up to class XII so that the students with certain competence should alone pursue education beyond class X.

The Appellant, Cambridge School, New Delhi, with a view to achieve the aforesaid objective and to up grade the academic standard of each student through special programme prescribed a cut off level of 50 percent marks for admission to class XI of the said school.

Consequently, the principal-Appellant addressed a circular dated 4-10-1993 to the parents of the students stating that the admission to class XI would not be automatic but a cut off level was prescribed by the Cambridge School to the effect that a student of class X must obtain 50 percent marks in aggregate in the Board examination for being granted readmission in class XI. In other words it would be a fresh admission even for those students who passed class X from the Cambridge School itself obtaining minimum marks of 50 per cent in aggregate as qualifying percentage for being considered for readmission in class XI. A similar circular was again issued in February, 1994.

As a consequence of the said circulars, after declaration of results of class X by the Central Board of Secondary Education and students who secured marks less than 50 per cent in aggregate were asked to obtain their school leaving certificates.

It appears that the parents of such students who had secured marks less than 50 per cent in aggregate approached the Deputy Education Officer who by his letter dated 13-6-1994 directed that all students of class X should be admitted into class XI without any pass percentage.
But the school authorities took the stand that no such direction could be issued by the Directorate of Education since the power to regulate admission under Delhi School Education Act, 1973 and Rule 145 of the Delhi School Education Rules vests in the head of the school.

Contentions

Appellant: Cambridge School

⇒ Whether the head of an educational institution is authorised to prescribe a cut off level of marks for continuance of further studies in higher class in the same school by a student who passes a public examination?
⇒ Whether a student who passed X class which is a public exam of Central Board of Secondary Education in unaided recognised school, can be denied admission to XIth class of same school by head of the institution by prescribing cut off level of marks?
⇒ Whether the question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school who passes the public examination?

Respondent: Payal Gupta

⇒ Whether the Director of Education has the power to regulate the admission in Delhi Schools under the Delhi School Education Act?

⇒ Whether the school is justified in denying admission to its own students?

Judgment

The fact that class X examination is a public examination does not make any difference. The question of an admission test or the result in a particular class or school for purposes of admission would arise only if a student of one institution goes for admission in some other institution. The question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school who passes the public examination. Learned counsel for the Appellant was unable to produce or show any provision in the Act or the Rules which specifically contemplates that readmission or fresh admission is necessary to every next higher class after a student passes out a particular class nor he could show any provision of law authorising the head of an educational institution, to prescribe a cut off level of marks for continuance of further studies in higher class in the same school by a student who passes a public examination.

The decision rendered by the Division Bench of the High Court in the case of Km. Renuka Khurana, (1991(44)Delhi LT 634) and relied on by the learned counsel for the Appellant, is not of any assistance to the Appellant as the question of power of the Director to issue instructions to unaided schools alone was the point in controversy and the question of power of Head of the school to regulate admission on either of the two basis i.e. on the basis of the test or on the basis or result in previous class was not directly in issue. It was not a case of admission or readmission in the same school but in a different institution altogether.

In view of the above discussion the appeal fails and is hereby dismissed. No order as to costs.

Principles laid down

⇒ The head of an educational institution is not authorised to prescribe a cut off level of marks for continuance of further studies in higher class in the same school by a student who passes a public examination.

⇒ Where a student passed X class by writing a public exam of CBSE in an unaided recognised school, s/he cannot be denied admission to XIth class of the same school by the Head of the institution by prescribing cut off level of marks.

⇒ A combined reading of Sections 16 (3), 28 (2) (q) and Rules 135, 137 and 138 will go to show that once a student is admitted to a school the same admission continues class after class until he passes the last examination for which the school gives training and no fresh admission or readmission is contemplated from one class to the other.

⇒ Therefore, in a Higher Secondary School, the examination of X class cannot be regarded as a terminal examination for those who want to continue their study in eleventh and twelfth classes in the same school. No separate criterion has been laid down in the rules for the students passing class X and wishing to continue their studies in eleventh and twelfth classes.

⇒ The question of an admission test or the result in a particular class or school for purposes of admission would arise only if a student of one institution goes for admission in some other institution. The question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school who passes the public examination.

⇒ The Appellant further took the stand that when a candidate is admitted to class XI it is a fresh admission and in fact a case of readmission and not merely a case of promotion which is apparent from the scheme of 10+2 examination.
⇒ The High Court, however, did not agree with the stand taken by the Appellant and took the view that an un-aided recognised school cannot of its own fix a criterion of not admitting its own students to class XI unless they secure certain minimum percentage of marks in class X examination which is a public examination and if a school lays down any such criterion it would be arbitrary, unreasonable and irrational.

Case name: Ekta Aggarwal v. St.Xavier School
2004 Indlaw DEL 78

Facts
The writ petition raises an important issue about the right of the student who has passed the class 10th Board exams of the Central Board of Secondary Education to change his subjects of study on the basis of the performance in the said Board exams.

Contentions
Appellant: Ekta Aggarwal
⇒ Whether the petitioner should have been given the option to change her subject at the initial stage or at least after her performance in the Board examination for the 10th class..
⇒ In case a candidate performs well in the 10th Board exams and obtains good level of marks much higher than his performance throughout the year, can such a student be denied the benefit of the change of subject merely on the ground that he did not have requisite marks in the internal assessment?

Respondents: St.Xavier School
⇒ Whether the Appellant can be admitted into the medical stream even after the CBSE guideline for the ideal number of students were exceeded?
⇒ Whether candidates are bound to be accommodated irrespective of the number of students who may be accommodated in a particular class?

Judgment
Flexibility in an education system is its hallmark. At a young age the students are still experimenting and may not be certain of their course of study. It is to care of such eventualities that even the CBSE gives breathing time till 31st October. The schools cannot take a rigid attitude in this to prevent an eligible student with the right aptitude to pursue his/her curriculum of study.

In the present case unfortunately the petitioner has already completed the course of study in 11th class and thus learned counsel for the petitioner states that the petitioner would not be in a position now to change to the medical stream.

The writ petition is disposed of in terms of the aforesaid leaving the parties to bear their own costs.

Principles laid down
⇒ In case a candidate performs well in the 10th Board exams and obtains good level of marks much higher than his performance throughout the year, such a student should not be denied the benefit of the change of subject merely on the ground that he did not have requisite marks in the internal assessment.

Minimum Wages for teachers

Case name: Haryana Unrecognised Schools v. State of Haryana
1996 SOL Case No. 106

Facts

The State Government in exercise of power conferred under sub-section (2) of Section 5 of the Act fixed the minimum rate of wages in respect of the different categories of employees serving in such (private coaching classes, schools including Nursery Schools and technical institutions) schools.

Contentions

Appellant: Haryana Unrecognised Schools

⇒ Whether the teachers of educational institutions can come within the purview of the Minimum Wages Act since they are not workmen within the meaning of Industrial Disputes Act nor would they be employees under Section 2(i) of the Minimum Ages Act?

Respondent: State of Haryana

⇒ Whether the State Government in exercise of power conferred under sub-section (2) of Section 5 of the Act fixed the minimum rate of wages in respect of the different categories of employees serving in such (private coaching classes, schools including Nursery Schools and technical institutions) schools?

Judgment

This Court while examining the question whether the teacher employed in a school is workmen under Industrial Disputes Act had observed in Miss A. Sundarambal v. Government of Goa, Daman & Diu and others [1988 (4) SCC 42]

"We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as `workmen' within the meaning of Section 2(s) of the Act. Imparting of education (which is the main function of teachers) cannot be construed as skilled or unskilled manual work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children; he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching." Applying the aforesaid dictum to the definition of employee under Section 2(i) of the Act it may be held that a teacher would not come within the said definition.

In the aforesaid premises we are of the considered opinion that the teachers of an educational institution cannot be brought within the purview of the Act and the State Government in exercise of powers under the Act is not entitled to fix the minimum wage of such teachers.

The impugned notifications so far as the teachers of the educational institution concerned are accordingly quashed.

This appeal is allowed. Writ petition filed succeeds to the extent mentioned above. There will be no order as to costs.

Principles laid down

⇒ Imparting of education (which is the main function of teachers) cannot be construed as skilled or unskilled manual work or clerical work.

Compartment Examination

Case name: Central Board of Secondary Education v. Nisha
1998(6) SLR (P&H)

Facts

The candidate had appeared in 10 + 2 examination in April. 1997, held by the C.B.S.E. They had got compartment in the paper of Introductory Computer Science and as per the Bye-law 42 of the Examination Bye-laws, she was permitted to reappear in the said paper in the examination held in August/September, 1997, but she failed to clear the compartment paper. She was given the second chance as per Bye-law 42 to reappear in the said paper in March-April, 1998. During the pendency of the writ petition, the result of the compartment paper held in March-April, 1998, was declared and the respondent failed again.

Contentions

Appellant: CBSE

⇒ Whether Nisha now can turn around after taking the examination that the examination held in April, 1998, under the new syllabi was a chance which was illusory?

Respondent: Nisha

⇒ Whether bye-law 42(1) provides for two chances to a candidate who might have been placed under compartment to clear the compartment paper in which one has got compartment?

⇒ Whether clause 42(1)(iii) makes the second chance nugatory and illusory inasmuch as in the second chance, if the syllabi is changed, which is applicable to the candidates of full subjects appearing at the examination?

Judgment

The Court was of the view that there is substance in the argument of the learned counsel for the appellant. Learned single Judge upheld the vires of Bye-law 42(iii), which, accordingly to us, is unassailable. That being so, all the students who are placed in compartment are bound by the regulations and, therefore, regulation cannot be laid down to mean that the second chance for clearing the compartment has to be with the same syllabus as was original when the first examination is taken by a candidate. All the candidates are supposed to know what the regulations are and as a matter of abundant caution, they are also apprised when they fill in the form for the examination for clearing the compartment second time that the new syllabus would be applicable to them. The chart would show that many students appeared under the new syllabus and a sizeable number also passed the said examination. Either the examination held by the C.B.S.E. is legal and valid or invalid. If the examination is invalid, it would be invalid for all the candidates. All the candidates who have passed the examination would naturally be affected if it is held that the examination was invalid. Even two writ petitioners passed the said examination. Sufficient time is given to the students when they fill in the form second time that they may prepare according to the new syllabus, if any. The Courts cannot rewrite the provision of law. Otherwise also, Ms. Nisha having taken chance to appear in the examination in April, 1988, under the new syllabus cannot turn around and say that such a chance was ineffective or nugatory. Even two of her co-petitioners passed the examination and did not pursue the writ petition.

For the foregoing reasons, we allow this Letters Patent Appeal and set aside the judgment of the learned single Judge and dismiss the writ petition of Ms. Nisha.
There will be no order as to costs.

Principles laid down

⇒ Nobody could claim two chances for clearing a board compartment examination as a matter of right.

⇒ All the candidates are supposed to know what the regulations are and as a matter of abundant caution, they are also instructed when they fill in the form for the examination for clearing the compartment second time that the new syllabus would be applicable to them.

Income Tax exemption

Case name: P.C. Raja Ratnam Institution v. Municipal Corporation of Delhi
1990 Supp SCC 97

Facts

The case of the petitioner is that it is a non-profit making registered society and its object is to organize and run schools in Delhi and elsewhere with a view to promote education and welfare. Accordingly it is running a school with the name of General Raj' s School in Delhi in a building constructed for that purpose. A demand was made by the appropriate authority of the Municipal Corporation for payment of general tax under the Act and the exemption claimed by the petitioner was rejected.

Contentions

Appellant: P.C. Raja Ratnam Institution

⇒ Whether the school run by the Society falls within the ambit of Clause (4) of Section 115 of Delhi Municipal Corporation Act, 1957?

⇒ Whether the petitioner's purpose is charitable can be accepted?

Respondents: Municipal Corporation of Delhi

⇒ Whether the view of the language of S. 115(4)(a), quoted below, is correct to suggest that to qualify the Appellant for exemption from the tax liability :--

"(a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose :

Provided that such society or body is supported wholly or in part by voluntary contributions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.

Explanation.-- "Charitable purpose" includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching;"

⇒ Whether it is necessary for a society to offer medical relief to be able to qualify for exemption under the MCD Act, 1957?

What the High Court said

The only question that arises for consideration is whether the School run by the Society falls within the ambit of clause (4) of S. 115 of the Delhi Municipal Corporation Act. Reading this section it is obvious that exemption for levy for general tax could be granted if the Society which is running the school was a society for charitable purposes. Charitable purpose is defined in the explanation to clause (4) of S. 115. No doubt the School is imparting education but in order to qualify for exemption, it had to give education and medical relief. Admittedly fees are charged from students. Mere imparting of education cannot be called giving relief. We, therefore, find nothing wrong with the stand taken by the Municipal Corporation of Delhi. Dismissed.

Judgment

The argument is well founded. The test of 'charitable purpose' is satisfied by the proof of any of the three conditions, namely, relief of the poor, education, or medical relief. The fact that some fee is charged from the students is also not decisive in as much as the proviso indicates that the expenditure incurred in running the society may be supported either wholly or in part by voluntary contributions. Besides, the explanation is in terms inclusive and not exhaustive. The impugned judgment must, therefore, be held to be erroneous.
The case is remitted to the High Court for fresh decision in the light of the observations made above. There will be no order as to costs of this Court. In view of the urgent nature of the case, the High Court is requested to dispose of the writ petition as expeditiously as may be possible.

Principles laid down

⇒ Mere imparting of education cannot be called giving relief
⇒ The school is imparting education but in order to qualify for the exemption it has to give education and medical relief

Taking over management

Case name: All Bihar Christian Schools Association v. State of Bihar
MANU/SC/0090/1987

Facts

These petition challenges the constitutional validity of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 on the ground that the provisions to of the Act are violative of Article 30 of the Constitution.

Contentions

Appellant: All Bihar Christian Schools Association

⇒ Whether Sections 3 & 18 of the Bihar Non-government Secondary Schools (Taking over of Management and Control) Act, 1982 is violative of rights of minority institutions granted under Article 30(1) of the Constitution?

Respondent: State of Bihar

⇒ Whether the State Government had intention to interfere with the fundamental rights of the minority community to establish schools of its choice?

Judgment

The first point to note is that the article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. The next thing to note is that the Article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice.

The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. The constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.

The Bench held that the management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas as to how the interests of the community in general and the institution in particular will be best served.

We accordingly hold that the impugned Act does not violate petitioners' rights guaranteed under Article 30(1) of the Constitution. In the result petitions fail and are accordingly dismissed but there will be no order to costs.

Principles laid down

The right to administer cannot obviously include the right to maladminister.

⇒ In the same way if an employee against the management of a minority educational institution raises a dispute, such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. All the civilised countries providing for such machinery now pass laws accordingly.

⇒ All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void.

Land Allotment

Case name: Union of India v. Jain Sabha, New Delhi
MANU/SC/0993/1997

Facts

Case was filed because the land allotted to the school was done on prevailing market rates.

Contentions

Appellant: Union of India

⇒ Whether the initial payment made by the Jain Sabha to the Government be termed as a acceptance for buying the allotted land at market rates?

Respondent: Jain Sabha, New Delhi

⇒ Whether the Jain Sabha eligible for subsidised land rates because it is running an educational institution?

Judgment

We think it appropriate to observe that it is high time the Government reviews the entire policy relating to allotment of land to schools and other charitable institutions. Where the public property is being given to such institutions practically free, stringent conditions have to be attached with respect to the user of the land and the manner in which schools or other institutions established thereon shall function. The conditions imposed should be consistent with public interest and should always stipulate that in case of violation of any of those conditions, the Government shall resume the land. Not only such conditions should be stipulated but constant monitoring should be done to ensure that those conditions are being observed in practice. While we cannot say anything about the particular school run by the respondent, it is common knowledge that some of the schools are being run on totally commercial lines. Huge amounts are being charged by way of donations and fees. The question is whether there is any justification for allotting land at throw-away prices to such institutions. The allotment of land

belonging to the people at practically no price is meant for serving the public interest, i.e., spread of education or other charitable purposes; it is not meant to enable the allottees to make money or profiteer with the aid of public property. We are sure that the Government would take necessary measures in this behalf in the light of the observations contained herein.

In our opinion, the proper course in all the circumstances of the case is to leave it open to the respondents to approach the appellants with the above request. It is open to the respondents to place all the relevant facts before the appellants and ask for a reconsideration of the matter. It is for the Union of India and the Land and Development Officer to consider whether their orders contained in the allotment letter dated 18-7-1990 call for any revision. The appeal is disposed of with the above direction. The judgment of the High Court is set aside. No costs.

REPORT ON VARIOUS HEADINGS

FEE STRUCTURE

In this report I will be concentrating on the fees charged by the private unaided schools and how there charging fees from students have been affected by the judgments of the Supreme Court and High Court:

As far back as 1957, the Supreme Court in the case of State of Bombay v. R.M.D. Chamarbaugwala[16](1957) has held that education is *per se* an activity that is charitable in nature. Imparting of education is a State function. The State, however, having regard to its financial constraints is not always in a position to perform its duties. The function of imparting education has been to a large extent taken over by the citizens themselves. In the case of Unni Krishnan, J.P. v. State of Andra Pradesh[17](1993), referring to the above ground realities, Supreme Court formulated a self-financing mechanism/scheme under which institutions were entitled to admit 505 students of their choice as they were self-financed institutions, whereas rest of the scats were to be filled in by the State. For admission of students, a common entrance test was to be held. Provisions for free scale and payment seats were made therein. The State and various statutory authorities including Medical Council of India, University Grants Commission etc. were directed to make end or amend regulations so as to bring them on par with the said Scheme.

But the scheme formulated by the Court in the case of Unni Krishnan was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue shortfalls making it difficult for the educational institutions to break-even. Consequently, all orders and directions issued by the State in furtherance of the directions in Unni Krishnan's case were held to be unconstitutional [TMA Pai Foundation v. State of Karnataka[18](2002)].

Court further observed in TMA Pai Foundation v. State of Karnataka that the right to establish and administer an institution included:

- The right to admit students
- Right to set up a reasonable fee structure

It was also held that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(I) gives the right to religious and linguistic minorities to establish and administer educational

[16] AIR 1957 SC 699
[17] (1993) 1 SCC 645
[18] (2002) 8 SCC 481

institution of their choice. However, right to establish an institution under Article 19(1)(g) is subject to reasonable restriction (in terms of Article19(6)). In the same judgment it was observed that:

- Economic forces have a role to play in the matter of fee fixation
- The institutions should be permitted to make reasonable profit after providing for investment and expenditure
- Capitation fee and profiteering was held forbidden

Subject to the above observations, the Supreme Court in the TMA Pai Foundation's case held that fees to be charged by the unaided educational institutions couldn't be regulated.

The Union of India, State Governments and educational institutions understood the TMA Pai Foundation's judgment in different perspectives. It led to litigations in several courts. Under these circumstances, a bench of five Judges was constituted in the case of Islamic Academy of Education v. State of Karnataka[19] (2003) so that doubts, if any, could be clarified.

One of the issues which arose for determination was concerning determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that:

- Such institutions had been given complete autonomy
    - Not only as regards to admission of students,
    - But also as regards determination of their own fee structure. It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government

On behalf of Union of India, State Governments and some of the students, it was submitted that:

- The right to set-up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests.
- It was contended that imparting education was a State function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently the States were permitting private educational institutions to perform State functions.
- It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in TMA Pai Foundation's case.

In view of rival submissions, four questions were formulated. However, we are only concerned with first question, namely,

Q. Whether the educational institutions are entitled to fix their own fee structure?

It was held:

- There could be no rigid fee structure. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees.
- They must be able to generate surplus, which must be used for betterment and growth of that educational institution. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution.

[19] (2003) 6 SCC 697

- The profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise.

The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute.

The High Courts have in my opinion have kept pace with the changing times. This is seen by the judgment given by the Calcutta High Court in the case of Principal, Juliaena Day School v. Shri Aruna Kumar Mazymdar[20] had observed that if the students intend to have better facilities and amenities they have to bear higher financial burden. But, in the management of school they can neither mismanage the same nor run an educational institution by way of a commercial pursuit. Similarly, the Delhi High Court in the case of Delhi Abibhavak Mahasangh v. Union of India and others[21] observed, that there has to be an element of public benefit or philanthropy in the running of the schools. The schools are to be run for public good and not for private gain. The object has to be service to the Society and not to earn profit. The public benefit and not private or benefit to a favoured section of the Society has to be the aim. Keeping these aims and objects in view the schools are required to also follow and comply the provisions of the Delhi School Education Act and the Rules framed thereunder as also the affiliation Bye laws framed by Central Board of Secondary Education. The schools are also required to comply the conditions upon which the land may be allotted to it by a public authority on concessional rates for setting up of a school building and its playground etc. Also, the recognised schools have to file with the Director of Education a full statement of fees to be levied by such school during the ensuing academic session. It also provides that 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 in the said statement.

The Supreme Court of India in the recent judgment of Modern School v. Union of India (2004) that, every school is required to file a statement of fees every year before the ensuing academic session under section 17(3) of the Delhi School Education Act and Rules, 1973 with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees in terms of rule 177(1). Such estimate will also indicate provision for donation, gratuity, reserve fund and other items under rule 177(2) and savings thereafter, if any, in terms of the proviso to rule 177(1).

Also, it shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with. The Director of Education was asked by the Court to look into letters of allotment issued by the Government and ascertain whether they have been complied-with by the schools. This exercise shall be complied with within a period of three months from the date of communication of this judgment to the Director of Education. If in a given case, the Director finds non-compliance of the above terms, the Director shall take appropriate steps in this regard.
Lastly, every recognized unaided school covered by the Act shall maintain the accounts on the principles of accounting applicable to non-business organization/not-for-profit organization; in

[20] 2000(2) SLR (Calcutta) (D.B.) 251
[21] 1998(3) SLR (Delhi) (D.B.) 171

this connection, the Court directed that every such school to prepare their financial statement consisting of Balance-sheet, Profit & Loss Account, and Receipt & Payment Account.

Establishing educational institutions

In this report I look at in what ways the rights minority communities have been interpreted by the Court under the Indian Constitution and various statutes.

The Supreme Court in the case of TMA Pai Foundation v. State of Karnataka (2002) had basically answered eleven question relating to the meaning of the word 'minorities' and religion under article 30 of the Constitution, then terms for admission into minority institutions, their administration etc. The Court in this regard addressed five focal issue which are as follows –

Is there a Fundamental Right to set up Educational Institutions and if so, under which provision?

Under the Constitution there are three Articles which allow establishment of Educational Institutions, namely, Article 19(1)(g), 26, and 30. Article 19(1)(g) of the Constitution employs four expressions namely, profession, occupation, trade and business. Their fields overlap, but each of them does have a content of its own.
Therefore religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious educational institutions.

Issue No. 1

Does Unni Krishnan's Case require reconsideration?

The restrictions imposed by the scheme, in Unni Krishnan's case, made it difficult, if not impossible, for the educational institutions to run efficiently. Such restrictions cannot be said to be reasonable. Affiliation and recognition have to be available to every institution that fulfils the conditions for the grant of such affiliation and recognition.
Therefore the decision in Unni Krishnan's case is so far as it framed the scheme relating to the grant of admission and the fixing of the fess, was not correct, and to that extent, the said decision and the consequent directions given to the UGC, AICTE, Medical Council of India, Central and State Government, etc., are overruled.

Issue No. 2

In case of Private Institutions, can there be Government Regulations and, if so, to what extent?

(i) Private unaided non-minority Educational Institutions

(c) Kinds of rights to establish Educational Institution
- To admit students
- To set up a reasonable fee structure
- To constitute a governing body
- To appoint staff (teaching and non-teaching)
- To take action if there is dereliction of duty on the part of any employees.

(d) Education must be liberal

(e) Right of private unaided colleges to admit students of their choice and determine the scale of fee.

It is to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee to be charged from the students.

(f) Prohibition of capitation fee and empowering the Government to issue regulations for excellence in education.
However, there can be a reasonable revenue surplus for the purpose of development of education and expansion of the institution.
(g) Excellence in Professional Education – Management of Unaided private schools to have maximum autonomy.
(ii) Private Unaided Professional colleges – Providing technical or professional education is not a commercial venture. The object of establishment and institution is to provide technical or professional education to the deserving candidates, and is not necessarily a commercial venture.
(iii) Private non-minority aided professional institution – Authority can prescribe conditions. Once aid is granted to a private professional institution, the Government or the State Agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution.
(iv) Other aided institutions – Autonomy of Private Unaided Institutions would be no greater that that of aided institutions. The autonomy of a private aided institution would be less than that of unaided institution.

Issue No. 3
In order to determine the existence of a religious or linguistic minority in relation to Article 30, what is to be the unit: -- The State or the country as a whole?

(i) Article 30 – State to decide the majority or minority status
(ii) Article 30 – Language is the basis for fixing such status. The position with regard to minority, since both have been put at Parliament in the article 30 of the Constitution.

Issue No. 4
To what extent can the right of aided private minority institutions to administer be regulated?

(i) Article 26 is a complementary to Article 25(1). While Article 25(1) grants the freedom of conscience and the right to freely profess, practice and propagate religion; Article 26 can be said to be a complementary to it, and provides for every religious denomination, or nay section thereof, to exercise the right to mention therein.
(ii) Article 27 empowers the State to incur expenses for promoting religion
(iii) Article 28(1) permits moral education
(iv) The Right under Article 30(1) may not be subject or morality or public order. On a plain reading of Article 29(2), the State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community, cannot deny admission to a citizen on the grounds only of religion, race, caste or language.
(v) Article 26(1)(a) and Article 30 overlap inter se. the right to establish and administer a minority educational institution would be subject to any rules and regulations. Regulation that embarrassed and reconciled the two objectives, namely, that of ensuring the standards of excellence of the institution and preserving the right of the minorities to establish and administer their educational institutions, could be considered to be reasonable and a balance has to be kept between these two objectives. It is the correct approach to the problem.
(vi) Administration of minority educational institution is subject to law. There is no reason why regulations or conditions concerning the welfare of the students and teachers generally should not be made applicable, for providing proper academic atmosphere.
(vii) Article 30(1) ensures treatment between the majority and minority institutions, but the same cannot be such as to whittle down right under Article 30 of the Constitution.
(viii) Conditions for grant of aid should be uniform both for majority or minority educational institutions.

(ix) Denying admission to non-minority students in minority Educational Institutions to a reasonable extent amounts to infraction of Article 29(2).
(x) Aided minority Educational Institutions should observe inter se merit among applicants for academic excellence.
(xi) Government framed Rules must be assumed to be lawful.
(xii) Articles 29 and 30 unite people of India for making one strong nation.
(xiii) Essence of secularism.

The court in the judgment added that all citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right will be 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.

This judgment of the Supreme Court was interpreted differently by the management of colleges and the government. This led to the case of Islamic Academy of Education v. State of Karnataka(2003) in which the constitutional validity of the Unni Krishnan case was challenged. In the said case the principle laid down was that self financing educational institutions were entitled to admit 60 per cent of the students of their choice where as the rest will be filled up by the State Government.

The Court made a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges. Therefore the subheading "Private unaided professional colleges" includes both minority as well as non minority professional colleges. Hence a difference is sought to be made as regards rules and regulations applicable to the aided institutions vis-à-vis unaided professional institutions. (This shows that the regulations relating to admission of students shall be less rigid for unaided institutions as compared to aided institutions).

Therefore, the management of a private unaided professional colleges for the purpose of admitting students will have options:
⇒ To hold a common entrance test by itself; or
⇒ To follow the common entrance test held by the State or the University. The students belonging to the management quota may be admitted having regard to the common entrance test either held by the management or by the State/University although the test may be common. So far as students belonging to poorer or backward section of society are concerned their seats will have to be filled up on the basis of counselling by the State agency.

NOTE: Due to an increasing number of case by and against minority run educational institutions, therefore to solve this problem the Ministry of Law and Justice passed and ordinance on 11th Nov 2004 relating to setting up of a National Commission for Minority educational Institution. This Commission has all the powers that ant civil court I enjoys. It will also work as an advisory body to the Central Government or any State Government.

Readmission into 10+2
There has been a lot of hue and cry about schools refusing admission to their own students into 11th standard, when the student failed to get the requisite marks in the 10th public examination. When a complaint of the same nature came to the Supreme Court in the case of The Principal, Cambridge School and another v. Ms. Payal Gupta(1996) the court laid down that the head of an educational institution is not authorised to prescribe a cut off level of marks for continuance of further studies in higher class in the same school by a student who passes a public examination. That is, when a student passed X class by writing a public exam of CBSE in an

unaided recognised school, s/he cannot be denied admission to XIth class of the same school by the Head of the institution by prescribing cut off level of marks.

The question of an admission test or the result in a particular class or school for purposes of admission would arise only if a student of one institution goes for admission in some other institution. The question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school who passes the public examination.

In a similar case of Ekta Aggarwal v. St.Xavier School(2004) where the candidate wasn't allowed a change in subject merely because she did not get the requisite marks was held to be invalid by the court. This is what the Court had to say in this regard, "In case a candidate performs well in the 10th Board exams and obtains good level of marks much higher than his performance throughout the year, such a student should not be denied the benefit of the change of subject merely on the ground that he did not have requisite marks in the internal assessment". Though I by the time Court gave its judgment the appellant had already done a year of school, so a no immediate relief was available. But the court said such practice in the future by schools should be discouraged.

Minimum Wages for teachers

This report basically deals with whether teachers can be brought under the purview of the Minimum Wages Act. The Court while examining the question whether the teacher employed in a school is workmen under Industrial Disputes Act had observed in Miss A. Sundarambal v. Government of Goa, Daman & Diu and others [1988 (4) SCC 42]

"We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as `workmen' within the meaning of Section 2(s) of the Act. Imparting of education (which is the main function of teachers) cannot be construed as skilled or unskilled manual work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children; he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching."

In the aforesaid premises the Court was of the opinion that the teachers of an educational institution cannot be brought within the purview of the Act and the State Government in exercise of powers under the Act is not entitled to fix the minimum wage of such teachers.

Compartment Examination

The case below [Central Board of Secondary Education v. Nisha(1998)] deals with the chances a student gets when giving a repeat exam. The CBSE gives a candidate to chances for clearing a repeat examination. But in this case the second chance given to the appellant was based on the new syllabus, she could not clear the exam in the second attempt and appealed to the court to let her take sit for the exam again on the old syllabus.

But the court said that nobody could claim two chances for clearing a board compartment examination as a matter of right and that all the candidates are supposed to know what the regulations are and as a matter of abundant caution, they are also instructed when they fill in the form for the examination for clearing the compartment second time that the new syllabus would be applicable to them.

The court mentioned if Miss Nisha had come to them earlier, that is before giving the examination then the court could still have given her some relief. But once she sat for the exam, she had given up all her rights in favour of the respondent.

Income Tax exemption

The case in question under this topic P.C. Raja Ratnam Institution v. Municipal Corporation of Delhi(1990) the appellant were a non-profit making registered society and its object is to organize and run schools in Delhi and elsewhere with a view to promote education and welfare and it made a demand to MCD for payment of general tax under the Act and the exemption claimed by the petitioner was rejected. This order was challenged by the appellant in High Court. The High Court said that no doubt the School is imparting education but in order to qualify for exemption, it had to give education and medical relief. Admittedly fees are charged from students. Mere imparting of education cannot be called giving relief. We, therefore, find nothing wrong with the stand taken by the Municipal Corporation of Delhi.

This judgment was challenged in the Supreme Court, and they also had more or less the same view. That is, mere imparting of education cannot be called giving relief and the school is imparting education but in order to qualify for the exemption it has to give education and medical relief

Taking over management

A very peculiar case in which the Constitutional validity of a State statute, which is Bihar Non-government Secondary Schools (Taking over of Management and Control) Act, 1982. The basic purpose of this Act was to help the State Government in taking over the management of control of the Non-Government Secondary Schools for better organisation and development of secondary education of the State. In the case of All Bihar Christian Schools Association v. State of Bihar(1987) challenged the Constitutional validity of Sections 3 (provides for taking over the management or control of non-government secondary schools) and 18 (provides for the recognition of minority secondary schools) of the above mentioned Act. The Court said that does not violate petitioners' rights guaranteed under Article 30(1) of the Constitution.

The key points that the Court noted was that The right to administer cannot obviously include the right to mal-administer. In the same way if an employee against the management of a minority educational institution raises a dispute, such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. All the civilised countries providing for such machinery now pass laws accordingly.

Land Allotment

If a school is to be started in a locality, the local authority generally gives land at subsidised rates to the management of that school. But in the case of Union of India v. Jain Sabha, New Delhi (1997) the Jain Sabha was allotted land at prevailing market rates, and the Jain Sabha had also given the advance for the same.

Sabha contended that it was running a school catering to the students from the poor and middle classes, that it is a purely charitable and genuine charitable organisation and that in view of its repeated requests for allotment of land over more than last thirty years, its request for, and its need for land, should be sympathetically considered.

The Court observed that it is common knowledge that some of the schools are being run on totally commercial lines. Huge amounts are being charged by way of donations and fees. The question is whether there is any justification for allotting land at throw-away prices to such institutions. The allotment of land belonging to the people at practically no price is meant for

serving the public interest, i.e., spread of education or other charitable purposes; it is not meant to enable the allottees to make money or profiteer with the aid of public property, and asked the Sabha to approach the concerned authority with the relevant facts before the appellants and ask for a reconsideration of the matter.

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APPENDIX

YEAR	**CASE NAME**	**CITATION**	**HEAD NOTE**
1987	All Bihar Christian Schools Association v. State of Bihar	MANU/SC/0090/1987	CONSTITUTION OF INDIA - Article 30(1)--Bihar Non-government Secondary Schools (Taking over of Management and Control) Act, 1982, Preamble, Sections 3 & 18--Act is not violative of rights of minority institutions granted under Article 30(1) of the Constitution. The minority Secondary Schools, proprietary schools and autonomous secondary schools have not been taken over by Section 3(1) of the Act and it does not affect a minority secondary school at all. Section 3(2) confers power on the State government to take over the management and control of recognised minority schools, proprietary autonomous secondary schools by issuing a notification in the official gazette provided the management committee, trust, association on the corporate body which may have been maintaining such schools make unconditional offer to the State government to take over the school with all assets and properties. Section 3(2) does not confer any power on the State to compulsorily acquire or take over the management of a minority school, instead the management is free to maintain and carry on the administration of its school and the State have no power to interfere with its management. Section 3(2) does not interfere with right of minority to maintain or administer its school. Section 3(3) relates to taking over of management and control of unrecognised schools other than the minority schools. These provisions do not affect the fundamental right of minority institution. Sections 18(3) laid down terms and conditions for granting recognition to a minority school and there are regulatory in the nature and do not confer any unguided blanket or veto power on any outside agency or authority to veto the decision of the management of the school.
1990	P.C. Raja Ratnam Institution v. Municipal	1990 Supp SCC 97	DELHI MUNICIPAL CORPORATION ACT, 1957 - Section 115(4)(a)--Exemption from general Tax--To qualify for

	Corporation of Delhi		exemption from General Tax Liability under Section 115(4)(a), it is not necessary for a society imparting education to satisfy other conditions contemplated under that Section--Test of charitable purpose is satisfied by the proof of any of the three conditions, namely, relief of the poor, education or medical relief--The fact that some fee is charged from the student is also not decisive in as much as proviso to Section 115(4)(a) of the Act indicates that the expenditure incurred in running the society may be supported either wholly or impart by voluntary contribution. The question was whether the school run by the Society falls within the ambit of Clause (4) of Section 115 of 1957 Act. Reading this Section it is obvious that exemption for levy of general tax could be granted if the society which is running the school was a society for charitable purposes. No doubt, the school is imparting education but in order to qualify the exemption, it had to give education and medical relief. Admittedly, fees are charged from the students--mere imparting of education cannot be called giving relief. Accordingly case remitted to the High Court for fresh decision.
1992	St. Stephens v. The University of Delhi	(1992) 1 SCC 558	Constitution of India, Art.30(1) - Minority community - Right to administer educational institution - Proof of establishment of institution is condition precedent - Minority means distinct group of citizens of India identifiable with religion or language. Words and Phrases - Minority - Meaning of the words "establish" and "administer" used in Art. 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution @page-SC1631 depends upon the proof of establishment of the institution. The proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution. Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. The minority under Art. 30 must necessarily mean those who

			form a distinct and identifiable group of citizens of India. Whether it is "old stuff" or "new product", the object of the institute should be genuine, and not devices or dubious. There should be nexus between the means employed and the ends desired. There must exist some positive index to enable the educational institution to be identified with religious or linguistic minorities. Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and it is essential, to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional protection.
1993	Unni Krishnan, J.P. v. State of Andra Pradesh	(1993) 1 SCC 645	Constitution of India, Articles 21, 41 and 45 - Right to education - Every child has a right of free education in India upto the age of fourteen years however the private institutions can charge fee - The right to education flows from Article 21 - But it is not an absolute right - Its contents and parameters have to be determined in the light of Articles 45 and 41 of the Constitution and financial capacity of the state. The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development. The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and para-meters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.
1996	Amandeep (minor) through her mother Ms. Raj Sharma v. Punjab School Education Board	1996(5) SLR (P&H) (D.B.) 173	Cancellation of candidature/Estoppel – eligibility for appearing in the Senior Secondary Education i.e. +2 examination is that there must be a gap of two academic years between the passing of Matriculation Examination and appearance at the SSE and for those who pass XIth Examination the gap is reduced

			to one year – petitioner after matriculation examination appeared in the SSE before the expiry of 2 years and as such was ineligible to appear in the examination – no relaxation in rules was ever made – the action of the Board in issuing the roll number cannot be equated with conscious decision to relax requirement of eligibility – requirement of time gap prescribed in the regulation mandatory - cancellation of candidature proper – no etoppel.
1996	Haryana Unrecognised Schools v. State of Haryana	1996 SOL Case No. 106	Minimum Wages Act, 1948, Sections 27, 2(i) and 5(2) - Skilled or unskilled work - Minimum wages - Fixation of - School teachers - Teachers employed in educational institutions are not to do any skilled or unskilled work - Therefore the State Government is not competent to bring them under the purview of the Act by adding the employment in educational institutions in the Schedule in exercise of power U/s 27 of the Act - Notification of Haryana Govt. fixing minimum wages for teachers employed in unrecognised schools quashed.
1996	Shaneel Kumar S. Shah v. State of Gujarat	1996(7) SLR (Gujarat) 412	Admission to educational institutions irrespective of by whom it has been established, cannot deny admission on the grounds of religion, race, caste, language or any of them – admission to the institution has to be made open irrespective of the identity of the minority community whether founded on the basis of language.
1996	The Principal, Cambridge School and another v. Ms. Payal Gupta	AIR 1996 SC 118	Delhi School Education Act (18 of 1973), S.16(3), S.28 - Delhi School Education Rules (1973), R.145 - Unaided recognised school - Student passing public examination - Continuance of further studies in higher class in same school - Head of educational institution - Not authorised to prescribe cut off level of marks for such continuance of studies in higher class. Education - Unaided recognised school - Admission to higher class in same school. Constitution of India, Art.226.
1997	Union of India v. Jain Sabha, New Delhi	MANU/SC/0993/1997	Property – allotment - land allotted to respondent for opening school at market rate and same accepted by it – later on in one matter High Court held that

			Government not entitled to charge market rate for land allotted for opening school under 'no profit no loss' scheme – relying on above judgment respondent challenged market rate charged by Government – Supreme Court observed that respondent accepted the rate charged at time of allotment and deposited part consideration in respect of same – stand taken by respondent at that time cannot be changed on basis of said judgment – reversal of stand neither justified as fact nor justified in law – review of price cannot be claimed as matter of right by respondent – appellant not bound to review price of land.
1998	Central Board of Secondary Education v. Nisha	1998(6) SLR (P&H)	Examination bye laws affording two chances to clear the compartment examination – 1st chance provided with old syllabi and the 2nd chance with new syllabi introduced for next session – petitioner failing in both the chances – held, nobody could claim two chances as a matter of right – all candidates who had been placed in compartment were bound by the regulations of CBSE – cannot claim that the second chance should also accorded to the old syllabi – if the examination is held to be invalid, it would be invalid for all the candidates and those candidates who had passed the examination would naturally be affected if it is held that the examination was invalid – examination cannot be held for one student – not the scope of writ jurisdiction – order set aside.
1998	Delhi Abhibhavak Mahasangh v. Union of India	1998(3) SLR (Delhi) (D.B.) 171	Sec.17(3) – fee and other charges – there is no requirement that the unaided schools shall seek prior or subsequent approval of the Director of Education for enhancement of tuition fees and other charges – no permission for increase in fees to be obtained from the Govt before or later when charged excessively. Sec.18(3), 22, 23, 24, and 28 – commercialisation and exploitation of education in schools – private unaided recognised educational institutions indulging in large scale commercialisation of education which is against public interest as alleged by the Mahasangh – almost all schools charging exorbitant

			admission fee, caution money, tuition fee and various other charges in violation of Sec. 18(4)(b) of the Act read with Rule 176 – general instructions in public interest issued – two public notices issued requiring schools to review/revise fee structure for 1997-98. Sec.24 – inspection of schools – increasing fees and other charges in grab of implementation of the fifth pay commission – Directorate of Education can take suitable including withdrawal of recognition on failure to comply with directions, on account defect found during inspection – school obliged to explain facts to the satisfaction of DOE – or the DOE can ask the school to reduce fee and other charges – such direction is only to avoid taking extreme step of withdrawal of recognition of taking over of school.
1999	Baddam Prabhavathi v. Govt of AP	1999(8) SLR (AP) 237	Article 30 of the Constitution conferred a right on the minority educational institutions, which were, established for protecting/conserving their religion or language but not all minority institution as such – burden lies on the institution which claims the protection under Article 30 to prove with necessary material by showing that the institution is sub-serving the interest of the concerned minority community and is entitled to claim constitutional protection – mere obtaining a certificate form the competent authority that a particular institution is a minority institution is not the end of it and the Court can always look into the question whether the institution is entitled to claim the constitutional protection or not.
1999	Naveen Kumar Seth v. State of Punjab	1999(2) SLR (P&H) 86	Reasonable Classification – admission to class XI course in Punjab – petitioner appeared in class X examination conducted by CBSE New Delhi from Public School Dehradun (U.P.) and placed in the compartment in one subject – he also cleared the compartment in the first opportunity – in the meanwhile he applied for the admission to class XI in Modern Senior Secondary School Phagwara (Punjab) – his application for registration declined by the Punjab School Education Board that the petitioner has

			got compartment while studying in Dehradun as such not entitled to admission in class XI in Punjab State – student who has studied in school in U.T. or Punjab and affiliated to CBSE and has cleared compartment is entitled to get admission – a school situated in Dehradun (U.P.) and affiliated to CBSE cannot be treated in a manner different than schools situated in Punjab or U.T. when both have identical standards of Education – no discrimination can be made on this score.
1999	Nidhi Bharti v. CBSE through its Secretary	1999(2) SLR (P&H) 32	Compartment – candidate placed in the compartment – entitled to get admission in higher academic course which is XI in the instant case.
1999	Ranjit Kashayap v. CBSE	1999(1) SLR (P&H) 583	Compartment – if a statutory by-law itself provides two chances for clearing the compartment, both the chances should be effective and not illusionary.
2000	District Education Officer, Himmatnagar v. Rajvirsinh K. Rathod	2000(8) SLR (Gujarat) (D.B.) 426	Admission to Higher Secondary School made according to Govt. Circular issued in pursuant to judgment of High Court – while implementing the circular some of the students not getting admission to the XI Standard in their own school – circular cannot be said to be arbitrary – courts would not interfere in such matters unless the action is arbitrary.
2000	Principal, Julien Day School v. Shri Arun Kumar Mazymdar	2000(2) SLR (Calcutta) (D.B.) 251	Sec.17 – Enhancement of tuition fees – the minority institutions within the meaning of Article 29 and 30 of the are not free to do whatever they like – in the management of school they can neither mismanage the same nor run an educational institution by way of a commercial pursuit – thus, the State in the given case, may regulate the functions of all the schools including minority institutions except to the extent protected under Article 30 by enacting a statute – if the students intend to have better facilities and amenities they have to bear higher financial burden. Enhancement of tuition fees in unaided schools – whether writ court can interfere – there cannot be any doubt whatsoever that even minority institutions with the meaning of Article 29 and 30 are not free to whatsoever they like – in the management of school they can neither

			mismanage the same nor run an educational institution by way of a commercial pursuit – thus, the State is a given case may regulate the functions of all the schools including minority institutions except to the extent protected under Article 30 by enacting a statute.
2001	Ummul Qura Educational Society v. Govt. of A.P.	2001(5) ALT 422	Section 4 – Minority Education Institution – No educational agency can by itself treat an educational institution unless it is recognised as a minority institution.
2002	Father Thomas Shingare v. State of Maharashtra	(2002) 1 SCC 487	CONSTITUTION OF INDIA - Rights of institutions run by minority - Collecting capitation fees--No upper limit is fixed by State Government whether the provision under Section 7 of Maharashtra Educational Institution Act is ultra virus? Section 7 of the Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1987 Act would not apply to unaided minority institution?--Yes, no minority can claim immunity to carry on illegal practices under the cover of Article 30(1) of the Constitution It is a question of fact in each case whether the limit imposed by the Government regarding approved fees would hamper the right under Article 30(1) of the Constitution in so far so they apply to any unaided educational institution established and administered by the minorities. If the legislature feels that the nefarious practice of misusing school administration for making huge profit by collecting exorbitant sums from parents by calling such sums either as fees or donations, should be curbed, the legislature would be within its powers to enact measures for that purpose. Similarly, if the management of an educational institution collects money from persons as quid pro quo for giving them appointments on the teaching or non-teaching staff of such institution, the legislature would be acting within the ambit of its authority by bringing measures to arrest such unethical practices. Such pursuits are detestable whether done by minorities or majorities. No minority can legitimately claim immunity to carry on such practices under the cover of Article 30(1) of the

			Constitution. The protection envisaged therein is not for shielding such commercialised activities intended to reap rich dividends by holding education as a facade.
2002	Kusum Lata v. State of Haryana	2002(2) SCT 457	Admissions - Education - Senior School Certificate Examination from the Central Board of Secondary Education (CBSE) - Diploma in Education (D.Ed.) in the State of Haryana, Qualifications for admission, Clause A - Pass in 10+2 with 50% aggregate marks - Optional subject - Compulsory subjects - Marks of only 5 compulsory subjects are counted, optional subject is ignored out of six subjects - Condition of 50% aggregate will apply only qua those subjects which are considered necessary to pass not the optional subject which the student may or may not even opt for and is ignored for all purposes while declaring the result of 10+2 - The institutions must go into real object behind the clause - Object and purpose of Clause `A' is that the candidate must have passed the qualifying exam with at least 50% marks - That will not mean to include even those subjects which are ignored for declaring the candidate pass - Judgment of Division Bench of Pb. & Hy. High Court in Kusum Lata v. State of Hy. 2002(2) SCT 457 places a hyper-technical and erroneous interpretation upon Clause `A'.
2002	Swapan Kumar Das v. State of West Bengal	2002(1) SLR (Calcutta) 28	"Patha Bhawan (Montessori & Primary)" and "Path Bhawan Secondary" are integral part of one educational Institution – No admission test is necessary for the student of former for admission form Class IV to Class V of "Patha Bhawan Institution" – the external students cannot be placed with the students of the school "Patha Bhawan (Primary)" – there is no discrimination in giving a notice to external students to sit for the admission test.
2002	T.M.A. Pai Foundation v. State of Karnataka	(2002) 8 SCC 481	Constitution- Fundamental rights- Right to establish and administer educational institutions- Rights of minorities- Minority educational institutions can admit non-minority students of their choice in the left over seats in each year as Article 29(2) of the Constitution does not

			override Article 30(1)- Grant of aid by the State cannot alter the character of minority institution, including, its choice of students- Fixing a percentage for intake of minority students in minority educational institutions would infringe upon the right under Article 30 as it would amount to cutting down that right- Best way to ensure compliance with Article 29(2) as well as Article 30(1) is to consider individual cases where denial of admission of a non-minority student by a minority educational institution is alleged to be in violation of article 29(2) and provide appropriate relief._Constitution- Fundamental rights- Right of minorities to establish and administer educational institutions- Right conferred under any provision of the Constitution including Article 30 does not either expressly or by necessary implication empowers any educational institution including a minority educational institution to compel anybody to have instructions in the educational institutions established and administered thereunder much less religious instructions or to attend any religious worships-Article 29(2) thus does not override Article 30(1).
2003	Islamic Academy of Education v. State of Karnataka	(2003) 6 SCC 697	Constitution - Constitution of India - Article 14, 15, 16, 18, 19, 29, 30 - Minority Institution - Petitioners are private unaided institutions established by society, trust or persons belonging to the minority community based on religion or language - Right to establish an institution is subject to reasonable restrictions - Minorities have a fundamental right to establish and administer educational institutions of their own choice - State Govt. would not interfere in such a right as long as admissions is on a transparent basis and the merit is adequately taken care of - Fee structure - No fixing of a rigid fee structure by the Govt. as well as institution must be able to generate surplus for the growth of educational institution - State Govt. must set up a committee headed by a retired High Court Judge to decide whether the fees proposed by the institute are justified -

			Institutions will not charge any capitation fees whether directly or indirectly - Minority educational institutions have right to admit students of their own community - Minority professional college that admits a student of their community in preference to a student of another community even though the other student is more meritorious - Management would hold a common entrance examination to select students for their management quota - State Government's to appoint a permanent committee which will ensure test conducted to be fair and transparent
2003	N.R. Choudhary v. Ministry of Human Resource Development	MANU/DE/0088/2003	Discrimination, Educational Institution, Free and Compulsory Education, Fundamental Right, Parliament, Private Institution, Public Interest Litigation, Representation
2004	Ekta Aggarwal v. St.Xavier School	2004 Indlaw DEL 78	Central Board of Secondary Education, Rule 26(i) - Right of student who has passed class 10th Board exams of Central Board of Secondary Education to change his subjects of study on basis of performance in Board exams - In case a candidate performs well in 10th Board exams and obtains good level of marks much higher than his performance throughout year, such a student should not be denied benefit of change of subject merely on ground that he did not have requisite marks in internal assessment - Petitioner already completed course of study in 11th class would not be in a position now to change to medical stream
2004	Modern School v. Union of India	2004 SOL Case No. 381	Delhi School education Act, 1973 – Sections 15, 17(3), 24(3) – Delhi school education rules, 1973 – Rules 172, 177 – Quantum of fees charged by unaided schools under Section 17(3) – Regulatory powers of Director of Education – Scope – Public interest writ petition filed by Delhi Abhibhavak Mahasangh a federation of parents association impleading thirty unaided recognized public schools and challenging fee hike in various schools in Delhi – Grievance of Mahasangh that recognized private unaided schools in Delhi indulged in large scale commercialisation of education against

			public interest and that there was transfer of funds by unaided recognized schools to society/trust or to other schools run by same society/trust – As High Court on inspection found that there was irregularities in management of accounts – Directions given by Director of education to managing committees of all recognized unaided schools in Delhi – Issue for determination whether director of education has authority to regulate fees of unaided schools – Divergent opinions expressed by judges – As per majority opinion director of education has authority to regulate fees of unaided schools – Directions given that every recognized unaided school to maintain accounts on principle of accounting applicable to non business organization/ not for profit organization – Schools not to increase rates of tuition fees without prior sanction of Directorate of Education – As per minority opinion since expression 'development of education' is a broad term it could not be limited, regulated or curtailed in absence of any provisions contained in Act or rules framed there under – When law permitted utilization of surplus fund of an institution for setting up another institution, court ought not to come in their way and it was not necessary to issue direction as to how and in what manner an institution should maintain their accounts - Appeal dismissed in view of majority opinion