

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi School Education Act, 1973

WP(C) 43/2006, CMs 1819/2007 & 16275/2007

Date of Decision : 08th February, 2008

Social Jurist, a Civil Rights Group Petitioner
Through : Mr. Anuj Aggarwal, Adv. with Mr. Ashok
Aggarwal, Adv.

versus

GNCT & Ors. Respondents
Through : Mr. J.R. Midha, Standing Counsel with
Ms.Zubeda Begum, Addl. Standing
Counsel with Addl. Director of Edn. (ACT)
Mr. Ajay Verma, Adv. for DDA
Mr. Sanjeev Sabharwa, Adv. for MCD
Mr. R.M. Sinha, Adv. with Ms. Namita
Sinha, Adv. for Applicant in CM 1819/07
Ms. Maninder Acharya, Adv.for Adarsh
Public School

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MS. JUSTICE VEENA BIRBAL

Thakur, J.

This petition filed in public interest brings to the fore, issues of considerable public importance concerning establishment and running of unauthorized and unrecognized schools in the city of Delhi. According to the petitioner, there are nearly 10000 schools in different parts of Delhi which are unregistered and unrecognized, run by private individuals, institutions and NGOs in which about 600000 children between the age group of 2 to 18 years are studying in different

classes between LKG to 12th standard. All these schools have been established and are being run without the permission of the Government and without the recognition of appropriate authority under the Delhi School Education Act, 1973. The petitioner inter alia alleges that most of the schools are ill-equipped and are established in unsafe buildings. They do not have adequate accommodation for running the institution nor are the teachers employed for imparting instructions qualified. They are usually underpaid. The absence of playgrounds, libraries and laboratories in the Schools makes the position quite dismal for the children who are for various reasons including poverty and absence of proper schools in the neighbourhood forced to join these institutions. It is further alleged that most of the Schools do not observe normal working days and are in the nature of 'Sub-standard Teaching Shops'. Many of these schools do not even hold examinations but issue certificates concerning examination of different classes and standards. The result is that innocent parents and their children fall prey to the schools under the impression that they are recognized. More often than not, children passing out from these schools are denied admission to the next higher class by the Government or a recognized institution on the ground that they do not possess a certificate from a recognized school. The petition also complains about the fees and other demands made by the schools which are said to be exorbitant and unjustified having regard to the poor facilities that are provided. All told, the petition paints a dismal picture of the prevailing situation in no less an important place than the power centre of the country. It refers to a fire incident in December, 2005 in which hundreds of school children had a miraculous escape following an explosion and fire at a spray painting unit that functions from the very same building as the unrecognized schools in South Delhi's Madanpur Khadar village. It also refers to another tragedy that occurred in July, 2004 in which 90 lives were lost at a unrecognized school in Kumbakonam, in the district of Tamilnadu. The petition in that background prays for a mandamus directing the respondents to forthwith identify the unsafe, unauthorized, illegal and unrecognized private schools operating in Delhi. It prays for a mandamus directing the respondents to take immediate action including action by way of closure of all such unauthorized and unrecognized schools being run from unsafe school buildings as do not conform to the minimum requirement stipulated for establishing schools under the provisions of the Delhi School Education Act, 1973 and their recognition. A further mandamus directing the respondents to frame rules in terms of Section 28 of the Delhi School Education Act, 1973 and issue instructions under Rule 43 of the Delhi School Education Rules, 1973 for regulating the opening and functioning of all the schools in Delhi has also been prayed for.

2. In response to a notice issued by this court, the respondent MCD has filed an affidavit in which it is inter alia stated that the MCD is empowered to grant

recognition and aid to primary schools under the Delhi School Education Act and Rules, 1973. It is further alleged that under Rule 17 of the Delhi School Education Rules, 1973, autonomous schools have an independent curriculum and method of study and evaluation, although the Corporation can interfere if it finds that the curriculum prescribed is detrimental to the interest of education.

3. An has been filed even on behalf of respondent No.1, Government of NCT of Delhi in which it is inter alia stated that recognition to a school is granted only when an application is made to the appropriate authority and that the management of any such school can be taken over only when there is a case of negligence on the part of the management in the performance of the duties imposed upon it under the Act and the Rules. Inspections in terms of the Act and the Rules can also be conducted only of the recognized schools. While dealing with applications seeking recognition, the Director of Education conducts inspection through authorized officers to ascertain and satisfy himself that the conditions for recognition as laid down under the law are fulfilled. The affidavit goes on to state that beyond the provisions authorizing recognition and inspection, there is no authority vested with the Director of Education under which he may enter or authorize any officer to enter any school for the sake of verifying whether the school is functioning in a satisfactory manner and in conditions fit for human habitation or whether there has been any negligence on the part of the person running any unauthorized School. The power to enter a premises and to check its misuse etc. is according to the respondent Government vested with the civic authorities like the Delhi Development Authority, Municipal Corporation of Delhi and New Delhi Municipal Council. These agencies alone are competent to initiate action like the sealing of the premises if a school is being run from a residential premises or from a premises which is not fit to be used as a school or where the user is not permissible under the Master Plan or the Zonal Plan.

4. A supplementary affidavit was filed by Sh. Vijay Kumar, the Director of Education, NCT of Delhi in terms of an order dated 15th November, 2007 by which he was required to respond to the following four points :

(i) is the Department of Education, Government of NCT of Delhi regulating the establishment of unrecognized schools by reference, inter alia, to Rule 44 of the Rules under the Delhi School Education Act, 1973?

(ii) If the answer to No.1 above be in the affirmative, what are the norms fixed by the department for permitting the establishment of a new school in terms of the infrastructural facilities required for such school and the safety and security measures for the children and the staff employed for the same.

(iii) What is the total number of unauthorized schools in Delhi as per the information available with the Directorate of Education and how many such schools have been established after following the procedure prescribed under Rule 44?

(iv) Has the Directorate of Education taken any steps to ensure compliance with the minimum standards required for establishment of schools? If so, what is the nature of the steps taken and to what result?

5. The affidavit states that the Directorate of Education is not regulating the establishment of unrecognized schools by reference to Rule 44 of the Rules. The provisions of Rule 44 have according to the Director been incorporated with a view to enabling the administrator to arrange the planned development of school education in Delhi.

6. In response to question No.2 above, the Director has stated that there are no norms available in the Delhi School Education Act or the Rules for schools which are not recognized. Primary schools are recognized by MCD, NDMC, Delhi Cantonment Board while recognition to middle, secondary and senior secondary school is granted by Directorate of Education.

7. In so far as the question No.3 extracted above is concerned, the Director has stated that no survey has been conducted by the Education Department regarding the unrecognized schools in Delhi. Most of the unrecognized schools in general are primary, pre-primary or play schools. Since primary education is under the purview of local authorities like MCD, NDMC and Delhi Cantonment Board, the said bodies are dealing with recognition and other matters relating to the said schools.

8. Answering question No.4 in the affirmative, the Director states that the provisions of Rules 49 - 57 of Delhi School Education Act and Rules are being strictly observed whenever an application is filed by any person desirous of opening a new school or seeking recognition of Directorate of Education and affiliation of the Central Board of Secondary Education. In conclusion, the Director has added that the issue regarding existence of unrecognized schools is a complex one and involves many departments such as the land owning agencies, planning agencies, Fire Department etc. and that a proposal has been put up to the Government to form an interdepartmental Committee to study the issue in depth and recommend measures.

9. By an order dated 31st January, 2007, learned counsel for the petitioner and the Deputy Director, Delhi Development Authority were asked to inspect Adarsh Public School alleged to be located in Kirti Nagar. They were also directed to inspect any of the 4 schools stated in the list of unauthorized and unrecognized public

schools placed before the Court and 10 schools out of a total list of 2000 unauthorized and unrecognized schools mentioned in the list filed by the MCD. The Committee comprising the counsel for the petitioner, the Deputy Director and a representative of the Government of NCT of Delhi was to report regarding the strength of students, number of staff teachers, accommodation available, availability of playgrounds and safety measures, if any, available in the School. The Committee was also required to report whether the Schools are recognized and affiliated to any authority in terms of the provisions of the Delhi School Education Act and whether running of the schools was causing any danger to the lives of the children.

10. The report submitted by the Committee pursuant to the above directions substantially supports the allegation made by the petitioner that the schools are unrecognized, running without proper infrastructure and at places that are unsafe for the children admitted to the same. Essential requirements like adequate accommodation and facilities including drinking water and toilets were also absent. In some schools, the accommodation was no more than two rooms in a 100-150 sq.yd. plot.

11. An application was at this stage made on behalf of the Delhi State Public Schools Management Association for addition as a party respondent. The applicant association claims to be a proper, if not a necessary party to the proceedings entitled to be added as respondent to the case. Having heard learned counsel for the parties and keeping in view the nature of the controversy and the relief which the petitioner has sought, we see no reason to decline the prayer made in the application. We accordingly implead the applicant as party respondent No.3. The memo of parties shall stand amended accordingly. Since the issue raised in the writ petition is purely legal in character, unrelated to any specific institution or institutions, the averments made in the application were taken as the reply of the newly added respondent to the writ petition and the matter heard finally for disposal with consent.

12. The material facts which provide the basis of the present proceedings are not in serious dispute. It is not in dispute that a large number of educational institutions have been established in Delhi which neither have the permission of the Government nor the recognition of the appropriate authority for the same. According to the petitioner, there are nearly 10,000 such institutions in Delhi, while according to the respondent/MCD, the number does not exceed 2000. The Directorate of Education does not, however, have any data available with it as to the total number of institutions that have been unauthorizedly set up and are functioning without due and proper recognition. The Director of Education has on affidavit made the following candid admission in this regard:

“3. That there are no norms available in the provision/Act/Rule for schools which are recognized. Primary schools are recognized by MCD, NDMC, Delhi Cantonment Board while recognition to middle, secondary and senior Secondary school is granted by Directorate of Education.

4. That no such survey has been conducted by Education Department regarding the unrecognized schools in Delhi. Most of the unrecognized schools in general are primary, pre-primary or play schools. Since primary education is under the preview of local authority, so MCD, NDMC & Delhi Cantonment Board are the bodies dealing with recognition and other matter of these schools.”

13. What was however admitted by learned counsel for the parties was that a very large number of educational institutions offering pre-primary, primary, secondary and higher secondary classes have been set up in Delhi which have neither the permission of the Government nor the recognition from the appropriate authority. The Director of Education has further stated on affidavit that no norms are applicable to such institutions, nor have these institutions been inspected or evaluated by any officer of the Directorate of Education. The irony is, that according to the Directorate of Education, the Delhi School Education Act, 1973 does not authorize the officers of the Education Department to either inspect or even enter such institutions for purposes of verifying the infrastructural and other facilities made available in the same to the students. The result is that these institutions are islands of authority subject to no control, inspection, supervision or directions of any statutory or non-statutory body or authority. The all important question that arises in that background is whether on a true and correct interpretation of the provisions of the Delhi School Education Act, 1973, the hands off policy adopted by the Department of Education is justified. If one were to go by the affidavit filed on behalf of the Directorate of Education, the Department of Education is pleading nothing but helplessness in the matter on account of a lacuna in the legislation which according to their understanding does not empower them to act in the matter against such institutions setting up shops without the requisite infrastructural facilities, no matter the institutions may be endangering the lives of the students who get admitted to the same for various reasons and compulsions.

14. To the credit of Mr. Midha, whom we requested to appear and assist us on behalf of the Government of Delhi, we must mention that he departed from the line of defence taken by the Directorate of Education. He argued and in our opinion rightly so that the understanding of the Director of Education regarding the legal position in relation to the regulation of education in Delhi and in relation to the competence of the administrator to provide for planned development of school

education in Delhi was not wholly correct. Mr. Midha contended that the scheme of the Act and in particular the provisions of Section 3 and 4 thereof left no manner of doubt that the administrator was competent to regulate education in 'all the schools in Delhi' and that no new school can be established and no higher class in any existing school started and no existing class closed down in any existing school except in accordance with the provisions of the Act and the Rules made thereunder. The argument that the Act envisaged two types of schools, namely, recognized and unrecognized was, according to Mr. Midha, wholly erroneous for after the commencement of the Act, there could be only one class of schools, namely, schools that have been permitted in terms of Section 3 read with Rule 44 of the Delhi School Education Act and the Rules. He also drew our attention to Section 28 of the Act which provides that the administrator was competent to frame rules to carry out the provisions of the Act and in particular to provide for the manner in which the education may be regulated. The rules can also provide for the condition which every existing school should be required to comply with and the requirements of establishment of a school or the opening of a higher class and/or closing down of an existing class in an existing school. Mr. Midha in that view fairly conceded that the Directorate of Education ought to have regulated the establishment of schools in Delhi for there was no question of any school being allowed to come up otherwise than in accordance with the provisions of the said Act. But since the Act did not provide for a closure of any school, such of the schools as were unauthorized and/or unrecognized could be directed to be closed down by the concerned local authority on the ground of misuse of the property in which such schools were running.

15. Appearing for the Delhi Development Authority, Mr. Verma argued that the scheme of the Act did not permit two classes of schools as was the ground reality at present. He urged that Section 4(6) of the Act by a fiction recognized every school that was in existence on the date the Act came into force and subjected such schools to the rigors of the provisions of the Act and the Rules made thereunder. Proviso to Section 4(6) however authorizes the prescribed authority to withdraw recognition if the school failed to satisfy such conditions as are stipulated for recognition within a specified period. This implied that from the date of commencement of the Act, only such schools could come up as were permitted in terms of Section 3(2) of the Act and recognized in terms of Section 4. He also drew our attention to the provisions of Section 19 to argue that every school offering higher secondary education had to be affiliated to one or more of the Boards or Councils conducting such examination and to fulfill the conditions specified by the Board or Council and that every recognized primary or middle school had to prepare students for examination held by the local authority competent to hold the examination or by the Directorate of Education, Delhi as the case may be.

16. Learned counsel appearing for MCD adopted the submissions made by Messrs Midha and Verma and submitted that the authority to recognize primary schools was vested in the MCD and that it was being exercised properly as and when applications for such recognition were received, but if no applications seeking recognition were filed, there was nothing which the MCD could do in the matter to force the institutions to seek recognition.

17. On behalf of the Association of unrecognized institutions, it was strenuously argued by Mr. Sinha that the right to establish a private educational institution was a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India and was recognized to be so by judicial pronouncements on the subject. He further submitted that any regulatory control exercised by the State that fell foul of the said guarantee had to be necessarily declared unconstitutional. He further contended that on a true and proper interpretation of the provisions of the Delhi School Education Act, 1973, only such schools as were recognized fell under the purview of the Act and under the regulatory control of the administrator. Other unrecognized institutions established and functioning in Delhi were outside the purview of the Act. There was, therefore, no question of directing any regulation of the said schools directly or indirectly nor could there be any mandamus to the authorities to do something that the Act did not envisage. It was further argued by Mr. Sinha that the unrecognized schools were doing great service and had become a necessity on account of the failure of the State to provide proper educational facilities in Delhi. He submitted that the schools were located in areas where the weaker sections of the society were residing and to which children from the middle and the lower middle class including those living in Jhuggi Jhopdi clusters were admitted. Insistence upon providing the infrastructure required for recognition under the Act would amount to shutting down the schools and would be tantamount to fixing an unreasonable standard and therefore an unreasonable restriction on the right to establish a school.

18. We have given our careful consideration to the submissions made at the bar and perused the record. The right to establish an educational institution is no doubt a fundamental right guaranteed under Article 19(1)(g) of the Constitution. At the same time, it goes without saying that in terms of Clause 6 of Article 19 of the Constitution, the said right is not absolute and is subject to reasonable restrictions. We need not dilate on this aspect any further for the legal position stands authoritatively settled by the decisions of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* AIR 2003 SC 355. The court has, in that case, among others, formulated the following two questions :

- (i) Is there a fundamental right to set up educational institutions and, if so, under which provision?
- (ii) In case of private institutions, can there be Government regulation and if so, to what extent?

19. Answering the first question extracted above in the affirmative, the Court held:
25. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in Sodan Singh's case correctly interpret the expression "occupation" in Article 19(1)(g).

26. The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. 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 and educational institutions. This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution. Given this, the phrase "private educational institution" as used in this judgment would include not only those educational institutions set up by the secular persons or bodies, but also educational institutions set up by religious denominations; the word "private" is used in contradistinction to government institutions.

20. In so far as the second question is concerned, the Court held that the right to establish an educational institution could be regulated but such regulation was limited to only certain aspects and did not extend to fixing a rigid fee structure or dictating the formation and composition of the governing body or compulsory nomination of teachers and staff etc. The Court observed:

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a government body,

compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

21. The provisions of Delhi School Education Act, 1973 are meant to better organize and develop school education in Delhi and matters connected therewith or incidental thereto. Chapter II of the said Act deals with establishment, recognition, management of and aid to schools. Section 3 which is by far the most significant of the provisions contained in the Act reads as under :

3. Power of Administrator to Regulate Education in Schools – (1) The Administrator may regulate education in all the schools in Delhi in accordance with the provisions of this Act and the rules made thereunder.

(2) The Administrator may establish and maintain any school in Delhi or may permit any person or local authority to establish and maintain any school in Delhi, subject to compliance with the provisions of this Act and the rules made thereunder.

(3) On and from the commencement of this Act and subject to the provisions of clause (1) of Article 30 of the Constitution, the establishment of a new school or the opening of a higher class or the closing down of an existing class in any existing school in Delhi shall be subject to the provisions of this Act and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with the provisions of this Act shall not be recognised by the appropriate authority.”

22. Section 4 of the Act deals with recognition of schools and empowers the appropriate authority to recognize any private school on an application made to it in the prescribed form. The proviso however forbids recognition of a school unless the conditions stipulated thereunder are satisfied. Section 4(1) may at this stage be extracted :

4. Recognition of Schools – (1) The appropriate authority may, on an application made to it in the prescribed form and in the prescribed manner, recognise any private school:

Provided that no school shall be recognised unless -

- (a) it has adequate funds to ensure its financial stability and regular payment of salary and allowances to its employees;
- (b) it has a duly approved scheme of management as required by section 5;
- (c) it has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;
- (d) it provides for approved courses of study and efficient instruction;
- (e) it has teachers with prescribed qualifications; and

(f) it has the prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.

23. Sub-section 6 to Section 4 deals with schools existing on the date the Act came into force and recognises them by a fiction created under the said provision. It reads :

4. Recognition of Schools –

(1) XXXX

(2) XXXX

(3) XXXX

(4) XXXX

(5) XXXX

(6) Every existing school shall be deemed to have been recognized under this section and shall be subject to the provisions of this Act and the rules made thereunder :

Provided that where any such school does not satisfy any of the conditions specified in the proviso to sub-section (1), the prescribed authority may require the school to satisfy such conditions and such other conditions as may be prescribed, within a specified period and if any such condition is not satisfied, recognition may be withdrawn from such school.

24. A plain reading of the above provisions especially Section 3(1) supra would show that the administrator has the power to regulate education in all the schools in Delhi. The expression ‘all the schools in Delhi’ is significant and leaves no manner of doubt that the Act is not limited in its application only to recognized schools. The term ‘recognized school’ and ‘school’ have been separately defined by the Act in Section 2(t) and 2(u) in the following words :

2(t) “recognized school” means a school recognised by the appropriate authority;

(u) “school” includes a pre-primary, primary, middle and higher secondary schools, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education;”

25. The language employed in Section 3 and the definition of the term ‘School’ in 2(u) supra would therefore make it manifest that the power of the administrator to regulate education extends to not only recognized but all schools whether the same are recognized or unrecognized. We have therefore no hesitation in rejecting the contention urged by Mr. Sinha that the Act is confined in its application to only recognized schools.

26. Coming then to the question of establishment of a new school. The provisions of sub-section 3 to Section 3 make it clear that on and from the commencement of the Act, the establishment of any new school or the opening of a higher class in an existing school or the closing down of any existing class in an existing school can be subject to the provisions of the Act and the Rules only. This implies that from the date of commencement of the Act, while the existing schools were deemed to be recognized and hence allowed to continue subject to their fulfilling the requirements of recognition, new schools could be established only in accordance with the Act. The establishment of a new School could in turn take place only with the permission of the administrator. This is evident from Section 3(2) of the Act which authorizes the administrator to permit the establishment of any such school. We may as well refer to Rule 44 of the Rules framed under the Act which makes a provision regarding the opening of new schools. The rule reads as under :

44. Notices of intention to open a new school – (1) With a view to enabling the Administrator to arrange for the planned development of school education in Delhi, every individual, association of individuals, society or trust, desiring to establish a new school, not being a minority school, shall, before establishing such new school, give an intimation in writing to the Administrator of his or their intention to establish such school.

(2) The intimation, referred to in sub-rule(1), shall contain the following particulars, namely :-

(a) the Zone in which the new school is proposed to be established, and the approximate number of students likely to be educated in such schools;

(b) the stage of education intended to be imparted in the new school;

(c) the number of schools of the intended stage in existence in the Zone where the new school is proposed to be established and the population of such a zone;

(d) whether the person proposing to establish the new school have any alternative Zone in view; and if so, the particulars of such alternative Zone with respect to the matters specified in clauses (a) and (c);

(e) the particulars including measurements of the building or other structure in which the school is proposed to be run;

(f) the financial resources from which the expenses for the establishment and running of the school is proposed to be made for any aid;

- (g) the composition of the managing committee of the proposed new school until the new school is recognized and a new managing committee is constituted in accordance with the scheme of management made under the Act;
- (h) the proposed procedure, until its recognition under the Act, for the selection of the head of the school and other teachers and non-teaching staff and the minimum qualification for their recruitment;
- (i) the proposed scales of pay for the head of the school and other teaching and non-teaching staff until the school is recognized under the Act;
- (j) admission, tuition and other fees which would be levied and collected until its recognition under the Act, from the student of the proposed new school;
- (k) any other facility which is proposed to be provided for the students of the proposed new school.

27. It is evident from a conjoint reading of Section 3(2) and 3(3) read with Rule 44 supra that establishment of a new school is also a matter that is regulated under the Act and that such a school could be established only with the permission of the administrator and subject to the fulfillment of the requirements stipulated in the Rules.

28. Rules 50 and 51 of the Rules stipulate the conditions for recognition and the facilities to be provided by a school seeking recognition, while Rule 52 of the said rules empowers the appropriate authority to exempt provisionally any private school seeking recognition from one or from all the provisions of Rule 50 or 51 or both. A closer reading of the said Rules would show that the same inter alia prescribe the composition of the management and other requirements like the need for such a school in the locality, the courses of instructions to be followed by it and that the School is not run for profit to any individual, group of association of individuals or any other persons. The rules also prescribe that the school must possess a building or other structure in which the school is carried on with congenial surroundings, furniture and equipment adequate and suitable for an educational institution and, where there is any business premise in any part of the building in which such school is run, the portion in which the school is run adequately separated from such business premises. The sufficiency of accommodation for the classes under instruction in the schools and the adequacy of sanitary arrangement and supply of good drinking water are also stipulated as conditions for recognition apart from other requirements like the medium of instruction. The rules also mandate that facilities like physical education, library service, laboratory work, workshop practice, co-curricular

activities etc. are available in the School. Rule 52 referred to earlier empowers the appropriate authority to grant exemption and reads as under:

“52. Power to grant exemption – The appropriate authority may, for good and sufficient reasons, exempt provisionally any private school seeking recognition from one or more of the provisions of rule 50 or rule 51 or both for such period as it may consider necessary, provided that the appropriate authority is satisfied that the school will be in a position to fulfill in the near future, the requirements from which it is provisionally exempted.”

29. The following aspects therefore emerge from the above discussion :

- (i) The power of the administrator to regulate school education extends to all the schools in Delhi whether the same are recognized or unrecognized.
- (ii) A school can be established only with the permission of the administrator granted in terms of Section 3(2) of the Act and any school established contrary to the said provisions shall not be recognized by the appropriate authority.
- (iii) Recognition of the schools shall be granted only if the school satisfies the norms stipulated in Section 4(1) of the Act read with Rules 50 and 51 of the Rules framed under the Act.
- (iv) The appropriate authority competent to grant recognition may, in its discretion and for good and sufficient reasons, exempt provisionally any private school seeking recognition from one or more of the provisions of Rule 50 or 51 or both for such period as it may consider necessary.
- (v) If a school ceases to fulfill any requirement of the Act or any of the conditions specified in the Rules or fails to provide any facility specified in Rule 51, the appropriate authority may after giving the school a reasonable opportunity of showing cause against the proposed action withdraw recognition in terms of Rule 56 which shall not be restored under Rule 57 unless the authority is satisfied that the reasons which led to the withdrawal have been removed and that in all other respects, the school complies with the provision of the Act.

30. Viewed in the light of what we have stated above, there has been a phenomenal failure on the part of the authorities in enforcing the provisions of the Act. What to speak of taking appropriate action at the appropriate stage in preventing mushrooming and consequent deterioration in the standards of education in Delhi, the understanding of the authorities including the Director of Education about the true scope and amplitude of the powers of the administrator to regulate education have been totally erroneous and misplaced. The result is that the purpose and spirit underlying the Act have been defeated to a very large extent. There is a larger number of unrecognized and unauthorized schools in Delhi than those that are authorized and recognized. The respondents have been conceded that the authorities

have remained wholly inactive and indeed oblivious of the powers and the scheme of the Act for whatever reasons.

31. The question then is what could and needs to be done to remedy the situation having regard to the fact that the provision of the Act and the Rules do not empower the Directorate of Education or its officers to shut down the institutions that have mushroomed. All that the statute provides for is a take over of the Management of the Institutions in terms of Section 20 of the Act whether the same are recognized or not for a period of three years extendable by a period of one year at the discretion of the appropriate authority. Section 20 of the Act reads:

20. Taking over the management of schools- (1) Whenever the Administrator is satisfied that the managing committee or manager of any school, whether recognised or not, has neglected to perform any of the duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interests of school education to take over the management of such school, he may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding three years :

Provided that where the management of a school has been taken over for a period of three years or less, the Administrator may, if he is of opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of the said limited period, he may, from time to time, issue directions for the continuance management of such management for such period not exceeding one year at a time as he may think fit, so however, that the total period for which such management is taken over shall not, in any case, exceed five years.

(2) Whenever the management of any school is taken over under sub-section (I), every person in charge of the management of such school immediately before its management is taken over, shall deliver possession of the school property to the Administrator or any officer authorised by him in this behalf.

(3) After taking over the management of any school under this section, the Administrator may arrange to manage the school through the Director or any other person authorised by the Director in this behalf (hereinafter referred to as the "authorised officer").

(4) Where the management of any school has been taken over under sub-section (1), the managing committee or manager of such school may, within three months from

the date of taking over, appeal to the Administrator, who may after considering the representation made by the managing committee or the manager, pass such orders, including an order for the restorations of the management or for the reduction of the period during which the management of such school shall remain vested in the Administrator, as he may deem fit.

(5) Where the management of a school has been taken over under section, the Administrator shall be pay such rent as may be payable for building of the school to the person entitled to receive it as was being paid by the managing committee or the manager immediately before the management of such school was taken over.

(6) During such period as any school remains under the management of authorised officer-

a) the service conditions, as approved by the Administrator, of employees of the school who were in employment immediately before the date on which the management was taken over, shall not be varied to their disadvantage;

b) all educational facilities which the school had been affording immediately before such management was taken over, shall continue be afforded;

c) the School Fund, the Pupils' Fund and the Management Fund and any other existing fund shall continue to be available to the authorised officer for being spent for the purposes of the school; and

d) no resolution passed as any meeting of the managing committee of such school shall be given effect to unless approved by the Administrator.”

32. It is evident from a reading of the above provision that the take over of the Management of the Schools whether recognized or not is also envisaged only in cases where the Managing Committee or the Manager has neglected to perform any of the duties imposed upon it by or under the said Act or the Rules made thereunder. The occasion to take over would also arise only if the School was established with the permission of the administrator. In the instant case, unrecognized schools have been established without the permission of the administrator required under Section 3(2) of the Act. No notice of intention to open the school in terms of Section 34 has ever been given by these institutions nor have these institutions been subjected to any inspection or evaluation to determine whether they fulfill the bare minimum requirements for running an institution in terms of Rules 50 and 51 of the Delhi School Education Rules, 1973. As a matter of fact, for some inexplicable reason, the Government and the Directorate of Education have been under the impression that neither any permission nor any intimation in terms of the provisions mentioned above is necessary for starting a school and that it is none of their business or responsibility to regulate the setting up of such institutions or their continuance in

Delhi. That impression, as already noticed earlier, is against the specific provisions of the Act and the scheme underlying the same. The result is that there is a total breakdown of the machinery which the Act had envisaged for regulating and organizing planned development of school education in Delhi. The situation is not however totally irremediable. While the schools may have, on account of the inaction of the authorities, come up and functioned all these years, there is no reason why the same cannot be brought under the regulatory control of the authorities under the Act. A direct and ruthless approach to that issue may have called for a mandamus to the authorities to shut down such institutions. Keeping however in view the fact that a very large number of students are admitted to such institutions and are likely to get displaced by any such direction, a more realistic and workable solution shall have to be found out by which both the objectives, namely, the establishment of the supremacy of the law as enacted by the Parliament and the protection of the interest of the students at large can be achieved. That can, in our opinion, be done by giving to the institutions established without due and proper authority of the administrator an opportunity to make such applications and seek recognition within a specified period by fulfilling the requirements stipulated under Section 4 of the Act read with Rules 50 and 51 of the Delhi School Education Rules, 1973. Such of the institutions as satisfy the requirements of the said provisions could then be recognized upon a proper evaluation of their infrastructure as stipulated by the statutory provisions. Such of the others as do not satisfy the requirements of the statute or fail even to seek waiver of compliance with the said provisions in terms of Rule 52 of the Rules could then be identified and their cases referred to the local authority concerned for taking appropriate action by way of closure of the institutions in accordance with the relevant statutory provisions having due regard to the user prescribed for the premises from which they are operating in terms of the Master Plan and the requirements of safety measures stipulated for running an educational institution of a public character.

33. Mr. Sinha, learned counsel for the Association, vehemently argued that once the standards prescribed for recognition including the requirements of a proper building were enforced against the private unrecognized institutions, these institutions will not be able to comply with the said requirements and shall have to be closed down. Any such closure would, according to him, offend Article 19(1)(g) of the Constitution. We do not think so. The right to establish an educational institution is not absolute. The Parliament or the State Legislature, as the case may be, are competent to stipulate such regulatory measures as are considered necessary in public interest in terms of Clause 6 of Article 19(1)(g). The provisions of Delhi School Education Act, 1973 is a legislation that serves precisely that purpose. It regulates the establishment of educational institutions and their functioning. If the

Parliament has, by law, stipulated the standards to be satisfied for establishing an educational institution and if those standards are in themselves reasonable and relevant to the object of ensuring that the institutions are institutions which provide a safe, secure and healthy environment for imparting education to children at different levels, we find it difficult to appreciate how those standards can be said to be prohibitive in nature so as to offend the guarantee contained in Article 19(1)(g). It is important to note that there is no challenge to the provisions of Section 4 of the Act or Rules 50 and 51 of the Education Rules which prescribe standards to be met by the institutions for the grant of recognition. Such being the position, the argument that the institutions can continue even without satisfying the basic requirements as stipulated under the statutory provisions must be rejected out of hand. It is true that one of the reasons that has resulted in the mushrooming of these unrecognized institutions is the failure on the part of the State to provide educational facilities but that failure cannot be remedied by allowing unsafe, unsatisfactory or wholly dysfunctional institutions to come up, no matter they are incapable of achieving the objective which the same are meant to achieve or become institutions that exploit the compulsion of the students for commercial gains. With education upto 14 years becoming a fundamental right, the State shall have not only to take appropriate steps for making available educational facilities in areas where the same do not exist, but also to ensure that till such time the State run schools are started in such areas, the private institutions do not fill up the vacuum only to exploit the failure of the State in doing what it ought to do. The State shall therefore have to act on both the fronts as the task of providing adequate and satisfactory educational facilities is stupendous and may not be achieved by relying upon the State run institutions alone.

34. In the result, we allow this petition with the following directions :-

- (i) The Directorate of Education shall undertake a survey and identify the unauthorized and unrecognized educational institutions running in Delhi.
- (ii) It shall call upon such unauthorized and unrecognized educational institutions to apply for post facto permission of the administrator in terms of Section 3(2) of the Delhi School Education Act, 1973 to establish and maintain such institutions.
- (iii) Upon receipt of the application from the institutions, it shall have the institutions inspected by a team of officers to evaluate the infrastructural and other facilities available in the same keeping in view the requirements of Section 4 of the Delhi School Education Act, 1973 read with Rules 50 and 51 of the Rules framed thereunder.
- (iv) It shall, depending upon the facilities required under the provisions mentioned above, place the matter before the appropriate authority in terms of Section 2(e) of the Act for grant of recognition to such institutions, who shall then take a decision

whether such institutions deserve to be recognized having regard to the requirement of the Act and the Rules and the other standards, if any, prescribed for recognition.

(v) The prescribed authority may, in its discretion and upon an application made to it in that behalf by the institution concerned, exempt provisionally any private educational institution from one or more of the provisions of Rules 50 or 51 or for both for such period as it may consider necessary provided it is satisfied that the school will be in a position to fulfill in the near future the requirements from which it is provisionally exempted.

(vi) The cases of such of the unauthorized and unrecognized private educational institutions as do not respond to the notices sent by the Directorate of Education for post facto permission or as do not satisfy the requirements of recognition and/or exemption shall be referred by the Directorate of Education and the appropriate authorities concerned to the MCD, NDMC and DDA as the case may be for taking appropriate action under the relevant statute for closure of the institutions under the relevant provisions of law applicable to such authority having regard inter alia to the misuse of the premises from which the institution is operating in the light of the Master Plan.

(vii) The Directorate of Education, MCD, NDMC and DDA as also the prescribed authorities in terms of Section 2(e) of the Act shall all submit an action taken report in the matter within a period of six months from today which shall then be put up for perusal and orders in chambers.

35. No costs.

Sd/-
T.S. THAKUR, J

Sd/-
VEENA BIRBAL, J