Before Jaswant Singh & Sant Parkash, J.

INDEPENDENT SCHOOLS' ASSOCIATION CHANDIGARH AND OTHERS—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

CWP No.7706 of 2020

Reserved on 18.01.2021
Pronounced on 28.05.2021

Constitution of India, 1950—Arts. 14, 19(1)(g), 21, 30(1), 162, 226 and 245 to 255—Punjab Re-Organisation Act, 1966—S. 87—Punjab Regulation of Fee of Unaided Educational Institution Act, 2016 (as extended to Chandigarh)—S.3 and 5 Fourth proviso, 10 (4) to (6) and 14—Vires of Section 87 of 1966 Act challenged—Being in derogation of powers of Parliament in Articles 245 to 255, beyond power conferred by Article 162— Notification issued by Central Government extending 2016 Act to UT with modifications challenged—Being violative of Article 30—Private unaided schools in UT to disclose income and expenditure statement and balance sheet on website—Held to be reasonable restriction to ensure transparency, curb profiteering—Does not infringe upon autonomy, day-to-day functioning of institutions—Right under Article 30 not absolute—Petitions dismissed.

Held that, it is settled position that educational institutions are vested with right to establish and administer and institution including the right to admit students and to set up a reasonable fee structure. However, occupation of education is not a business but profession involving charitable activities. Therefore, it is well permissible to promulgate regulatory measures aimed for protecting the student community as the whole and as well as to ensure maintenance of required standards of education which are non-exploitative. The imposition of reasonable restrictions by the State government aimed to ensure transparency and to curb the menace of profiteering and charging of capitation fees do not violate Article 30 (1) or Article 19 (1) (g) of the Constitution of India.

(Para176)

Further held that, the right under Article 30(1) cannot be such as to override the National Interest or to prevent the Government from

framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution, but the right under Article 30 is not so absolute as to be above the law.

(Para 177)

Further held that, that after considering the settled position in law as enumerated hereinabove and the conditions so imposed by the U.T. Administration, we are of the view that the imposition of the conditions by the Chandigarh Administration upon the petitioner schools can at no extent or by any stretch of imagination be called as unreasonable or restrictive in nature, as the same are regulatory. The same shall ensure that there is no charging of capitation fee or profiteering, as held in the case of T.M.A. Pai Foundation's case (supra) and followed thereafter in numerous judgment. By adhering to modifications/ restrictions carried out by the Central Government while adapting the 2016 Act to Chandigarh Administration (as reproduced in para No.1 hereinabove), it shall be ensured that there is no backdoor charging of capitation fee by the schools and the funds of the private unaided institution are properly utilized to promote the field of education.

(Para 180)

The modification carried out by the Central Government while adapting 2016 Act of State of Punjab, to the Union Territory of Chandigarh are not adversarial modifications/ additions but are meant to ensure balance between the competing interest of the students, the institution and the requirement and desire of the society for accessible quality education. The modifications/ additions carried out by the Central Government do not in any manner infringe upon the autonomy or day-to-day functioning of the Institution or in any manner prescribe rigid fee structure. The modifications/ additions only facilitate in ensuring the goal of transparency.

(Para 181)

Therefore, in light of the observations made hereinabove and decision and findings on issue NO. (iv), we are of the view that the modification carried out by the Central Government while extending the 2016 Act of State of Punjab, to the Union Territory of Chandigarh does not violate the rights of the unaided educational institution or the rights of the minority unaided educational institutions.

(Para 182)

Puneet Bali, Sr. Advocate, assisted by
Ashish Chopra, Advocate
and Swati Dayalan, Advocate
for the petitioners (in CWP No. 7706 of 2020).

Rajiv Atma Ram, Sr. Advocate, assisted by
Arjun Pratap Atma Ram, Advocate
for the petitioners (in CWP No. 7761 of 2020)

Satya Pal Jain, Additional Solicitor General of India,
assisted by Puneeta Sethi, Sr. Counsel,
for the respondent(s) – Union of India (in both cases)

Pankaj Jain, Sr. Standing Counsel, alongwith
Vivek Chauhan, Advocate,
Madhu Dayal, Advocate
And Nitin Kaushal, Advocate
for the respondent(s) – U.T., Chandigarh (in both cases)

JASWANT SINGH, J.

(1) The above said two writ petitions bearing ***CWP Nos. 7706 & 7761 of 2020*** have been clubbed and are being dealt together as the controversy in the petitions and the issues involved are overlapping / similar. But for the sake of convenience, facts are being taken from the lead case viz. **CWP No. 7706 of 2020**.

(2) The challenge in both writ petitions is to the notification dated 13.4.2018 **(Annexure P-4)** issued by Ministry of Home Affairs vide which while exercising the powers conferred by Section 87 of the Punjab Re-organisation Act, 1966 (hereinafter referred to as the 1966 Act), the Central Government has **extended** the Punjab Regulation of Fee of Unaided Educational Institution Act, 2016 (hereinafter referred to as the 2016 Act) to the Union Territory of Chandigarh **with certain modifications**. At the very outset, for convenience, comparative reading of the relevant provisions as applicable to State of Punjab *vis-a-vis* those adapted to Union Territory of Chandigarh are reproduced hereunder:-

PUNJAB	As adapted to UT of Chandigarh
1.Short Title and commencement — (1) This act may be called the Punjab Regulation of Fee of Un-	1. Short Title and commencement – (1)This act may be called the Punjab Regulation of Fee of Un-

aided Educational Institutions Act, 2016. (2) It shall come into force on and with effect from the date of its publication in the Official Gazette.	aided Educational Institutions Act, 2016 as extended to the Union Territory of Chandigarh. (2) It shall come into force on and with effect from the date of its publication in the Official Gazette.
Nil	(aa) 'Administrator' means the Administrator of the Union Territory of Chandigarh appointed by the President under Article 239 of the constitution.
(b)'Affiliation' means inclusion of the name of an institution in the approved list of affliliated institutions with the Punjab School Education Board of any other such board or authority, approved and authorized by the Central Government for admitting in to the privilege of the said board or authority;	(b)'Affiliation' means inclusion of the name of an institution in the approved list of affliliated institutions with the Central Board of Secondary Education of any other such board or authority, approved and authorized by the Central Government for admitting in to the privilege of the said board or authority;
(i) 'Government' means the Government of the State of Punjab in the Department of School Education;	Omitted
3.Constitution of Regulatory Body- (1) There shall be constituted a Regulatory Body to be known as the Regulatory Body for Regulating Fee of UN-aided Educational Institutions at the Divisional Level in the State of Punjab the exercise the powers conferred upon and perform the functions assigned to it under this Act.	3.Constitution of Regulatory Body- (1) There shall be constituted a Regulatory Body to be known as the Regulatory Body for Regulating Fee of UN-aided Educational Institutions at the Divisional Level in the State of Punjab the exercise the powers conferred upon and perform the functions assigned to it under this Act.

(2) The Regulatory Body shall consist of the following, namely:- a. Divisional Commissioner of the concerned Chairperson; division; b. Circle Education Officer concerned Member; secretary divisions; c. Circle Education Officer (Secondary Member; Education) posted at the concerned Headquarter of the divisions; d. District Education Officer (Elementary Member: Education) posted at the concerned Headquater of the division; e. Two member to be nomination by the Nominated Member; Government from amongst theminent educationist of the concerned division; f. One member to be nominated by the Divisional Nominated Members, Commissioner from amongt the deputy Controllers (Finance and Account) or Assistant Controllers (Finance and Account) working in the concerned division. 3. The nominated members referred to in sub-section (2) shall be paid such remuneration and travelling allowance for attending the meeting of the Regulatory body, as may be prescribed.	(2) The Regulatory Body shall consist of the following, namely:- a. Education secretary, Chandigarh Administration-Chairperson. b. Director School Education, Chandigarh Administrator – Member Secretary. c. Deputy Director School Education -- Member; d. District Education Officer Chandigarh Administration-Chairperson. e. Two member to be nominated by the Administration of the Union Territory of Chandigarh from amongst the eminent educationist of Chandigarh – Nominated Member; f. One member to be nominated by the Chairperson from amonst the Deputy Controllers (Finance and Accounts) or Assistant Controllers (Finance and Account) posted in the Education Department of Chandigarh Administration – Nominated Members. 3. The nominated members referred to in sub-section (2) shall be paid such remuneration and travelling allowance for attending the meeting of the Regulatory body, as may be prescribed.
4. Headquater of the Regulatory Body- The office of the Regulatory Body	4. Headquater of the Regulatory Body- The office of the Regulatory

shall be located at the Headquarter of the concerned Division.	Body shall be located in the Union Territory of Chandigarh.
Section 5. Power to fix fee and increase fee As Unaided Educational Institution shall be competent to fix its fee and it may also increase the same after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students: Provided that while fixing or increasing fee, the factors mentioned in sub-section (1) of section 6, shall be kept in view by the Unaided Education Institution: Provided further that increase in fee shall not exceed eight per cent of the fee or the previous year, charged by the Unaided Educational Institution. Provided further that while fixing or increasing fee, an Unaided Educational Institution cannot indulge in profiteering and it cannot charge capitation fee.	Section 5. Power to fix fee and increase fee As Unaided Educational Institution shall be competent to fix its fee and it may also increase the same after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students: Provided that while fixing or increasing fee, the factors mentioned in sub-section (1) of section 6, shall be kept in view by the Unaided Education Institution: Provided further that increase in fee shall not exceed eight per cent of the fee or the previous year, charged by the Unaided Educational Institution. Provided further that while fixing or increasing fee, an Unaided Educational Institution cannot indulge in profiteering and it cannot charge capitation fee. Provided further that every Unaided Educational Institution shall a. upload income , expenditure account and balance sheet on its website; b. not charge any kind of cost from the parents; c. disclose complete fee structure

	at the beginning of the academic year in the Booklet issued, along with the admission form, by the schools and also be posted in it's website; d. not raise the fee any time during the academic session.
Section 10. Utilization of Fund (1) The Fund shall be utilized for the betterment and development of theconcerned Unaided Educational Institution. (1) The Fund or any profit accrued therefrom shall not be used for any personal gains or business or enterprise by the Unaided Educational Institution. (2) The fund can be used by the Unaided Educational Institution for the activities, which are beneficial to the student; (3) No amount whatsoever shall be diverted from the Fund by the Unaided Educational Institution to the Society or the Trust or any other institution, except under the management of the same Society or trust.	(1) The Fund shall be utilized for the betterment and development of the concerned Unaided Educational Institution. (2) The Fund or any profit accrued therefrom shall not be used for any personal gains or business or enterprise by the Unaided Educational Institution. (3) The fund can be used by the Unaided Educational Institution for the activities, which are beneficial to the student; (4) No part of income from the Unaided Educational Institution shall be diverted to any individual in the trust or society or company or School Management committee or any other person. (5)The savings, if any after meeting the recurring and non-recurring expenditure and contribution and contingency funds may be utilized for promoting the concerned Unaided Educational Institutions.
14. Penalties- (1) If any Unaided Educational Institution contravenes the provisions of this Act or the rules made thereunder, it shall be	14. Penalties- (1) If any Unaided Educational Institution contravenes the provisions of this Act or the rules made thereunder, it shall be

punishable with fine, which may extend to thirty thousand rupees in the case of an Unaided Educational Institution of Primary Level, rupees fifty thousand in the case of an Unaided Educational Institution of Middle Level, and rupees one lac in the case of an Unaided Educational Institution of Secondary and Senior Secondary Level for each contravention. (2)If an Unaided Educational Institution contravenes the provisions of this Act or the rules made thereunder for the second time, shall be punishable with fine, which shall be sixty thousand rupees in the case of an Unaided Educational Institution of Primary Level, rupees one lace in the case of an Unaided Educational Institution of Middle Level and ruprees two lac in the case of an Unaided Educational Institution of Secondary and Senior Secondary Level for each contraventions. (3) If an Unaided Educational Institution contravenes the provisions of this Act or the rules made thereunder for the third time, then besides imposing penalty as mentioned in sub-section 2, the Regulatory Body shall direct the concerned authority to withdraw recognition or affiliation or such Unaided Educational Institution.	punishable with fine, which may extend to Sixty thousand rupees in the case of an Unaided Educational Institution of Primary Level, rupees fifty thousand in the case of an Unaided Educational Institution of Middle Level, and rupees Two lac in the case of an Unaided Educational Institution of Secondary and Senior Secondary Level for each contravention. (2)If an Unaided Educational Institution contravenes the provisions of this Act or the rules made thereunder for the second time, shall be punishable with fine, which shall be One lac twenty thousand rupees in the case of an Unaided Educational Institution of Primary Level, rupees Two lac in the case of an Unaided Educational Institution of Middle Level, and rupees four lac in case of an Unaided Educational Institution Secondary and Senior Secondary Level for each contraventions. (3) If an Unaided Educational Institution contravenes the provisions of this Act or the rules made thereunder for the third time, then besides imposing penalty as mentioned in sub-section 2, the Regulatory Body shall direct the concerned authority to withdraw recognition or affiliation or such Unaided Educational Institution.
(4) The Regulatory Body may	(4) The Regulatory Body may

direct the Unaided Educational Institution to refund the fee in excess of the fee as displayed by such institution.	direct the Unaided Educational Institution to refund the fee in excess of the fee as displayed by such institution.
15. Appeal- Any person or Unaided Educational Institution aggrieved by any direction or order passed under this Act , may file an appeal to the Government within a period of forty-Five days from the date or passing of such order or direction.	15. Appeal- Any person or Unaided Educational Institution aggrieved by any direction or order passed under this Act , may file an appeal to the Administrator within a period of forty-Five days from the date or passing of such order or direction.
23. Power to make rule (1) The Government may by notification in the Official Gazette, make rules for carrying out the provisions of this Act. (2) Every rule made under this Act shall be laid as soon as may be after it is made, before the House of the State Legislature while it is in session for a total period of ten days, which may be comprised in one session or in two or more successive sessions as if before the expiry of the session in which it is so laid or the succession sessions as aforesaid, the House agrees in making any modification in the rule of the House agrees that the rule should not be made, the rule shall thereafter, have effect only in such modified from or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the	23. Power to make rule (1) The Adminstrator may by notification in the Official Gazette, make rules for carrying out the provisions of this Act. (2) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of the Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions as if before the expiry of the session in which it is so laid or the succession sessions as aforesaid, the House agrees in making any modification in the rule of the House agrees that the rule should not be made, the rule shall thereafter, have effect only in such modified from or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the

validity of anything previously done or omitted to be done under that rule.	validity of anything previously done or omitted to be done under that rule.

(3) The **bold portion** in the column "As adapted to UT of Chandigarh" in paragraph no.1 **denotes the modifications** carried out bythe Central Government, while extending the 2016 Act to U.T. Chandigarh.

C.W.P. No. 7706 of 2020 :- Independent Schools Association Chandigarh (Regd.) & others Versus Union of India & others.

(2) Petitioner No. 1 is an Association of 79 unaided privately managed schools, majority of which are affiliated to Central Board of Secondary Education. Petitioner No. 2 (Saint Soldier International Educational Society running Saint Soldier International School) and Petitioner No. 3 (The Saupin Education Foundation running Saupin's School) are the society running the respective schools which are private unaided educational institutions. The petitioners have filed the present writ petition raising following grievances:-

(i) Seeking declaration to the effect that incorporation of the 4th proviso to Section 5 and substitution of subsection (4) to (6) for subsection (4) of the Section 10 of the 2016 Act, while extending the same to Union Territory of Chandigarh, in exercise of powers under Section 87 of the 1966 Act, be declared as unconstitutional, without jurisdiction and beyond the scope of powers delegated to the Central Government and also on the ground that it violates the rights of private unaided educational institution as guaranteed by the Constitution of India;

(ii) Challenge is to the composition of the Regulatory Body constituted under Section 3 of the 2016 Act, as extended to Union Territory of Chandigarh vide notification dated 13.04.2018 **(Annexure P-4)** on the ground that it does not provide for any representation from the private unaided educational institutions.

(iii)Further challenge is to the Section 14 of the 2016 Act as extended to Union Territory of Chandigarh, to be declared as illegal and arbitrary as the purpose of the 2016 Act is to regulate and not to penalize.

(iv)Lastly quashing of Order/ Memo/ Correspondence dated

24.4.2020 **(Annexure P-6)**, 01.05.2020 **(Annexure P-7)**, 13.05.2020 **(Annexure P-8)**, 22.5.2020 **(Annexure P-9)**, has been sought, whereby the respondents in terms of the 2016 Act as extended to Union Territory of Chandigarh have directed the private unaided schools to upload the income and expenditure account and balance sheet ontheir websites;

CWP No. 7761 of 2020:- Kabir Education Society & another Versus Union of India & others

(3) Petitioner No. 1 is the society registered under the Societies Registration Act, 1960. Petitioner No. 1 (Kabir Education Society) society has set up the petitioner No. 2 (Saint Kabir Public School) school which is an unaided minority school. As is evident from the pleadings, the challenge in C.W.P. No. 7706 of 2020 is not to the extension of the 2016 Act to Union Territory of Chandigarh but is to the modifications which have been made by the Central Government while exercising the powers under Section 87 of the 1966 Act. The present petition increases the scope of challenge as **Firstly,** the petitioners have sought quashing of Section 87 of the Punjab Re-organisation Act, 1966 being *ultra vires* the Constitution of India and being in derogation of the powers of the Union Parliament as contained in Article 245 to 255 of the Constitution of India and beyond the power conferred by Article 162 of Constitution of India. **Secondly,** the petitioners are seeking quashing of the notification dated 13.4.2018 in toto, vide which the Central Government has extended the 2016 Act to Union Territory of Chandigarh with modifications, being ultra-vires the Constitution of India and being violative of Article 30 of the Constitution of India. **Thirdly,** the petitioners herein are also seeking quashing of notices **Annexure P-5/A to P-5/F** whereby compliance of 2016 Act as extended to Union Territory of Chandigarh has been sought.

ARGUMENTS:-

(4) Learned counsel for the petitioners in CWP No. 7706 of 2020, submits that, the 2016 Act, was notified by the State of Punjab on 23.12.2016. The 2016 Act is contrary to the settled position of law, as the private unaided schools are free to determine their own fee structure, make allowance for savings and investment and can even generate reasonable profits. There is no restriction in law that the society or a trust which has set up an unaided educational institution, cannot generate funds, which could be utilised for expansion and/or for opening of new schools.

(5) Learned counsel for the petitioners, however, states that the 2016 Act has been challenged before this Hon'ble Court by the petitioner Association in separate set of proceedings by filing **CWP No. 10662 of 2017 titled "Independent Schools Association** versus **State of Punjab and others"**. The challenge has been laid on the ground that the 2016 Act is unconstitutional and violative of fundamental rights enshrined under Article 14, 19 and 21 of the Constitution of India.

(6) It is submitted that the challenge in the present petition is restricted to the modifications carried out by Central Govt. while extending 2016 Act to the Union Territory of Chandigarh.

(7) Learned counsel for the petitioners submit that the 4th provisoto Section 5 and sub- section (4) to (6) of Section 10, the 2016 Act as extended to Union Territory of Chandigarh, which have been added/substituted by way of modification by the Central Government, in the purported exercise of its powers under Section 87 of the 1966 Act amounts to legislation under the garb of extension, therefore the said modifications amounting to legislation are beyond the scope and purview of Section 87 of the 1966 Act.

(8) It is further submitted that the 2016 Act does not envisages disclosure of income and expenditure statement and balance sheet on the public portal by the private unaided schools, however the Central Government while extending the same to the Union Territory of Chandigarh has incorporated Clause (a) of the 4th proviso to Section 5 of the 2016 Act, vide which an obligation has been casted upon the private unaided educational institutions to upload income and expenditure accounts and balance sheets on the website which has no rationale or nexus with the 2016 Act especially once the said information is already made available to the concerned authorities.

(9) Learned counsel for the petitioners submits that uploading the financial information on the website would render the private institutions vulnerable to unbridled dissection of the accounts by the public and possible resultant unwarranted attacks, which would create hurdles in smooth functioning of the Institution.

(10) With regard to clause (b) of the 4th proviso to Section 5 of the 2016 Act, it has been submitted that the said clause prohibits the schools from charging any kind of cost from the parents. But the term cost has not been defined as such an ambiguity has arisen as to whether

the cost would also amount to not charging any fee from the parents and thus rendering free education to the students. Thus the vagueness of the clause gives unbridled powers in the hands of the authorities to include anything or everything inthe term 'cost'.

(11) Counsel for the petitioners submits that modifications/addition w.r.t. subsection (4) to (6) of Section 10 of the 2016 Act carried out by the Central Government is in direct contravention of parent Act of 2016 inasmuch as the parent Act allows for diversion of funds by the unaided educational institution to another institution, provided the same are being run under the management of the same society. Whereas by the newly substituted/modified sub-sections the Central Government has made an absolute embargo on any diversion, utilisation of channelling of incomes, savings and funds of the institution to the society under the same management.

(12) Learned Counsel for the petitioners submits that the power under Section 87 of the 1966 Act is only a power to transplant laws already in force and that too without any material change. The executive cannotmake substantial deviations from the parent Act while extending the same to the Union Territory of Chandigarh.

(13) Counsel for the petitioners submits that modifications and alterations has changed the basic essential structure of the 2016 Act which isbeyond the scope of Section 87 of the 1966 Act, thereby the Central Government has outreached its jurisdiction.

(14) It is further submitted that the disclosing of the financial details on the website will also amount to unwarranted invasion of privacy.

(15) With regard to Section 14 of the 2016 Act, it is submitted that the Section 14 of the 2016 Act seeks to impose penalties for contravening the provisions of the said Act, which would apparently make the statute penal in nature and that is contrary to the object of the Act, as the same has been enacted only with the purpose to regulate the fee of unaided educational institution and not to provide any penal action. Counsel for the petitioners states that the Section 14 is already under the challenge in separate set of proceedings, however while extending Section 14 to the Union Territory of Chandigarh, the quantum of fine has been increased without there being any rationale behind the same.

(16) It is even submitted that the respondents by extending the

2016 Act to the Union Territory of Chandigarh, have imposed unreasonable restrictions which is directly hit by Article 14, Article 19 (1) (g) and Article 30 of the Constitution of India and as such the same deserves to be set aside.

(17) Learned counsel for the petitioners in C.W.P. No. 7761 of 2020 in addition to the above common arguments, submits that the Section 87 of the 1966 Act is unconstitutional as it gives un-guided & un-canalized power to the executive, as there are no guidelines or circumstances described whereunder powers enshrined in Section 87 of the 1966 Act can be exercised while extending any statute and making it applicable to the Union Territory of Chandigarh.

(18) Learned counsel for the petitioners further submits that power to legislate lies with the Union Parliament in terms of Article 245 to 255 andthe same cannot be usurped by enacting Section 87 of the Punjab reorganization Act, 1966.

(19) Learned counsel for the petitioners in CWP No. 7761 of 2020 even submits that the Section 87 uses the word modification & deletion and it does not provide for amendment/addition by the Executive, therefore the notification dated 13.4.2018 is illegal as the same has amended the 2016 Act which is impermissible in law.

(20) It is further submitted that there can be no capping on the yearly increase in fee and that the prescribed enhancement of 8% per year is not substantiated by any reasoning. The issue with regard to capping the increase in fee up to only 8% of the fee of the previous year as provided under 2nd proviso to Section 5 of the 2016 Act is concerned, the same has been given up during the course of arguments, as the same has **not** been added by the Central Government for the Union Territory of Chandigarh.The said proviso is already there in the original Act of State of Punjab which is assailed in separate set of proceedings *viz.* **CWP No. 10662 of 2017**.

(21) Learned counsel for the Union Territory of Chandigarh, submits that a **C.W.P. No. 20545 of 2009, titled *Anti-Corruption and Crime Investigation Cell*** versus ***State of Punjab & others*** was filed before this Hon'ble Court alleging that the private educational institutions within Ludhiana and entire State of Punjab are taking the parents to ransom by whimsically enhancing the school fees on one hand and on the other hand, the state machinery has failed to impose check and balances on such arbitrary and illegal action on the part of private educational institutions.

(22) The Hon'ble High Court directed the State of Punjab, State of Haryana and Union Territory of Chandigarh to provide for some permanent regulatory bodies/mechanism which would ensure that appropriate checks and balances are imposed upon the private stations, in public interest, so that they do not indulge in profiteering or in any other unethical manner to charge capitation fees. Further this Court, while issuing directions to the States of Punjab, Haryana and Union Territory of Chandigarh to examine the feasibility of establishing such a mechanism, formulated three (03) committees one each for the State of Punjab, State of Haryana and the Union Territory of Chandigarh headed by retired Hon'ble Judges of the High Court to ensure transparency in the functioning of the private educational institutions.

(23) The said directions issued by the Hon'ble High Court in **CWP No. 20545 of 2009** was challenged by the Association viz Independent School Association Chandigarh (which is petitioner in the present set of proceedings viz. CWP No. 7706 of 2020), before the Hon'ble Supreme Court of India by way of **S.L.P. No. 20029 of 2013**. The SLP filed by the Association was dismissed vide order dated 2.8.2013

(24) Since the directions issued by the Hon'ble High Court in **CWP No. 20545 of 2009** attained finality, a status report was filed before this Court by the State of Punjab, Haryana and Union Territory of Chandigarh. The State of Punjab, stated before this Court, that the state is in the process of bringing the legislation as directed in the judgement so as to provide a mechanism for regulating the private educational institutions. The Union Territory of Chandigarh also stated that they wish to follow the steps taken by the State of Punjab. Consequently the writ petition was ordered to be closed on the statements rendered by the State Governments, vide order dated 7.7.2014.

(25) Learned counsel for the Union Territory of Chandigarh submits that the 2016 Act has been formulated by the State of Punjab, in pursuance to the directions issued by this Hon'ble Court, and the Union Territory of Chandigarh has adopted the 2016 Act in terms of the statement rendered by the Union Territory of Chandigarh before this Court.

(26) Learned counsel for the respondents submitted, that Section 87 of the Punjab Re-organisation Act has been upheld and interpreted by the Hon'ble Supreme Court in the case of ***Ramesh Birch*** versus

Union of India[1] and as such the challenge laid down to the Section 87 being covered by the judgement rendered by the Hon'ble Supreme Court, deserves to be dismissed outrightly.

(27) Learned counsel for the respondents further submits, that the modifications incorporated by the Central Government are only subservient to the basic scheme of the parent Act as enacted by the State of Punjab. The modified provisions have been incorporated only with an intent to advance transparency and accountability which are the most essential feature of the mechanism to be provided for the purpose of regulating fee.

(28) The uploading of the incoming and expenditure by the private educational institutions, sought by the administration vide letter dated 24.4.2020 is on account of complaints being received from the parents regarding the school being indulging in profiteering. Further it is submitted that the challenge has been laid to the order dated 02 / 03.06.2020 vide which compliance has been sought from the schools with regard to the financial details on the website, the said order has been issued by the Chairman, State Disaster Management Authority which has not been impleaded as a party respondent, therefore the present petition deserves to be dismissed for the nonjoinder of necessary parties.

(29) Learned counsel for the respondents further submits, that majority schools have complied with the directions. It is also submitted that various schools which are members in the petitioner Association have also complied with the directions issued by the Chandigarh Administration under the 2016 Act as adapted to U.T. Chandigarh.

(30) Learned counsel for U.T. Chandigarh points out that with regard to the challenge been laid to the show cause notices seeking compliance of the directions issued by the administration no final order has been passed till date and only show cause notice has been issued. Therefore the writ petition being premature deserves to be dismissed. Further even against the final order, provision for appeal has been provided under Section 15 of the 2016 Act, therefore at this stage no interference is called for bythis Court.

(31) After scrutinizing the pleadings on record and the rival arguments raised at length, following issues which require consideration are as under:-

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[1] 1989 suppl (1) SCC 430

(i) Whether the writ petition filed on behalf of the petitioner Association would be maintainable?

(ii) Whether Section 87 of the Punjab Reorganization Act, 1966 is ultra-vires of the Constitution of India?

(iii) Whether Section 87 of the Punjab Reorganization Act, 1966 gives un-guided & un-canalized power to the Executive?

(iv) Whether the modifications carried out by the Central Government while extending the 2016 Act to the Union territory of Chandigarh vide notification dated 13.04.2018 are beyond the scope of Section 87 of the Punjab Reorganization Act, 1966?

(v) Whether the modifications carried out by the Central Government while extending the 2016 Act to the Union territory of Chandigarh vide notification dated 13.04.2018, violates the rights of private unaided educational institution and infringes upon the rights of minority unaided educational institutes?

ISSUE NO. (i)

(32) A preliminary objection had been taken by the Ld. Counsel for the Chandigarh Administration, that C.W.P. No. 7706 of 2020 is not maintainable at the behest of Association, as no prejudice has been causedto the Association by the orders passed by the Chandigarh Administration. Further it has been pointed out by the counsel for the Chandigarh Administration, that the resolution appended along with the writ petition cannot be said to be a proper authorisation, in the eyes of law.

(33) This Court on 02.07.2020, keeping in view the preliminary objection raised by the Ld. Counsel for the Chandigarh Administration atthe time of arguments, had formulated certain preliminary issues, relevant extract of which reads as under:-

> "Keeping in view the incomplete and conflicting averments, we deem it appropriate to first examine as to whether CWP-7706-2020 filed by the Association would be maintainable in the light of the incomplete contents of the Resolution dated 05.01.2020. In the writ, the Association is stated to be comprising of about 78 unaided privately managed schools including situated in the cities of Panchkula and Mohali,

which schools would have no cause of action for maintaining the instant writ petition. The Resolution dated 05.01.2020 is allegedly on behalf of the Association authorizing the President / Secretary to represent the Association, without indicating any proceedings and the quorum being complete as per the by-laws of the Association; as also without disclosing the details of the Members of the Association.

In CWP-7761-2020, it is conceded that the School is a Member of Association and averred that there are 73 Members of the Association.

In CWP-7940-2020, it is conceded that the School is also part of the Association.

If both the Schools in the aforesaid two writ petitions are a part of the Association, it is not understandable as to how their individual writs would be maintainable. Therefore, the issues which are required to be addressed at this stage are:-

a. Whether the writ petition on behalf of the Association would be maintainable in the present form, more so, in the light of the incomplete and probably invalid Resolution dated 05.01.2020;

b. If the answer to the (i) above is in the affirmative, then whether the petitioner(s) in the other two writ petitions bearing CWP Nos. 7761 & 7940 of 2020 being Members of the said Association can maintain their separate writ petitions;

c. If the answer to the (i) above is in the affirmative, in the light of the stand of the U.T., Chandigarh that 40 (forty) schools have already complied with the provisions, whether the writ on behalf of the Association would still be maintainable in terms of the by-laws of theAssociation;

d. In the facts of the present case, whether the Resolution dated 05.01.2020 annexed in CWP-7706- 2020 on behalf of the Associationcan be accepted to be a valid Resolution as per the by-laws;

e. Whether the writ petition preferred by Association will be maintainable once the Association itself is not affected by an act of respondents, even assuming if the members of

Association are affected, but for purpose of enjoying legal rights, members of the Association will have to approach individually especially once majority of the Members of Association are either not affected by acts of respondents or have complied with the impugned act / action.

(34) Since, the arguments on the above said issues as well as on the main petition were addressed by the learned counsel for the parties, together, therefore the said preliminary issue is being decided along with the main petition.

(35) The Secretary of the Association, Sh. Rajdeep Singh Riar, had filed an affidavit dated 10.7.2020 in pursuance to order dated 02.07.2020. Along with the affidavit Memorandum of Association and Articles of Association of the Association were also placed on record.

(36) The petitioner-Association is a registered society under the Societies Registration Act. As per affidavit of the Secretary dated 10.07.2020, the Association comprises of 79 schools as members who are situated across the Union Territory of Chandigarh, as also the States of Punjab and Haryana. Though, as per the list **Annexure P-12** appended with the affidavit makes it evident, that school of Himachal Pradesh is alsomember of the petitioner-Association.

(37) As per the Articles of Association *viz.* rules and regulations of the Association as amended on 20.12.2013, (Clause 6) all members of the Association form the general body of the Association. The Executive Committee of the Association comprises of President, Vice President, Secretary, Treasurer and 5 other members elected by the Association. Further as per Clause 20 of the Articles of Association, all acts /decisions taken by the Executive Committee in consultation with the General Body shall be binding on the members of the Association.

(38) As per Clause 22 of the Articles of Association, the quorum of the General Body meeting of the Association comprises of one fourth of the total members whereas quorum for the meeting of the Executive Committee is of 5 members.

(39) As per the resolution dated 5.01.2020, appended along with C.W.P. No. 7706 of 2020, in the meeting of the Independent School Association, Chandigarh held on 28.11.2019, the President and theSecretary of the Association were authorised and empowered to represent the Association in any suit or any petition including writ petition or any other litigation in any Court/ authority/ tribunal anywhere in India. They were further authorised to sue or to defend any

proceedings or to file any affidavit/additional affidavit or to engage any advocate in order to represent the Association in any Court of law. The contents of the meeting makes it evident, that the same is general and not specific to filing of the present writ petition with regard to assailing the 2016 Act as adopted by the Chandigarh Administration vide notification dated 13.4.2018.

(40) The reliance has been placed upon **Annexure P-13**, to depict that in the meeting held on 28.11.2019, approximately 33 member schools were present which is evident from the signatures and therefore the one fourth quorum as mandated in Clause 22 of the Articles of Association was duly met with.

(41) Though the signatures of the 33 members is not in dispute, but the factual position is that the Association comprises of the schools from Punjab, Haryana, Himachal Pradesh and Chandigarh. The challenge in the present writ petition is to the notification issued by the Chandigarh Administration and therefore the schools of Punjab, Haryana and Himachal Pradesh being not aggrieved have no locus standi to file the present petition.

(42) The resolution dated 5.01.2020 appended with the writ petition on behalf of the petitioner Association only reproduces relevant extracts of the meeting dated 28.11.2019 and is absolutely vague and does not depicts any specific authorisation granted by the members to assail the notifications and orders issued by the Chandigarh Administration which are in dispute in the present petition. Even if we are to ignore this defect in the petition, it cannot be lost sight, that the resolution is on the basis of the meeting of the General Body dated 28.11.2019 and as per **Annexure P-13**, thirty-three (33) members are signatory, out of which various member schools are not within the jurisdiction of Chandigarh and as such are not aggrieved by the actions of the U.T. Administration.

(43) This Court would not have gone in hyper-technicalities of maintainability but it has been rightly pointed out by learned counsel for the respondents, that present Association challenges each and every order passed by the State Governments at the drop of the hat, without there being any specific resolution to challenge the said action or there being any specific approval on behalf of the member schools. Further it is the stand of respondents that the present association is merely a front / cloud which restrains and creates hindrance in complying of the directions issued by the State Governments/Authorities, even when majority of the schools are

willing to comply and the Association is being operated/ controlled by two or three schools situated in Chandigarh for fulfilling their own needs. The said fact is substantiated, as even in the present case various member schools have already complied with the directions issued by the Chandigarh Administration, which is a matter of challenge in the present petitions, despite that the writ petition has been filed even on behalf the members who have already complied with the directions. Thus what seems to us is that, only few members are aggrieved by an order of State Authorities/Government but the petitions are filed by the Association making all member schools as parties, at the behest of few members, only to pressurize the government. It can also not be ignored, that there can be cases where the various schools wish to comply with the directions and are not aggrieved but on account of challenge by the Association refrain from complying.

(44) That another contention which has been raised by the petitioners is that the CWP No. 7706 of 2020 has been filed by the Association only on behalf of 49 schools and not on behalf of all the member schools viz 79. This argument itself runs contrary to the facts placed on record vide affidavit dated 10.07.2020, of the Secretary of the Association. As stated above, the CWP No. 7706 of 2020 has been filed on behalf of the Association on the basis of the meeting held on 28.11.2019and as per proceedings of 28.11.2019 **(P-13)**, 33 members are signatories out of which many schools are not even situated in the territory of Chandigarh.

(45) Even if the present argument of petitioner Association is to be tested, it transpires that on one side on the basis of the resolution passed in the meeting attended by 33 members (out of which few members do not belong to Chandigarh) the writ petition has been preferred (for 49 member schools situated in Chandigarh) on the strength of the Articles of Association of the society, which makes all the members schools bound by the decision of the society. On other side when the Association is confronted with the issue of locus of filing the present petition as the Association comprises of member schools from State of Punjab, Haryana, Himachal Pradesh & U.T. Chandigarh, and therefore all the members of the association are bound by its decision, despite not being affected by the decision taken by the Chandigarh Administration, it is being argued that the writ petition is restricted only to 49 members and all member schools are notbound by the decision of the society. The present argument of the petitioner

Association is itself contradictory and is thus rejected.

(46) This Court is aware of the fact, that the Union/ Association have locus standi in the facts and circumstances of particular case. However if the Association is no more than a wayfarer or officious intervener without any common interest or concern, then the doors of the Court will not open for them.

(47) This Court is also conscious of the fact that participative justice is part of our democracy. A petition is maintainable if common grievance exists with large body of persons and they by forming an Association approach the Hon'ble Court for redressal of their grievances. But the relevant factor in the present case is that there exists no common grievance as the petitioner Association is not restricted to the territory of Chandigarh. The petitioner Association includes member schools from State of Punjab, State of Haryana, State of Himachal Pradesh and Chandigarh. As per the bylaws of the Association, all the members are bound by the decision of the General Body. If the present petition, in the present form, on the basis of resolution appended with the writ petition is to be considered, the same would amount that the schools of States of Punjab, Haryana and Himachal Pradesh are also party to the present proceedings, despite they having no grievance.

(48) Further even amongst the members of the Association which are operating in Chandigarh, various members have already complied with the directions of the Chandigarh Administration without any demur. The alleged resolution is on the basis of the proceedings held on 28.11.2019 which makes it abundantly clear that neither all the member schools of Chandigarh had authorised the filing of the present writ petition nor all the members who are signatory to the proceedings belong to Chandigarh.

(49) The petitioner-Association has also not approached this Court with clean hands and have made an attempt to suppress the facts with an intent to ensure that the maintainability of the petition does not comes in its way. The petitioner-Association in paragraph No. 1 of the writ petitionstates that the association comprises of about 78 un-aided privately managedschools whereas once specific affidavit was directed to be filed on behalf of the Association, it has come to notice that the association comprises of 79 schools. Even in the contents of affidavit it has not been disclosed that the school of Himachal Pradesh is also member of the present Association. It is only once this Court perused **Annexure P-12**, it came to the notice that the school of Himachal

Pradesh is also a member of the present Association.

(50) The present petition has been filed by the Association and asper the bylaws of the Association all the members are bound by the decision of the General Body. As such it would amount that the writ petition also includes the member school which is situated in the state of Himachal Pradesh. Neither the school situated in Himachal Pradesh can have anygrievance against the actions of the Chandigarh Administration nor this Court can have territorial jurisdiction to redress any grievance of such school. The nondisclosure and concealment of the said fact on the part ofthe association adds force to the arguments of the learned counsel for the Chandigarh Administration that the association is an artificial cloud which is creating hurdles in the functioning of the schools in transparent manner.

(51) Further no fundamental right of the petitioner Association (which comprises of schools of Chandigarh, State of Punjab, State of Haryana and State of Himachal Pradesh) has been violated.

(52) It is also relevant to note that in CWP No. 7706 of 2020 along with the petitioner Association, petitioner No. 2 (Saint Soldier International Educational Society, Saint soldier International School) and petitioner 3(Saupin Education Foundation, Suapin's School) who are presently members of the association as per the averments in the writ petition, but have approached this Court through the societies running the respectiveschools in their independent capacity.

(53) Therefore the issues and grievances as raised in CWP No. 7706 of 2020 is being dealt on behalf of petitioner No. 2 and 3. But the writ petition on behalf of the petitioner No. 1 *viz.* the Independent Schools'Association is dismissed being not maintainable.

(54) That though this Court is dealing with the issues raised in the present petitions on merits but this Court cannot shut its eyes to the actionsof the schools which are petitioners before this Court. The schools have the duty on their shoulders to impart education as well as to teach moral valuesto its students in order to uplift the society. But it seems that certain schools are themselves indulging in immoral activities such as concealing material facts with an ulterior motive to get a favourable order. The CWP No. 7761of 2020 has been filed on behalf of the society (Kabir Education Society) as well as the school (Saint Kabir Public School) being run by the society. The petitioner school is the member of the Independent schools Association which

has been admitted by the petitioner in paragraph 3 of the CWP No. 7761 of 2020. Despite the fact that the association had preferred writ petition (CWP No. 7706 of 2020) seeking similar relief, the Saint Kabir Public School preferred separate writ petition (CWP No. 7761 of 2020) without disclosing the pendency of the writ petition filed by the Association.

(55) The CWP No. 7706 of 2020 was listed for hearing before this Court on 4.06.2020. Whereas the CWP No. 7761 of 2020 came up for hearing on 5.6.2020. **Learned counsel for the Chandigarh Administration** to whom advance copy of the writ petition was served, **submits** that the petitioner school in CWP No. 7761 of 2020 despite filing petition through the association filed separate set of petition without disclosing the pendency of the writ petition filed by the association, and has thereby approached this Court with unclean hands. It is further stated by learned counsel for the Chandigarh Administration that on 5.6.2020, the case was tagged along with the writ petition filed by the association as the same Hon'ble Court was already seized of the matter filed by the association which was heard one day prior to the listing of CWP No. 7761 of 2020. It is further submitted that had the Hon'ble Court being not aware of the proceedings filed by association, the writ petitioners in CWP No. 7761 of 2020 would have succeeded in securing an interim order, if any.

(56) The specific preliminary issue was also framed by this Court on 2.7.2020 as to how a separate writ petition would be maintainable once the schools are member of the association which has already filed a writ petitionseeking similar relief.

(57) Learned counsel for the petitioners in CWP No. 7761 of 2020 took a categoric stand that though the petitioner school is part of the association in CWP No. 7706 of 2020 but for the grievance being raised in the present petition, it has **disassociated** itself from the association and as such has preferred the present petition individually. However the said stand of CWP No. 7761 of 2020 seems to be an afterthought as it is evident, from **Annexure P-13** (appended in CWP No. 7706 of 2020) as per which in the list of members present in the meeting dated 28.11.2019, the name of Saint Kabir Public School is duly mentioned at serial No. 62 and in fact the authorised signatory Sh. Gurpreet Singh Bakshi who has signed CWP No. 7761 of 2020 is himself signatory of the resolution dated 28.11.2019.

(58) Further in pursuance to the order dated 2.07.2020 (reproducedin paragraph No.8 hereinabove) whereby preliminary issue

with regard to maintainability was raised, the writ petitioner (Saint Kabir Public School) in CWP No. 7761 of 2020 filed an Additional Affidavit dated 09.07.2020 (CM No. 6269 of 2020) of Sh. Gurpreet Singh Bakshi stating that the petitioner has not filed the writ petition through the association, as the association has preferred the writ petition on behalf of 49 members and the name of the petitioner is not included therein. Further it has been stated in the additional affidavit that the separate writ petition has been filed so as to raise the issue of protection granted to Minority institutions, as the petitioner school is a Minority Institute. As evident from the record that Sh. Gurpreet Singh Bakshi has himself signed the proceedings on behalf of Saint Kabir Public School (which is a member school of the petitioner Association) pursuant to which CWP No. 7706 of 2020 has been filed by the Association and the saidfact has not been disclosed in the writ petition filed by the Saint Kabir Public School. Further it is undisputed fact that as per the Bylaws/Articles of Association of the petitioner Association, all the members schools are bound by the decision of the society, therefore once a decision has been taken in which Saint Kabir Public School is a signatory, the argument thatthe writ petition is not filed on behalf of Saint Kabir Public School by the Association cannot be accepted.

(59) Second argument raised on behalf of Saint Kabir public school justifying the action for filing a separate writ petition, despite being member of the petitioner Association, is that they had preferred the separate petition in order to raise the issue of modifications carried out by the Central Government while adopting the 2016 Act of state of Punjab, being infringing upon the rights of minority institutions enshrined under Article 30 of the Constitution of India. The said argument does not justify filing of the separate writ petition as it is always open to raise all possible grounds to assail the order in same petition. Mere availability of new ground to assailthe order does not entitle filling of separate petition. Ever otherwise the present argument is contrary to record as issue of Minority has been specifically raised in the writ petition preferred by the Association (CWP No. 7706 of 20) in paragraph no. 41. Thus it is evident that false statements have been made and affidavit dated 09.07.2020 containing false averments has been filed before this Hon'ble Court.

(60) False statement made in Court or in pleadings, intentionally to mislead Court and obtain favourable order, amounts to criminal contempt,as it tends to impede the administration of justice.

(61) The petitioner (Saint Kabir Public School) cannot possibly refute the above said factual position and as a last resort, submitted through the counsel that no benefit has been derived by the petitioner by filing a separate petition as in any case both the writ petitions had been tagged together and even without filing of the separate writ petition, the Hon'ble Court was already seized of the matter in the writ petition filed by the Association.

(62) We are of the view that whether contemner has obtained an advantage or not is wholly immaterial. False statement made before Court and filling of affidavit dated 09.07.2020 containing false averments, (moreso in the background of a preliminary issue raised by this Court in its order dated 2.7.2020), would amount to Contempt of Court. The scope and object of Contempt of Courts Act, 1971 has been discussed by the Hon'ble Supreme Court of India in ***Murray & Co.*** versus ***Ashok Kr. Newatia,***[2]. The purpose and object of the Contempt of Court Act as observed by the Hon'ble Supreme Court in ***Murray & Co.*** (supra) and culled out by us is as under:-

> (i) When an offence of contempt of court is committed, it is wholly immaterial whether contemner obtained an advantage or not.
>
> (ii) Purpose of punishment for contempt is to ensure rule of law and orderly administration of justice and uphold majesty and dignity of courts of law because image of such a majesty in minds of people cannot be allowed to be distorted.
>
> (iii) Respect and authority commanded by courts are greatest guarantee to an ordinary citizen. Entire democratic fabric of society will crumble down if respect for judiciary is undermined.
>
> (iv) Judiciary will be judged by the people for what the judiciary does, but in event of any indulgence which even can remotely be termed to affect majesty of law, thesociety is bound to lose confidence and faith in judiciary and law courts will forfeit the trust and confidence of the people in general.

(63) The petitioners who approach the Court of equity should also act in responsible manner and not act as a hindrance in the

[2] 2000(1) RCR (Criminal) 729 : (2000)2 SCC 367

administration of justice. Therefore, keeping in view the peculiar facts of the present case, wherein on the basis of objections raised by the respondents, certain preliminary issues were formulated vide order dated 02.07.2020, regarding maintainability of the CWP No. 7761 of 2020 filed by Saint Kabir Public School, being member of the Association, which has already preferred CWP No. 7706 of 2020.The writ petitioner, Saint Kabir Public School in CWPNo. 7761 of 2020 chose to furnish affidavit of Sh. Gurpreet Singh Bakshi, containing false averments and made incorrect false submissions through his counsel before this Court, justifying his misdeed. We are of the view that Sh. Gurpreet Singh Bakshi, signatory in CWP No. 7761 of 2020, is liable to proceeded against for criminal contempt. However, keeping in view the fact that the Sh. Gurpreet Singh Bakshi is an educationist, running a well-known school in Chandigarh, we refrain from precipitating action under the Contempt of Courts Act and proceed to let go him with advisory warning to remain extremely careful in future and act responsibly while dealing with the Court cases.

ISSUE NOS. (ii) & (iii)

(64) Since issue Nos. (ii) & (iii) are overlapping, therefore the same have been dealt with together

(65) Section 87 of the 1966 Act reads as under:-

> " 87. Power to extend enactments to Chandigarh.—The Central Government may, by notification in the Official Gazette, extend **with such restrictions or modifications as it thinks fit**, to the Union territory of Chandigarh any enactment which is in force in a State at the date of the notification".

(66) The controversy involved in the above said issues is no more *res-integra* and has already been adjudicated by the Hon'ble Supreme Court in the case of ***Ramesh Brich and ors*** **.**versus ***Union of India and ors of India***[3] The arguments raised by learned counsel for the parties with regard to the present issues are *para materia* similar to the arguments raised before the Hon'ble Supreme Court of India in ***Ramesh Birch's*** case (supra).

(67) The issues involved in the ***Ramesh Birch's*** case**,** as noticed in Para No. 11, reads as under:-

[3] 1989 (Sup 1) SCC 430 :AIR 1990 SC 560.

> "11.Ex facie, the impugned notification appears to be intra vires Section 87. The 1985 Act is an enactment in force in a State on the date of the notification and Section 87 clearly permits the Central Government to extend it to Chandigarh. **If the petitioners/appellants seek to challenge its validity, they have either to contend that Section 87 itself is ultra vires the Constitution or that, though Section 87 is a valid provision, on a proper construction thereof, the notification travels beyond the area of extension permitted under it and is hence invalid. Both these contentions have been urged before us.** Sri Gujral had so much confidence in the latter argument that he had made it his principal argument, taking up the former as a plea in the alternative. But young Sri Swarup boldly concentrated on attacking the validity of Section 87 while also lending support to Sri Gujral's principal argument as an argument in the alternative. We shall proceed to examine these two contentions."

(68) This Court does not require to go into the depth of the arguments raised regarding the present issues, as the said arguments have been considered and dealt by the Hon'ble Supreme Court of India and as such this Court is bound by the decision rendered in ***Ramesh Birch's*** case (supra). The relevant paragraphs of the same read as under:-

> "**23.** But, these niceties apart, we think that Section 87 is quite valid even on the "policy and guideline" theory if one has proper regard to the context of the Act and the object and purpose sought to be achieved by section 87 of the Act. The Judicial decisions referred to above make it clear that it is not necessary that the legislature should "do all i's and cross all the t's" of its policy. It is sufficient if it gives the broadest indication of a general policy of the legislature. If we bear this in mind and have regard to the history of this type of legislation, there will be no difficulty at all. Section 87, like the provisions of Acts I, II and III, is a provision necessitated by changes resulting in territories coming under the legislative jurisdiction of the Centre. These are territories situated in the midst of contiguous territories which have a proper legislature. They are small territories falling under the legislative jurisdiction of Parliament which

has hardly sufficient time to look after the details of all their legislative needs and requirements. To require or expect Parliament to legislate for them will entail a disproportionate pressure on its legislative schedule. It will also mean the unnecessary utilisation of the time ofa large number of members of Parliament for, except the few (less than ten) members returned to Parliament from the Union Territory, none else is likely to be interested in such legislation. In such a situation, the most convenient course of legislating for them is the adaptation, by extension, of laws in force in other areas of the country. As Fazl Ali, J. pointed out in the Delhi Laws Act case, it is not a power to make laws that is delegated but only a power to "transplant" laws already in force after having undergone scrutiny by Parliament or one of the State Legislatures, and that too, without any material change. There is no dispute before us and it has been unanimously held in all the decisions that the power to make modifications and restrictions in a clause of this type is a very limited power, which permits only changes that the different context requires and not changes in substance. There is certainly no power of modification by way of repeal or amendment basis available under Section 89.

25. So far as the first aspect referred by Sri Swarup is concerned, the provision only confers a power on the executive to determine, havingregard to the local conditions prevalent in the Union Territory,which one of several laws, all approved by one or the other of the legislatures in the country, will be the most suited to Chandigarh. **Thus viewed, it would fall under one of the permissible categories of delegation referred to at p. 814 in the Delhi Laws Act case and extracted by us earlier and, if so, it is not really an unguided or arbitrary power**. There could have been no objection to the legislation if it had provided that the laws of one of the contiguous States (say Punjab) should be extended to Chandigarh. But such a provision would have been totally inadequate to meet the situation for two reasons. There may be more than one law in force on a subject in the contiguous States say one in Punjab, one in Pepsu and one in Himachal Pradesh etc. and Parliament was anxious thatChandigarh should have the benefit of that one

of them which would most adequately meet the needs of the situation in that territory. Or, again, there may be no existing law on a particular subject in any of the contiguous areas which is why the power had to include the power of extending the laws of any State of India. **While, in a very strict sense, this may involve a choice, it is in fact and in the general run of cases, only a decision on suitability for adaptation rather than choice of a policy. It is a delegation, not of a policy, but of matters of detail for a meticulous appraisal of which Parliament has no time. Even if we assume that this involves a choice of policy, the restriction of such policy to one that is approved by Parliament or a State Legislature constitutes a sufficient declaration of guideline within the meaning of the "policy- guideline" theory.**

26. The second aspect referred to by Sri Swarup, again, is in the context,not a sign of "abdication" but is only a necessary enabling power. **Once it is held that the delegation of a power to extend a present existing law is justified, a power to extend future laws is a necessary corollary**. Here again its validity may be tested by considering what the position would have been if the section had provided only for the extenstion of the laws in the contiguous territory, say Punjab. **As mentioned earlier, a power to extend existing statutes in Punjab could clearly have been delegated. If Parliament formulated such a policy as it had no time to apply its mind to the existing law initially to be adapted, it could hardly find time to consider the amendments from time to time engrafted on it in the state of its origin. Hence once a policy of extension of Punjab laws is clear and permissible it would seem only natural as a necessary corollary that the executive should be permitted to extend future amendments to those laws as well. The power to extend any future law has to be considered in the above context and not only could be, but also has to be, conferred for the same reasons as justify the conferment of a power to extend a present contiguous law**. Mukherjee, J. in the Delhi Laws Act case has touched upon this issue. **As pointed out by him, the question of validity of the delegation of a power to extend any future law, is**

> **notfree from difficulty. If the provision is considered in the abstract and construed on the basis of its fullest possible ambit, it may be difficult to sustain it. But if it is construed and judged in the historical context of the legislation, the needs of the situation and a reasonably practical appraisal of the extent of its intended application, there can be no doubt that it contains a sufficient indication of leaord policy to sustain the validity of the extent of delegation involved in section 87. We may, in this context, repeat again that courts, in the decided cases, do not envisage a meticulous enunciation of a policy in all its details. They are satisfied even if they can discern even faint glimmerings of one from the object and scheme of the legislation**.
>
> 27. **For the reasons discussed above, we reject the contentions of the petitioners challenging the constitutional validity of section 87**."

(Emphasis Supplied)

(69) That the law laid down by the Hon'ble Supreme Court in ***Ramesh Birch's*** case (supra) has been followed by the Hon'ble Supreme Court of India in the case of ***Ram Krishan Grover*** versus ***Union of India***[4] The challenge in ***Ram Krishan Grover's*** case (supra) was to the constitutional validity of Section 13 B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Rent Act') and its extension to the Union Territory of Chandigarh by the Central Government vide Notification dated 09.10.2009 in exercise of powers under Section 87of the Punjab Reorganisation Act, 1966. The Hon'ble Supreme Court upheldthe power of the executive to adapt and extend laws by the Central Government to the Union Territory of Chandigarh by invoking powers under Section 87 of the 1966 Act. The relevant portion of ***Ram Krishan Grover's case (supra)*** reads as under:-

> "**A. Whether Notification dated 09.10.2009 issued under Section 87 of the Reorganisation Act extending Section 13B of the Rent Act to Chandigarh by executive action is invalid?**
>
> **16.** In Ramesh Birch (supra), earlier Constitutional Bench

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[4] 2020 PLR 671 : AIR 2020 SC 3226.

judgment of this Court in **Re Delhi Laws Act 1912, Ajmer Merwara (Extension of Laws) Act, 1947 and Part C States (Laws) Act, 1950, AIR 1951 SC 332** was examined and elucidated after considering seven different opinions of Kania, CJ., Fazl Ali, Patanjali Sastri, Mahajan, Mukherjea, Das and Bose JJ. All the Judges except Kania, CJ. and Mahajan, J. had upheld provisions of Section 7 of the Delhi Laws Act, 1912, Section 2 of the Ajmer Merwara (Extension of Laws) Act, 1947 and the first portion of Section 2 of Part C States (Laws) Act. However, Bose and Mukherjea, JJ. had for reasons stated by them formed the majority with Kania, CJ. and Mahajan, J. in striking down second part of Section 2 of Part C States (Laws) Act, 1950 by which the executive had been given the power to make a provision in any enactment so extended for the repeal or amendment of any corresponding law (other than a Central Act) which was for the time being applicable to that Part C State. This part of Section 2, it was observed, suffers from the vice of excessive delegation and abdication of power by the Legislature. On the touchstone of an earlier decision of the Privy Council in **R. v. Burah, (1878) 5 Ind App 178 (PC)**, this Court in Ramesh Birch (supra) had upheld constitutional validity of Section 87 of the Reorganisation Act, holding it to be valid on the 'policy and guideline' theory if one has proper regard to the context of the Reorganisation Act and the object and purpose sought to be achieved by Section 87 of the Reorganisation Act. It was observed:

"23. But, these niceties apart, we think that Section 87 is quite valid even on the "policy and guideline" theory if one has proper regard to the context of the Act and the object and purpose sought to be achieved by Section 87 of the Act. The judicial decisions referred to above make it clear that it is not necessary that the legislature should "dot all the i's and cross all the t's" of its policy. It is sufficient if it gives the broadest indication of a general policy of the legislature. If we bear this in mind and have regard to the history of this type of legislation, there will be no difficulty at all. Section 87, like the provisions of Acts I, II and III, is a provision necessitated by changes resulting in territories coming under the legislative jurisdiction of the

Centre. These are territories situated in the midst of contiguous territories which have a proper legislature. They are small territories falling under the legislative jurisdiction of Parliament which has hardly sufficient time to look after the details of all their legislative needs and requirements. Torequire or expect Parliament to legislate for them will entail adisproportionate pressure on its legislative schedule. It will also mean the unnecessary utilisation of the time of a large number of members of Parliament for, except the few (less than ten) members returned to Parliament from the Union territory, none else is likely to be interested in such legislation. In such a situation, the most convenient course of legislating for them is the adaptation, by extension, of laws in force in other areas of the country. As Fazl Ali, J. pointed out in the Delhi Laws Act case [AIR 1951 SC 332 : 1951 SCR 747] it is not a power to make laws that is delegated but onlya power to "transplant" laws already in force after having undergone scrutiny by Parliament or one of the State legislatures, and that too, without any material change. There is no dispute before us - and it has been unanimously held in all the decisions - that the power to make modifications and restrictions in a clause of this type is a very limited power, which permits only changes that the different context requires and not changes in substance. There is certainly no power of modification by way of repeal or amendment as is available under Section 89."

17. Ramesh Birch (supra) had held that once a policy of extension of the Rent Act is clear and permissible, it would seem only natural as a necessary corollary that the executive should be permitted to extend future amendments in the Rent Act to the Union Territory of Chandigarh. After extensively examining the different judgments and the views expressed in Re Delhi Laws Act (supra), the notification was upheld with the following findings:

"31. There is certainly a good deal of force in these arguments but we think that they proceed on an incorrect view of the effect of the notification impugnedin the present case. We might have been inclined to accept the submissions of the learned Counsel had the effect of the

notification been to extend law which is in "actual conflict" with any parliamentary enactment or which has the effect of "throwing out" any existing law in the Union territory. To borrow an expression used in an analogous context, we would have considered the validity of the extension doubtful had the extended provisions been repugnant to an Act of Parliament in force in the Union territory. So long as that is not the effect or result, we think, there is no reason to construe the scope of Section 87 in the restricted manner suggested by counsel. It is no doubt true that Section 87 permits an extension because there is no law in the Union territory in relation to a particular subject and Parliament has not the requisite time to attend to the matter because of its preoccupations. But this purpose does not require for its validity that there should be no existing law of Parliament at all on a subject. Again the concept of "subject" for the purposes of this argument is also an elastic one the precise scope of which cannot be defined. The concept of vacuum is as much relevant to a case where there is absence of a particular provision in an existing law as to a case where there is no existing law at all in the Union territory on a subject. For instance, if Parliament had not enacted the 1974 Act but had only enacted an extension of the Transfer of Property Act to Chandigarh, could it have been said that a subsequent notification cannot extend the provisions of the 1949 Act to Chandigarh because the subject of leases is governed by the Transfer of Property Act which has been already extended and there is, therefore, no "vacuum" left which could be filled in by such extension ? Again, suppose, initially, a Rent Act is extended by Parliament which does not contain a provision regarding one of the grounds on which a landlord can seek eviction - say, one enabling the owner to get back his house for reoccupation - and then the Government thinks that another enactment containing such a provision may also be extended, can it not be plausibly said that the latter is a matter on which there is no legislation enacted in the territory and that the extension of the latter enactment only fills up a void or vacancy ? Again, suppose the provisions of a general code like, say, the Code of Civil Procedure are extended to the Union territory, should we construe Section 87 so as to

preclude the extension of a later amendment to one of the rules to one of the orders of the CPC merely on the ground that it will have effect of varying or amending an existing law? We think it would not be correct to thus unduly restrict the scope of a provision like Section 87. The better way to put the principle, we think, is to say that the extension of an enactment which makes additions to the existing law would also be permissible under Section 87 so long as it does not, expressly or impliedly, repeal or conflict with, or is not repugnant to, an already existing law. In this context, reference can usefully be made to the observations in Hari Shankar Bagla **[Harishankar Bagla v. State of M.P., (1955) 1 SCR 380]** at p. 391, which seem to countenance the "bypassing" of an existing law by a piece of delegated legislation and to draw the line only at its attempt to repeal the existing law, expressly or by necessary implication. In a sense, no doubt, any addition, however small, does amend or vary the existing law but so long as it does not really detract from or conflict with it, there is no reason why it should not stand alongside the existing law. In our view Section 87 should be interpreted constructively so as to permit its object being achieved rather than in a manner that will detract from its efficacy or purpose. We may also note, incidentally in legislative practice also, such successive changes have been allowed to stand together. **Lachmi Narain v. Union of India [(1976) 2 SCC 953]** narrates how the Bengal Finance (Sales Tax) Act, 1941 extended to Delhi under Act III was subsequently amended by Parliament Acts of 1956 and 1959 but was also sought to be modified by various notifications from time to time. These notifications were challenged on the ground that the power to extend by notification could be exercised only once and that the impugned notification did not merely extend but also effected modifications of a substantial nature in the Act sought to be extended. No contention was, however, raised that after the intervention of Parliament in 1956 and 1959 there could have been no extension of the Bengal Act as it would have the effect of adding to or varying the Parliamentary legislation apparently because they could stand side by side with each other. We, therefore, think that since the extension of the 1985 Act only adds

provisions in respect of aspects not covered by the 1974 Act and in a manner not inconsistent therewith, the impugned notification is quite valid and not liable to be struck down."

18. The distinction between conditional legislation and delegated legislation was explained by this Court in **Vasu Dev Singh v. Union of India, 2006(2) RCR (Rent) 561 : (2006) 12 SCC 753** in the following words:

"16. ... The distinction between conditional legislation and delegated legislation is clear and unambiguous. In a conditional legislation the delegatee has to apply the law to an area or to determine the time and manner of carrying it into effect or at such time, as it decides or tounderstand the rule of legislation, it would be a conditional legislation. The legislature in such a case makes the law, which is complete in all respects but the same is not brought into operation immediately. The enforcement of the law would depend upon thefulfilment of a condition and what is delegated to the executive is the authority to determine by exercising its own judgment as to whether such conditions have been fulfilled and/or the time has come when such legislation should be brought into force. The taking effect of a legislation, therefore, is made dependent upon the determination of such fact or condition by the executive organ of the Government. Delegated legislation, however, involves delegation of rule-making power of legislation and authorises an executive authority to bring in force such an area by reason thereof. The discretion conferred on the executive by way of delegated legislation is much wider. Such power to make rules or regulations, however, must be exercised within the four corners of the Act. Delegated legislation, thus, is a device which has been fashioned by the legislature to be exercised inthe manner laid down in the legislation itself...

17. In **Hamdard Dawakhana v. Union of India, AIR 1960 SC 554** this Court stated:

"The distinction between conditional legislation and delegated legislation is this that in the former the delegate's power is that of determining when alegislative declared rule of conduct shall become effective; **Hampton & Co. v. U.S.** and the latter involves delegation of rule-making power

which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend;" In the present case, the extension of the Amendment Act to the Union Territory of Chandigarh falls within the ambit of conditional delegation and is valid and permissible.

19. In light of the aforesaid decisions and for the same reasons as stated in Ramesh Birch (supra), we would reject the first contention raised by the appellants. Once a policy of extension of laws has been laid down by the Parliament and is clear and permissible, it would only seem as an inevitable fallout that the executive should be permitted to extend future amendments to the existing laws. Therefore, the challenge predicated on the doctrine of excessive delegation, separation of powers, doctrine of the law of agency, fails and must be rejected. Such challenge must also be rejected in view of the large number of eviction suits filed by Non-Resident Indian landlords on the strength of Notification dated 09.10.2009 who would be left remediless if contentions to the contrary are accepted."

(Emphasis Supplied)

(70) That from the observations made in ***Ramesh Birch's case (supra)*** as followed in ***Ram Krishan Grover's*** case (supra) as well as from reading the Re-organisation Act, it transpires that Section 87 of the 1966 Act is not transitional in nature but confers an all-time power on the Executive. Section 87 empowers the Central Government to extend any legislation to Chandigarh, at any point of time, which is in force in any part of India. Since the Legislation is always overburdened and in order to render support such like powers as provided under Section 87 of the 1966 Act, have been granted to the

Executive. Section 87 permits deriving benefit of the legislation which has gone through the hands of the legislators having being passed by the Legislative Assembly of the state and has stood the test of time.

(71) We are also not impressed with the argument raised by learned counsel for the petitioners in CWP No. 7761 of 2020, to the effect that the laws including acts, rules, regulations etc. etc. can only formulated under Part XI, Chapter-I, of the Constitution of India viz under Article 245 to Article 255 of the Constitution of India and no other provision empowers the Government to lay down any law. Article 245 to Article 255 of the Constitution of India are not the only source for legislating laws. There are various other sources, apart from Part XI, Chapter-I, of the Constitution of India, such as Article 35, 323 (B), 369 of the Constitution of India etc. etc. which provides power to legislate. The Re-Organization Act draws force from Article 2 to Article 4 of the Constitution of India and the Re- organization Act gives ample power to the Central Government to adopt any law which is in operation in various parts of the country.

(72) The 2nd limb of the argument, is that Section 87 of the 1966 Act, by using words “restrictions and modifications” give un-guided and un- canalised power to the Executive.

(73) The “restrictions and modifications” to be made while extending enactments by the Central Government has been considered by Hon’ble Supreme Court of India in **re: Delhi law Act (1951 S.C.R. 747)** while dealing with Section 7 of the Delhi laws Act, 1912 which is similar to Section 87 of the 1966 Act. The observations of the Hon’ble Supreme Court in **re: Delhi law Act (1951 S.C.R. 747)** case has been considered in ***Ramesh Birch's*** case (supra). The relevant extracts (from para no. 18 at pg 459 of SCC citation) of the ***Ramesh Birch's*** case (supra) reads as under:-

> "...........Of course the delegate cannot be allowed to change the policy declared by the legislature and it cannot be given the power to repeal or abrogate any statute. This leads us to the question as to what is implied in the language of section 7 of the Delhi Laws Act which empowers the Central Government to extend any statute in force in any other part ofBritish India to the Province of Delhi with such 'modifications and restrictions' as it thinks fit. **The word "restriction" does not present much difficulty. It connotes limitation imposed upon a**

> **particular provision as to restrain its application or limit its scope. It does not by any means involve any change in the principle. It seems to me that in the context, and used along with the word "restriction", the word "modification" has been employed also in a cognate sense and it does not involve any material or substantial alteration. The dictionary meaning of the expression "to modify" is to "tone down" or "to soften the rigidity of the thing" or "to make partial changes without any radical alteration"**. It would be quite reasonable to hold that the word "modification" in section 7 of the Delhi Laws Act **means and signifies changes of such character as are necessary to make the statute which is sought to be extended suitable to the local conditions of the province**. I do not think that the executive Government is entitled to change the whole nature of policy underlying any particular Act or take different portions from different statutes and prepare what has been described before us as "amalgam" of several laws. The Attorney General has very fairly admitted before us that these things would be beyond the scope of the section itself and if such changes are made they would be invalid as contravening the provision of section 7 of the Delhi Laws Act, thoughthat is no reason for holding section 7 itself to be invalid on that ground." (p. 100-5)"

(Emphasis Supplied)

(74) Further the Hon'ble Supreme Court of India in ***Ramesh Birch's case (supra)*** while relying upon ***Lachmi Narain's case*** **1976 2 SCR 785 (at pg. 801-2)** held that a notification, while extending a law, can make only such "modifications and restrictions" that are incidental, ancillary or subservient in nature. Relevant Extract of Para 32 (2) of ***Ramesh Birch's*** case (supra) at page 781 of SCC citation, reads as under:-

> "…. In Lachmi Narain 1976 2 SCR 785 (at SCR p. 801-2: SCC pp. 966- 967) and other cases it has been held that such a notification, while extending a law, can make only such "modifications and restrictions" in the law extended as are of an incidental, ancillary or subservient nature and as do not involve substantial deviations therefrom. Here, it is common ground that the 1985 Act has been extended as it

is, with only very minor modifications and, hence, it is unnecessary to consider the question debated."

(75) The Hon'ble Supreme Court of India in ***Brij Sunder Kapoor*** versus ***Ist. Additional District Judge,***[5] while considering decisions in ***Lachmi Narain's case***[6], ***Delhi Laws Act case***[7] and ***Rajnarain Singh's case***[8] observed that:-

> "It is true that the words 'such restrictions and modifications' as it thinks fit, if construed literally and in isolation, appear to give unfettered power of amending and modifying the enactment sought to be extended Such a wide construction must be eschewed lest the very validity of the section becomes vulnerable on account of the vice of excessive delegation. Moreover, such a construction would be repugnant to the context and the content of the section, read as a whole and the statutory limits and conditions attaching to the exercise of the power. We **must, therefore confine the scope of the words 'restrictions and modifications' to alterations of such a character which keep the in-built policy essence and substance of the enactment sought to be extended, intact, and introduce only such peripheral or insubstantial changes which are appropriate and necessary to adapt and adjust it to the local conditions of the Union Territory**." These observations make it clear that, though apparently **wide in scope, the power of the Central Government for the extension of laws is a very limited one and cannot change the basic essential structure or the material provisions of the law sought to be extended** to Cantonment areas.

(Relevant Extract)

(76) That further Section 87 of the 1966 Act, uses the expression "**as it thinks fit**". The term "as it thinks fit" gives ample power to the Central Government to make all necessary modifications and restrictions to the Legislation being adapted to Union Territory of Chandigarh. From, the plain language in Section 87 makes it abundantly clear that the power to make modifications/restrictions has

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[5] 1989 (1) SCC 561
[6] (1976) 2 SCR 785
[7] 1951 SCR 747
[8] (1955) 1 SCR 290

been left to the wisdom and discretion of the Central Government which cannot not be curtailed or whittled down in any manner.

(77) The Hon'ble Supreme Court of India in ***Ghulam Quadir*** versus ***Special Tribunal***[9] while interpreting the phrase "May pass such order as he thinks fit" has held that the term as he thinks fit confers power of wide plentitude on the authority and the same cannot be hedged or circumscribed by any limits. However, as observed by the Hon'ble Supreme Court in ***Clariant International Ltd.*** versus ***S. E. B. I.***[10] such discretionary jurisdiction though confers wide powers but the same must be exercised fairly and within four corners of the Statute.

(78) From the above discussion and our findings in para no. 41& 42 hereinabove we find that Section 87 of the 1966 Act is intra-vires the Constitution of India.

(79) We are also of the view that Section 87 of the 1966 Act, gives ample power to the Executive to make restrictions or modifications as it thinks fit while adapting any enactment to the Union Territory of Chandigarh, but at the same time, the restrictions or modifications have to be incidental, ancillary or subservient in nature and the modifications and restrictions ought not to change the object to be achieved by the Parent Act. The **powers** conferred to the Executive by Section 87 **cannot be termed to be un-canalised or un-guided** as the Executive while making modifications and restrictions cannot change the basic essential structure of the parent law sought to be extended.

(80) Therefore in light of the observations made hereinabove and the law laid down by the Hon'ble Supreme Court of India as noticed hereinabove, the issue Nos. (ii) & (iii) are decided against the petitioners and in favour of the respondents.

ISSUE NO. (iv)

(81) The challenge is to the additions/modifications carried out by the Central Government vide notification dated 13.4.2018, while adopting the 2016 Act of the state of Punjab, has been assailed on the ground that the additions/modifications are beyond the scope of Section 87 of the 1966 Act.

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[9] 2000 (1) SCC 33

[10] 2004 (8) SCC 524

(82) We have heard the learned counsel for the parties at length with regard to the objections raised on specific sections/clauses added/modified by the Central Government while adopting the 2016 Act, and the same are being dealt separately as hereunder: -

(A) Challenge to validity of 4th proviso to section 5 of the 2016 Act as extended to Union Territory of Chandigarh

(83) The Section 5 of the 2016 Act as well as the modification carried out **(bolded portion)** to the Section 5 by the Central Government while extending the same to the Chandigarh are reproduced hereunder in comparative form:-

PUNJAB	As adapted to UT of Chandigarh
Section 5. Power to fix fee and increase fee An Unaided Educational Institution shall be competent to fix its fee and it may also increase the same after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students: Provided that while fixing or increasing fee, the factors mentioned in sub-section (1) of section 6, shall be kept in view by the Unaided Educational Institution: Provided further that increase in fee shall not exceed eight per cent of the fee of the previous year, charged by the Unaided Educational Institution. Provided further that while fixing or increasing fee, an Unaided Educational Institution cannot indulge in profiteering and it cannot charge capitation fee.	Section 5. Power to fix fee and increase fee An Unaided Educational Institution shall be competent to fix its fee and it may also increase the same after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students: Provided that while fixing or increasing fee, the factors mentioned in sub-section (1) of section 6, shall be kept in view by the Unaided Educational Institution: Provided further that increase in fee shall not exceed eight per cent of the fee of the previous year, charged by the Unaided Educational Institution. Provided further that while fixing or increasing fee, an Unaided Educational Institution cannot indulge in profiteering and it cannot charge capitation fee.

	Provided further that every Unaided Educational Institution shall a. Upload income, expenditure account and balance sheet on its website; b. Not charge any kind of cost from the parents; c. Disclose complete fee structure at the beginning of the academic year in the Booklet issued, along with the admission form, by the schools and also be posted in it's website; d. Not raise the fee any time during the academic session.

(Emphasis supplied)

(84) The petitioners are aggrieved of clause (a) of the 4th proviso to Section 5 of the 2016 Act, as extended to Chandigarh, on the ground that uploading of income and expenditure accounts and balance sheets on the website has no rationale and is not incidental to the objects to be achieved by the main enactment. Further as per the petitioners, the schools are already submitting the financial information with the concerned authorities, therefore there is no need to upload the financial information on its websites as the same would render private institutions vulnerable to unbridled dissection of the accounts by the public.

(85) The 2016 Act has been enacted by the State of Punjab (as extended to U.T. Chandigarh), to provide for the Constitution of regulatory body with view to provide a mechanism for the purpose of regulating fee of unaided educational institutions and further matters connected therewith or incidental thereto. As per Section 18 of the 2016 Act, every unaided educational institution has to maintain proper accounts of fees and charges and has to prepare annual statement of accounts which is to be audited by a qualified chartered accountant.

(86) This Court had specifically asked the learned counsel for the

respondents to state the purpose for which clause (a) of the 4th proviso to Section 5 has been inserted. The respondent Chandigarh Administrationfiled an affidavit dated 27.7.2020 wherein it was stated that the said clause has been added so as to achieve transparency and accountability which is an essential feature of reasonable fee structure. It has been further stated that the direction is to the educational institution and not to the Trust/ Societies.

(87) It is a settled position that there can be no fixing of rigid fee structure. Each institute has freedom to fix its own fee structure while taking into consideration the facilities and the infrastructure of the Institute. Further the institutes are also permitted to generate surplus funds which they can use for the betterment and growth of the educational institution. But at the same time the institutions cannot be permitted to be indulged in profiteering or charging of capitation fees. The education as held by the Hon'ble Supreme Court of India in ***TMA Pai foundation*** versus ***State of Karnataka,***[11] is a charitable occupation.

(88) The purport and object of the 2016 Act is to ensure that appropriate checks and balances are maintained and that the private educational institutions are granted liberty to fix their own fee structure, but at the same time it be ensured that the institutes do not indulge in profiteering or charging of capitation fees.

(89) This Court in ***Anti - Corruption and Crime Investigation Cell vs. State of Punjab, Civil Writ Petition No. 20545 of 2009 (O&M). D/d. 9.4.2013***, had considered the fact that though most of the schools are submitting their annual reports but it is a matter of record that there is hardly any examination of these records and the same are being dumped by the schools with the boards/regulatory authorities and the same is lying in their archives. It was on this account that to ensure that while giving freedom to the schools to fix their own fee structure but also to ensure that they do not indulge in commercialization of education, this Court felt the necessity of establishing a mechanism by the State Governments and till such time such mechanism is not formulated, directed establishing of the committees headed by the retired Hon'ble Judges of the High Court. The relevant portion of Anti-Corruption case (supra) reads as under:-

> "81.**The moot question is while giving freedom to the schools to fix their own fees structure, how to ensure that**

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[11] 2002 (8) SCC 481

these schools are not indulging in profiteering/commercialization of education and are also not diverting funds through unauthorized channels. In Delhi Abhibhavak Mahasangh case (supra), Delhi High Court expressed the view that there was a need for establishing a permanent Regulatory Body/mechanism, the rationale whereof is given in parasNo. 72 and 81, already extracted above.

82. No doubt, in the instant cases before us, as per the replies filed bythe official respondents themselves, most of the schools are fulfilling the requirements of submitting the Annual Reports etc. **At the same time, it is also a matter of record that there is hardly any examination of these records which are simply dumped by the schools with the Boards/Regulatory Authorities and keep lyingthere in their archives.** Needless to mention that it is the duty of the official respondents to ensure that increase in the fees undertaken by a particular school is justified and necessitated by other circumstances like increase in expenditure or because of developmental activities needed and does not result into profiteering. It is also to be ensured that the funds are not diverted elsewhere. However, there is no mechanism for checking the same. In a situation like this, we are of the opinion that the States of Punjab and Haryana as well as Union Territory, Chandigarh should also provide for some permanent Regulatory Bodies/mechanism which would go into this aspect on regular basis. We accordingly give directions to the States of Punjab, Haryana as well as Union Territory, Chandigarh to examine the feasibility of establishing such a mechanism and take decision thereupon within a period of six months from today. Till that is done and in order to sort out the issue as to whether the hike in fees by the schools is proper or not, we would like to follow the same path as done by the High Court of Delhi, namely, setting up a Committee with the task to go into the accounts of the Schools and find out the reasonableness of increase in fees by the schools……"

(Emphasis Supplied)

(90) The 2016 Act has been extended to the U.T. Chandigarh in view of the directions of this Court in the ***Anti-Corruption's case (supra)*** and in view of the undertaking rendered by the respective Governments as recorded in the order dated 7.8.2014 passed in CWP

No. 20545 of 2009.

(91) It is matter of record that though the petitioners are submitting the financial records to the respondents, however we are also of the same view as taken by this Court in **Anti-corruption's case (supra)** that neither the State Governments are considering the financial record submitted by the private institutions meticulously nor the officials go into the depth of the account statements prepared by professional Chartered Accountants. While observing this, we are also drawing force from the arguments raised by the petitioner Association before this Court in **Anti-Corruption's case (supra)** wherein it was argued by the private unaided educational institutions that itis not the job for the affiliating bodies to control the fee structure of the schools and the aim of the schools is to conduct examinations and designs syllabi of the affiliated schools.

(92) Therefore, if the financial statement of the private institutions is uploaded on the website of the institutes, the same will ensure in maintaining transparency and will be an aid in achieving the goal of ensuring that no Institute is indulging in profiteering and charging of capitation fee. It cannot be disputed that there are institutions which indulge in charging of capitation fees and indulge in profiteering. Since the accounts of the institutions are prepared by professionals, we cannot expect the officials working in the Government departments to find out the truth beneath the financial statements. The bureaucratic approach of the Government can also not be ruled out, as not having expertise is one factor but not paying any heed & looking into the bulky financial statements dumped by the Institutes is also relevant factor.

(93) If the financial statements of the Institutes are uploaded on the website of the Institutions, the parents of the students will be able to look into financial statements of the institutes. There is high probability that various parents may have an expertise in the field of accounting which will help the administration in ensuring that no Institute/ School indulges in profiteering or charging of capitation fees.

(94) Further we are not able to reconcile, as to why the private unaided institutions are afraid of uploading the financial statements on their websites. The intention of the institutions to **not/ resist** upload(ing) the financial statements create(s) more suspicion. If the private institutes upload their financial statements on the websites it will help in achieving the goal of transparency and accountability which are essential features of a reasonable fee structure and it will

also generate confidence in the parents.

(95) We are also not impressed with the argument of the petitioners that by uploading the financial statements they will be vulnerable to harassment by general public. The validity of the clauses cannot be judged on apprehensions. Further, it is the specific stand of the Chandigarh Administration that majority schools (including majority schools from the petitioner Association in CWP No. 7706 of 2020) have already complied with the provisions under challenge in the present petition. On specific query to the respondents, as to whether any complaint by any school, on account of compliance of the provisions under challenge in the present petition, has been received, the same has been answered in negative. Thus the apprehension seems to be without any justification and contrary to ground reality.

(96) The Hon'ble Supreme court of India in ***Avishek Goenka*** versus ***Union of India***[12] has held that enforcement of law if causes inconvenience, cannot be a ground for rendering the provision of statute as unenforceable.

(97) Needless to say that if any such situation arises, the private educational institutions are always at liberty to seek their remedies, in accordance with law.

(98) Learned counsel for the petitioners have raised an issue that uploading the financial statements of the Institute will be breach of their right of privacy. The right of privacy is primarily for the individuals. Though the right of privacy is also available to artificial entities but sincethe field of education is an charitable occupation, we do not find any reason to hold that uploading of the financial statements on the websites of the private educational institutions in any manner will breach the right of privacy. This is being held while keeping in mind the fact that the benefitsof uploading will outweigh the alleged difficulties to be faced by the institutes.

(99) Public Interest Test would be applied to weigh the scales whether information should be furnished or would be exempt. It is a settled position of law that Disclosure may be allowed where the Public Interest in disclosure, outweighs any possible harm or injury to be caused. Reference made to the judgement of the Hon'ble Supreme Court of India in ***Central Public Information Officer, Supreme Court***

[12] 2012 (8) SCC 441 : AIR 2012 SC 3230

of India versus ***Subhash Chandra Agarwal,***[13] In the present case the uploading of the financial statements will have more benefits to the society and as such cannot be held to be bad in law.

(100) Learned counsel for the respondent-Administration has also brought to the notice of this Court that the modifications in the 2016 Act while extending the same to Union Territory of Chandigarh has been made keeping in view the bylaws of the affiliating bodies viz CBSE. As per Clause 8 (8) (v) &13 (3) (i) of the 1988 bylaws of CBSE& Clause 2.3.8 & 2.3.9 of 2018 Bylaws of CBSE, the unaided educational institutions are bound to upload their annual report and post the same on the website. Therefore by adopting the said clause of the affiliating body no prejudice has caused to the petitioner institutions as in any case what has been mandated by the Administration that they were even bound to do as per the bylaws of the affiliating body. It has been further submitted that similar is the position in bylaws/rules and regulations of other affiliating bodies. Ld. counsel for the parties do not dispute that the bylaws and regulations ofother affiliating bodies are more or less similar to CBSE.

(101) As we have already held that uploading of the financial statements on the website of the private educational institution will serve the general public and as such will ensure in achieving the goal of transparency and accountability, the Chandigarh Administration by adding clause (a) to the 4th proviso to section 5 of the 2016 Act has only made an attempt ensure that private educational institutions do not adopt means of making profit. It was also the stand of the petitioners before this Court in the case of ***Anti- Corruption (supra)*** (is evident from the pleadings mentioned in the written synopsis filed by the Union Territory, Chandigarh dated 1.12.2020) that it is not in the domain of the affiliating body to regulate the fees, the adoptionand induction of clause (a) in the 2016 Act by the Central Government while extending the 2016 Act to Chandigarh will also take care of the said issue.

(102) Therefore in light of the aforesaid discussion Clause (a) of 4th proviso to Section 5 of the 2016 Act being incidental to the purpose of transparency and accountability to be achieved by the promulgation of 2016 Act, is held to be valid.

(103) The challenge has been made to Clause (b) of 4th proviso

[13] 2019 (16) Scale 40.

to Section 5 of the 2016 Act on the ground that the term cost has not been defined in the Act. Since the said clause prohibits the school from charging any kind of costs from the parents, the same can also be interpreted in a manner that the private institutions would not charge any fee from theparents resulting in rendering free education.

(104) Though it is admitted position that the term "Cost" has not been defined in the 2016 Act as extended to Chandigarh. But the Chandigarh Administration has filed an affidavit dated 27.7.2020 wherein it has been stated that the object behind incorporating the clause (b) is to save the parents from being caused to deposit amounts projecting the same to becosts over and above the fee. The purpose sought to be achieved by incorporating this provision is that the schools are restrained from charging any amount as hidden costs and to ensure that the schools do not charge any amount from the parents under the head of cost (except for as provided under the affiliating bylaws) over and above the fee structure declared in advance at the beginning of the session.

(105) It is thus abundantly clear from the affidavit filed by the Chandigarh Administration that the term "Cost" referred in clause (b) of 4th proviso to Section 5 of the 2016 Act as extended to Chandigarh, refers to any amount being charged over and above the fee structure which has not been declared or is permissible in law. By the reasoning assigned by the Chandigarh Administration in its affidavit dated 27.7.2020, the apprehensions of the private unaided institutions stand redressed. However for abundant caution, we direct the Chandigarh Administration be bound by the definition and explanation rendered by them in the affidavit dated 27.7.2020, with regard to the term "Costs".

(106) With regard to clause (c) & (d) of 4th proviso to Section 5 of the 2016 Act as extended to Chandigarh, no arguments were addressed by counsel for the petitioners. Though a bare perusal of the said clause makes it evident that the private educational institutions are directed to disclose thefee structure in advance at the starting of the academic year and the private institutions have been restrained from revising the fee structure during the academic session. The said clauses in no manner can be held to be irrational.The Hon'ble Supreme Court of India time and again has held that thefixation of fee should be regulated and controlled at the initial stage itself. The suggestion for post audit checks was rejected. Reference be made to para 80 of the

judgement of the Hon'ble Apex Court in ***Modern Dental College and Research Centre and others*** versus ***State of Madhya Pradesh and others,***[14] That similar is the position under the **Central Board of Secondary Affiliation Byelaws, 1988** (hereinafter referred to as 1988 bylaws). The relevant portion of the 1988 bylaws reads as under:-

8. Physical Facilities

Sub Rule 8. (iv) **Every affiliated school to develop their own website** containing comprehensive information such as affiliation status, details of infrastructure, details of teachers, number of students, address-postal and e-mail, telephone nos. etc.Sub Rule 8. (v) **Every school should prepare its annual report containing above information and upload the same on its website before 15th Sept. of a year**.

11. Fees

1. Fees charges should be commensurate with the facilities provided by the institution. Fees should normally be charged under the heads prescribed by the Department of Education of the State/U.TI for schools of different categories. No capitation fee or voluntary donations for gaining admission in the school or for any other purpose should be charged / collected in the name of the school and the school should not subject the child or his orher parents or guardians to any screening procedure. In case of such malpractices, the Board may take drastic action leading to disaffiliation ofthe school.

Further, any school or person violates the above provisions is liable for the following:-

(i) Receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(ii) Subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.

2. In case a student leaves the school for such compulsion

[14] 2016 (7) SCC 353.

as transfer of parents or for health reason or in case of death of the student before completion of the session, pro rata return of quarterly/term/annual fees should be made.

3. **The unaided schools should consult parents through parents' representatives before revising the fees. The fee should not be revised during the mid session**.

13. Miscellaneous

Sub Rule 3(i) The school should prepare its annual report containing comprehensive information including name, address postal and e-mail, telephone numbers, affiliation status, period of provisional affiliation, details of infrastructures, details of teachers, number of students, and status of fulfillment of norms of affiliation Bye-Laws and post same on the website before 15th September of every year.

23. Head of the School- Duties, Powers and Responsibilities

iv) Be responsible for the proper maintenance of accounts of the school, school records, service books of teachers, and such other registers, returnsand statistics as may be specified by the Society/Board."

(107) That further 2018 bylaws as mentioned by the Ld. Counsel for Union Territory, Chandigarh in its written synopsis dated 1.12.2020 makes it abundantly clear that not only the fees so charged has to be uploaded on the website of the schools but the schools are even bound by the directions of the State/UTs and even bound to adhere to the acts and regulations of the Central and State/ UT's enacted/framed in connection with the regulation of fees. The relevant portion of the 2018 bylaws reads as under:-

" 2018 Byelaws of CBSE

2.3.8 WEBSITE

The school seeking affiliation shall develop and maintain its website providing all vital information regarding the school on -the website.

2.4.9 WEBSITE

Every affiliated school will develop their own website containing comprehensive information such as Affiliation

status, details of Infrastructure, details of teachers Including qualifications. number of students, address-postal and e-mail, telephone nos., copies of transfer certificates issued, etc. as may be directed by the Board from time to time. The website so created should also have information with regard to fees charged.

7. SCHOOL FEES

Societies /trust /companies are required to run schools without any profit motive in accordance with the provisions contained in these bye laws. The School shall endeavor to charge fees to the extent the expenses for running the School are met. Schools shall follow the following norms in respect of the fees charged from pupils:

No Society/Trust/Company/School shall charge capitation fee or accept donations for the purpose of admission for pupils.

Admission Fee and Fee charged under any other head are to be charged only as per the regulations of the Appropriate Government.

Fees shall be charged under the heads prescribed by theDepartment of Education of the State/UTs.

7. REFUND OF FEES:

In case not otherwise provided by the Appropriate Government. In the event of a student discontinuing the studies or wishing to migrate to some other School. Dues shall be collected only up to the month of discontinuance or migration and not up to the month in which the transfer certificate is applied for. This shall apply to all Heads of fee.

FEE REVISION:

Fee revision of schools shall be subject to laws, regulation and directions of the Appropriate Government.

Fee shall not be revised without the express approval of the School Management Committee or the process prescribed by the Appropriate Government under any circumstances.

The acts and regulations of the Central and State/UT Governments enacted/framed In connection' with regulation of fee In respected of the various categories of the schools situated in the state will be applicable to the school affiliated with CBSE also.

For schools situated In foreign countries a transparent process. as per the applicable laws and regulations of the country where the school Is situated, shall be followed in respect of all matters related to fee and revision of fee etc."

(111) We are also of the view that the fee structure has to be disclosed in advance so that parents are aware of the fees to be deposited at the time of admissions. It would not be just to change the fee structure in the middle of the session as there can be a situation where the parents are not able to pay the revised fee and resultantly the education of the student will be suffered in the mid-session. If the fees is disclosed at the commencement of the session it would help the parents to make appropriate arrangements or to look for alternative institutions.

(112) It is also relevant to note that the private educational institutions in any case were bound to follow the directions issued clause (c) and (d) as the same has also been mandated by the CBSE (which is the affiliating body) in its bylaws. The CBSE in its bylaws, as reproduced hereinabove, has already mandated that unaided schools should consult the parents before revising the fees and the fee should not be revised during mid-session. Therefore the petitioner institutions in any case cannot have any grievance against the said sub-clauses of 4th proviso to section 5 as even without the said sub-clauses they were bound to disclose the fee prior in advance and were not permitted to change the fee mid session.

(113) In view of the observations made hereinabove, we are of the view that the 4th proviso to Section 5 of the 2016 Act as extended to Union Territory of Chandigarh is incidental and subservient to the main Act and is thus intra vires Section 87 of the 1966 Act.

(B) Challenge to validity of Section 10 (4) to (6) of the 2016 Actas extended to Union Territory of Chandigarh

(114) The modified/ substituted Sub-Section 4 to 6 of Section 10 of the 2016 Act as extended to Union Territory of Chandigarh reads as under:-

> **" Section 10.Utilization of Fund**
>
> (1) No part of income from the Unaided Educational Institution shall be diverted **to any individual** in the trust or society or company or School Management Committee **or any other person**.
>
> (2) The savings, if any, after meeting the recurring and non-recurring expenditure and contributions to developmental, depreciation and contingency funds may be utilized for promoting the **concerned** Unaided Educational Institutions.
>
> (3) The channelling of funds by the management **to any person or enterprise,** other than for furthering education in the Unaided Educational Institution shall be deemed to be contravention of the rules governing affiliation and appropriate action shall be taken by the Chandigarh Administration or Affiliation Board, as the case maybe."

(115) That the challenge to the above said clauses is on the ground that the affiliating Boards CBSE or CISCE have their own rules/bylaws that govern the affiliation of the schools and there is no such provision existing in the rules/bylaws framed by the affiliating Board's which restrict channelising of the funds to the society. Further, the challenge is on the ground that the parent Act of the State of Punjab allows for the diversion of amounts by the unaided educational institutions to another institution provided the same is under the management of the same society or trust and by adding sub-section 4 to 6 under Section 10, the respondents have amended the Act which is impermissible in law.

(116) That further reliance has been placed by the petitioners, uponthe judgement of the Hon'ble Supreme Court in the case of ***Action Committee, Unaided Private Schools*** versus ***Director of Education, Delhi***[15] to state that in the review petitions, the Hon'ble Supreme Court has held that the private unaided educational institutions cannot be restricted from transferring the funds to the Society/trust which are running the institution.

(117) Learned counsel for the respondent-U.T. Administration in rebuttal submits that in view of the size of territory of Chandigarh none ofthe Trust/ Society have more than one educational institution in Chandigarh. Thus,by allowing transfer of funds to society, the same

[15] 2009 (10) SCC 1

would lead to a situation where educational institutions outside Chandigarh (being maintained by same society) will be developed at the cost of students of Chandigarh.

(118) Section 10 (4) of the 2016 Act, as extended to Union Territory of Chandigarh, makes it evident that the restriction is on diversion of the income of the unaided educational institution to any individual in the trust or society or company or School Management committee. The restriction so imposed is upon transfer of the funds to particular individual only. The term 'any other person' has to be read harmoniously with the term 'any person or enterprise' used in Section 10 (6) which permits channelling of the funds by the management to any person or enterprise, if the same are being utilised for the purpose of education, for example for any expenses, expenditure, expansion being carried out by the management for furthering education in unaided educational institution.

(119) Section 10 (5) of the 2016 Act, as extended to Union Territory of Chandigarh, permits utilisation of the savings for the concerned educational institutions. A bare perusal of the amendments carried out in Section 10 of the 2016 Act of State of Punjab, by the Central Government, makes it evident that Section 10 (5) uses the word "InstitutionS" whereas Section 10 (4) and (6) uses the term "Institution". The use of word "InstitutionS" in sub-section (5), appears to be deliberate and material/ significant. Thus, upon a conjoint reading of sub-section 4 to 6 of Section 10, the term "concerned unaided educational institutions" referred to in sub- section(5) would, in our considered opinion mean the educational institutions being run under one umbrella *viz*. Society/trust/ management etc. etc.

(120) That modification so carried out by the Central Government in Section 10 of the 2016 Act of State of Punjab are inspired by corresponding provisions of the CBSE bylaws. However the relevant word used therein is 'school' whereas the word used in sub-section 5 of Section 10 is 'InstitutionS'. A bare perusal of the 1988 bylaws of the CBSE makes it evident that the institutions are not permitted to divert their income 'to any individual' in the Trust/ Society/ Company registered under Section 25 ofthe Companies Act. Similar is the position under the 2018 bylaws of the CBSE. The same are reproduced hereunder for immediate reference:-

" 1988 Byelaws of CBSE2 Definitions

xxii) "Private Un-Aided School means a school run by

a Society/Trust

/Company registered under section 25 of the Companies Act, 1956 duly constituted and registered under the provisions of Central/State Acts not getting any regular Grant-in-Aid from any Government source(s).

Financial Resources

1. The school must have sufficient financial resources to guarantee its continued existence. It should have permanent source of income to meet the running expenses of the school so as to maintain it at a reasonable standard of efficiency, to pay salaries to teachers and other categories of staff regularly at least at par with the corresponding categories in the State Government Schools and to undertake improvement/development of school facilities. In case of institutions which are in the receipt of grant-in-aid from the State Govemment/U.T. the permanent Source of income shall include the amount of grant-in-aid also

2. No part of income from the institution shall be diverted to any individual in the Trust/Society/ Company registered under section 25 of the companies act, 1956 School Management Committee or to any other person. The savings, if any, after meeting the recurring and nonrecurring expenditure and contributions to developmental, depreciation and contingency funds may be furtherutilized for promoting the school. The accounts should be audited and certified by a Chartered Accountant and proper accounts statements should be prepared as per rules. A copy each of the Statement of Accounts should be sent to the Board every year.

3. The channelling of funds by the management to person (s) or enterprise other than for furthering education in the school will contravene the rules governing affiliation and call for appropriate action by the Board.

2018 Byelaws of CBSE FINANCIAL RESOURCES.

The school must have sufficient financial resources to guarantee its continued existence, to meet the running

expenses of the school and to undertake Improvement/development of school facilities and capacity building of teachers.

No part of income from the Institution shall be diverted to any individual in the Trust Society/Company/School Management Committee or to any other person/entity. The saving, if any, after meeting the recurring) and nonrecurring expenditure and contributions to developmental, Depreciation and contingency funds. may be further utilized for promoting the school and extending the cause of education in the same school.

It shall be the responsibility of the school to maintain its account in a transparent and accountable manner based on accounting standards. The accounts should be audited and certified by a Chartered Accountant and proper accounts statements should be prepared and maintained as per extant laws/rules.

All the transactions should be made through digital mode.

The school shall separate its account from the society and maintain the books of accounts independently.

RESERVE FUND:

The school will maintain a reserve fund if the laws/regulations of the Appropriate Government so stipulates. In the manner prescribed under such laws/ rules.

It shall be the responsibility of the school to maintain a separate register for all loans taken by the school or by the society/trust/company from banks etc. for the school, having complete details of the purpose, securities and terms of repayment etc. of the loan such secured. School will ensure that the loan such taken is only utilized for the purpose for which it is obtained. "

(Emphasis Supplied)

(121) That it is evident upon perusal of the bylaws of the CBSE that the modifications carried out by the Central Government are based upon the CBSE bylaws, however with slight modification, as noticed hereinabove.

(122) That before considering the observations of the Hon'ble

Supreme Court in ***Action Committee's*** Case (supra) which reviewed the judgement rendered by the Hon'ble Supreme Court in ***Modern School*** versus ***Union of India***[16]**,** it would be relevant to consider the rules which came up for interpretation before the Hon'ble Supreme Court in ***Modern School's*** Case (Supra) and in ***Action Committee's*** Case (supra). Section 177 of the Delhi School Education Rules, 1973 rules as well as Clause 8 of the Directions issued by Director, which were subject matter of interpretation before the Hon'ble Supreme Court of India in the case of ***Modern School's*** case (supra) and ***Action Committee's*** Case (Supra) reads as under:-

> **Rule 177. Fees realised by unaided recognised schools how to be utilised.**
>
> **—(1)** Income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school:
>
> **Provided that savings, if any, from the fees collected by such school may be utilised by its managing committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely—**
>
> (a) award of scholarships to students;
>
> (b) establishment of any other recognised school; or
>
> **(c) assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first-mentioned school is run.**
>
> **(2)** The savings referred to in sub-rule (1) shall be arrived at after providing for the following, namely—
>
> (a) pension, gratuity and other specified retirement and otherbenefits admissible to the employees of the school;
>
> (b) the needed expansion of the school or any expenditure of adevelopmental nature;
>
> (c) the expansion of the school building or for the expansion orconstruction of any building or establishment

[16] 2004 (5) SCC 583

of hostel or expansion of hostel accommodation;

(d) co-curricular activities of the students;

(e) reasonable reserve fund, not being less than ten per cent, of such savings.

(3) Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the school concerned and shall not be included in the savings referred to in sub-rule (2).

(4) The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils' Fund are administered."

Directions by Director:

Clause 7. Development fee, not exceeding ten per cent, of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture, fixtures and equipment. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head alongwith and income generated from the investment made out of this fund, will be kept in a separately maintained Development Fund Account.

Clause 8. Fees/funds collected from the parents/students shall be utilised strictly in accordance with Rules 176 and 177 of the Delhi School Education Rules, 1973. **No amount whatsoever shall be transferred from the Recognised Unaided School Fund of a school to the society or the trust or any other institution."**

(123) That a bare perusal of Section 177 of Delhi School Education Rules, 1973 (hereinafter referred to as 1973 rules) (as reproduced hereinabove) makes it evident that Section 177 permitted transferring of the funds after meeting the expenditure of the school/educational institution for establishing any other recognised school or for assisting any other school educational institution being run under the same management. It was only the order passed by the

Director, which imposed restriction upon transferring of funds. The directions were contrary to the 1973 rules, as rules permitted transferring of funds for utilisation for any other school/educational institution being run under the same society or trust.

(124) Section 10 (4) to (6) of the 2016 Act, as extended to Union Territory of Chandigarh are differently worded but similar to that of Section 177 of the 1973 rules of Delhi. The 1973 rules permit transferring of the surplus funds for the establishment of any other recognised school or for assisting any other school education institution not being a college, under the same management of the society or trust. Section 10 (4) to (6) though does not expressly recite / provide transferring of the surplus funds of the unaided educational institution to the society or trust etc. etc. under which it is operating, but at the same time it does not impose any restriction or bar, upon unaided educational institution from transferring it surplus funds to the society or trust etc. etc. under which it is operating.

(125) The Hon'ble Supreme Court in ***Modern School's*** case (supra), while dealing with Rule 177 of the Delhi School Education Rules,1973 in paragraph 22 rejected the argument to the effect that Clause 8 of the order of the Director was in conflict with Rule 177 of the 1973 rules.

(126) However, the Hon'ble Supreme Court of India in ***Action Committee's*** case (supra) while reviewing the decision rendered in ***Modern School's*** Case (supra) held that there cannot be any restriction upon transfer of funds from one institution to other, **under the same management**, so long there is reasonable fee structure in existence. The relevant observations made by the Hon'ble Supreme Court in ***Action Committee's case (supra)***, reads as under:-

> "21. There is merit in the argument advanced on behalf of the Action Committee/Management**. The 1973 Act and the Rules framed thereunder cannot come in the way of the Management to establish more schools. So long as there is a reasonable fee structure in existence and so long as there is transfer of funds from one institution to the other under the same management, there cannot be any objection from the Department of Education**."

(Emphasis Supplied)

(127) The principle of *Ejusdem generis* would be attracted in the present case, while interpreting the modified/ substituted Sub-

Sections 4 to 6 of Section 10 of 2016 Act as extended to U.T. Chandigarh read in conjunction with sub-section 4 of Section 10 of 2016 Act of State of Punjab. The 2016 Act of State of Punjab permits channelizing of funds from the unaided educational Institution to the Society/ Trust/ any other Institutions (running under the same management) whereas modified / substituted 2016 Act as extended to U.T. Chandigarh does not specifically/ explicitly restrict channelizing of funds from the unaided educational Institution to the Society/ Trust/ any other Institutions etc etc. (running under the same management).

(128) Further, the principle of *Ejusdem generis* would be attracted while interpreting sub-section 5 of Section 10 of the 2016 Act as extended to U.T. Chandigarh when read conjointly with sub-section (4) and (6) of Section 10 of the 2016 Act as extended to U.T. Chandigarh. The sub-section 5 uses the term "Institution**s**" whereas Sub-section 4 & 6 uses the term "Institution".

(129) That the Hon'ble Supreme Court of India ***Bharat Heavy Electricals Ltd. (B.H.E.L.)*** versus ***M/s. Globe Hi-Fabs Ltd***[17] has held that, *Ejusdem generis* is not a rule of law, but it permits inference in the absence of an indication to the contrary, and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning.

> "14. The rule of ejusdem generis has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference inthe absence of an indication to the contrary, and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated by LORD SCARMAN:
>
> "If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of thestatute. The rule like many other rules of statutory interpretation, is auseful servant but a bad master."

[17] 2015 (5) SCC 718

> **So a narrow construction, on the basis of ejusdem generis rule may have to give way to a broader construction to give effect to the intention of Parliament by adopting a purposive construction**."
>
> **(Emphasis supplied)**

(130) The Legislation has very specifically used the term "Unaided Educational Institution" in Section 10 (4) and (6) of the 2016 Act as extended to U.T. Chandigarh whereas under Section 10 (5) of the 2016 Act as extended to U.T. Chandigarh, the term "Unaided Educational Institution**s**" is used. The purpose of using the term "Institutions" in Section 10 (5) is with the intent of permitting/granting discretion to the management to utilise the funds for the Unaided Educational Institutions being run under the same management of trust/society.

(131) We are afraid that we cannot accept the explanation of the U.T. Administration, as the interpretation of U.T. Administration restricting the Growth of educational institutions within geographical boundary of Chandigarh, would defeat the ultimate goal of flourishing/ furthering theeducation in the Country. Only because a single society/ trust is not operating more than one school in Chandigarh does not by any means amount to restricting or prohibiting the Society/trust to utilise the excessfunds of the educational institution for establishment of any other recognised school or for assisting any other school educational institution under the same management irrespective of any geographical restrictions.The ultimate goal of 2016 enactment is to curb the menace of profiteeringand charging of capitation fees by the unaided educational institutions but at the same time is to ensure furtherance of education, which shall only be achieved if the management/society or trust is granted freedom to set up unaided educational institutions without any geographical restrictions.

(132) The Francis Bennion's Statutory Interpretation, describes purposive struction in the following manner :

> " A purposive construction of an enactment is one which gives effect to thelegislative purpose by-
>
> (a) following the literal meaning of the enactment where that meaning isin accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

(133) That further it is the rule of interpretation that Construction of a Statute should be done in a manner which would give effect to all itsprovisions.

(134) The purpose of the promulgation of 2016 Act of state of Punjab, as extended to Union Territory of Chandigarh, is to govern the fee structure of the unaided educational institutions and to ensure proper utilisation of the funds as well as to curb the menace of capitalisation and profiteering. At the same time the end goal is to promote education in India. The goal is not to promote education by dividing the territory of India in metes and bounds. Therefore, restricting utilisation of the funds to the particular/concerned unaided educational institution will curb the growth of education and will be detrimental to the goal to be achieved by such enactments.

(135) To our mind, the word 'concerned' used in section 10 (5) has to be read along with 'Unaided Educational Institution**s'** which would refer to the educational institutions being operated under one management. The term'concerned' has been used with an intention to permit utilisation of the funds only for the Institutions being run under the same management and not for the institutions governed under different management. Therefore, we hold that by applying the principle of *ejusdem generis* and purposive construction of statute,the term 'concerned unaided educational institutions' as used in Section 10 (5) of the 2016 Act as extended to U.T. Chandigarh, has to be construed to mean all the Institutions being run under the management of same Society or trust or Company. Needless to say, the channelizing of funds is with a purpose to utilize the same for promoting education only (misuse of which can always be checked from the uploaded financial statements of the Institutions).

(136) That further a perusal of Section 10 (4) of the 2016 Act state of Punjab, makes it evident that the said enactment also permitted diversion of the funds of the unaided educational institution to the society or trust or any other institution which are under the same management of the society or trust. Thus even under the parent enactment of state of Punjab, there was complete restriction on transferring of the funds to an individual or to any trust or society other than the society or trust managing the educational institution. Similar would be the position in the modified 2016 Act as applicable to

U.T., Chandigarh, as the same does not specifically impose a bar. The Central Government by carrying out the modifications has ensured transparency in the process of transferring funds to the society managing the educational institution, so that the excess funds of the educational institutions are not mis-utilised.

(137) We while rendering the above said interpretation also drawstrength from the language used in Rule 177 of the 1973 rules which cameup for consideration before the Hon'ble Supreme Court in ***ActionCommittee's*** case (Supra) wherein the Hon'ble Supreme Court categorically held that so long as there is reasonable fee structure in existence and the transfer of excess funds is from one institution to other under the same management there cannot be any objection. Section 10 (4) to (6), in our view, also permit transferring of the funds to the trust or society or company or School Management committee for utilization of promotingof the education and in no manner the same can be construed to restrict utilization of the funds to a particular Institute and not to the institutions being run under the same management.

(138) That further it has been argued before us that Section 10 (4) restricts diversion of funds to any other person whereas section 10 (6) permits channelling of funds to any person or enterprise, therefore both the sections being contradictory to each other cannot sustain. We see no force in this contention as there is no contradiction in both the sections.

(139) Even otherwise, it is a cardinal rule of construction that when in a Statute there are two provisions which are in conflict with each other, such that both of them cannot stand, they should be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. Thisis what is known as the rule of harmonious construction.

(140) That a bare reading of Section 10 (4) and Section 10 (6) makesit evident that the term any person has been utilised in absolutely different contexts. Section 10 (4) imposes restriction on diversion of funds of the unaided educational institutions to any particular Individual in the Trust or Society or Company or School Management committee but permits transferring of the funds of the Trust or Society or Company or School Management Committee running the unaided educational institution. Section 10 (6) operates in a different field, as the same permits channellingof funds to any person or enterprise for

the purposes incidental to promotion of education. To our mind, term used in Section 10 (6) "channelling of funds by the management to any person or enterprise" is in the context of meeting expenses or for utilisation of the funds for expansion purposes or for any other purposes incidental to promotion of education. Therefore, there does not seem to be any conflict in both the sub-sections.

(141) The restriction imposed upon diversion of the funds 'to any individual' in the trust or society or School Management committee or direction to utilise the funds in the unaided educational institution for promotion of the education cannot be termed to be irrational or contrary to the purpose of promulgation of the parent Act. In fact the modifications so carried out by Central Government shall ensure transparency and proper utilisation of the funds of the unaided educational institution and will further ensure that the funds of the Institute/ school are used to promote and invest in the field of education.

(142) The modifications carried out under Section 10 fall within the definition of reasonable modifications and alterations, as Section 10 (4) to (6) are incidental to the purpose by promulgation of the 2016 Act, and the same shall ensure proper utilisation of the funds collected by the unaided educational institutions. Transferring of funds has direct nexus with profiteering and usurping the funds of the Institution. Therefore, in view of the observations made hereinabove and interpretation given by us, we are of the view that Section 10 (4) to (6) as extended to Union Territory of Chandigarh are incidental and subservient to the main Act and are thus intra vires of Section 87 of the 1966 Act.

(C) Challenge to validity of Section 3 (2) of the 2016 Act as extended to Union Territory of Chandigarh.

(143) The challenge is to the composition of the regulatory body as provided under Section 3 (2) of the 2016 Act as extended to Union Territory of Chandigarh, on the ground that there is no representative of the private unaided schools in the regulatory body.

(144) At the very outset, it is evident from bare reading of the statute that the Central Government while extending the 2016 Act to Union Territory of Chandigarh has in no manner altered the original Act. It is not the case of the petitioners that the representative of private unaided schools were permitted in the 2016 Act and the same has been removed by the Central Government while extending the same to the

Chandigarh. The comparative chart of section 3 (2) of the 2016 Act reads as under:

PUNJAB	As adapted to UT of Chandigarh
3. Constitution of Regulatory Body- (2) The Regulatory Body shall consist of the following namely:- a. Divisional Commissioner of the concerned Chairperson; division; b. Circle Education Officer of the concerned Member Secretary: division; c. District Education Officer (Secondary Member; Education) posted at the concerned Headquarter of the of the division; d. District Education Officer (Elementary Member: Education) posted at the concerned Headquarter of the division; e. Two members to be nominated by the Nominated Member; Government from amongst the eminent educationist of the concerned division; f. One member to be nominated by the Divisional Nominated Members. Commissioner from amongst the Deputy Controllers (Finance and Accounts) or Assistant Controllers (Finance and Accounts) working in the concerned division. 3. The nominated members referred to in sub-section (2) shall be paid such remuneration and	3. Constitution of Regulatory Body- (2) The Regulatory Body shall consist of the following namely:- a. Education Secretary Chandigarh Administration Chairperson; b. Director School Education, Chandigarh Administration – Member Secretary; c. Deputy Director Officer Chandigarh Administration – Member; e. Two members to be nominated by the Administration of the Union Territory of Chandigarh from amongst the eminent educationist of Chandigarh – Nominated Member; f. One member to be nominated by the Chairperson from amongst the Deputy Controllers (Finance and Accounts) or Assistant Controllers (Finance and Accounts) posted in the Education Department of Chandigarh Administration – Nominated Members. (3) The nominated members referred to in sub-section (2)

travelling allowance for attending the meeting of the Regulatory body, as may be prescribed.	shall be paid such remuneration and travelling allowance for attending the meeting of the Regulatory body, as may be prescribed.

(145) It is relevant to note that the Hon'ble Supreme Court of India had also constituted fee committee in paragraph 7 of ***Islamic Academy of education and another*** versus ***State of Karnataka and others***[18] wherein no representative of the private educational institutions were inducted in the regulatory body.

(146) The 2016 Act of State of Punjab has been promulgated in view of the directions issued by this Court in the case of ***Anti-corruption*** (supra). Till such time proper enactment was brought into force by the State governments, this Court had directed Constitution of the committees withthe task to go into the accounts of the schools and to find out the reasonableness of increase in fees by the school. Even in the said committee no member of the private educational institution was inducted.

(147) The private educational institutions are given freedom to fix their own fee structure keeping in mind the infrastructure and the facilities available. The regulatory bodies have been constituted so as to ensure that while fixing the fees, the institutions do not indulge in profiteering and charging of capitation fee. No prejudice has been caused by not inducting members in the regulatory body as the freedom granted to the private educational institutions to fix their fee structure has in no manner been infringed. Therefore the challenge to section 3 (2) of the 2016 Act as extended to the union territory of Chandigarh is also rejected.

(D) Challenge to validity of Section 14 of the 2016 Act as extended to Union Territory of Chandigarh.

(148) The challenge has been laid to Section 14 of the 2016 Act as extended to Union Territory of Chandigarh on the ground that the 2016 Act was promulgated with an object to regulate the fee of educational institutions by providing a mechanism and in no manner Act was to impose penalties.

(149) A bare perusal of the Section 14 of the 2016 Act makes it evident that the penal provision was already existing in the Act

[18] 2003 (6) SCC 697

promulgated by State of Punjab and the Central Government while extending the same has only increased the penalty amount. The validity of the parent Act of the State of Punjab has already pending consideration in CWP No. 10662 of 2017 and is not a matter of adjudication in the present proceedings.

(150) The Central Government while extending Section 14 of the2016 Act for the Union Territory of Chandigarh has only increased the penalty amount and has in no manner altered the original Act. Therefore the modification carried out by the Central Government is incidental, ancillary in nature and does not in any manner involves substantial deviations from Act.

(151) That further the 2016 Act has been enacted so as to achieve the goals as set out by the Hon'ble Courts from time to time viz ensuring thatthe private educational institutions do not indulge in profiteering and charging of capitation fees. And to ensure that there is transparency and accountability which is an essential feature of a reasonable fee structure. The Hon'ble Supreme Court of India in **para No. 7 of *Islamic Academy of Education & Anr*** versus ***State of Karnataka &Ors,***[19] even directed the government/authorities to frame appropriate regulations, and ifit is found that an institution is charging capitation fees or profiteering, the same could be appropriately penalized. The relevant observations made by the Hon'ble Supreme Court of India in the case of ***Islamic Academy*** (supra) reads as under:-

> **" 7.** .... **The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder 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 losingits recognition/affiliation**."

(Emphasis supplied)

(152) That further, the petitioners cannot have any grievance against the penal clause as the same is attracted only in case of violation and not otherwise. Even against the order of penalty there is a provision of appealand needless to say, in case of any arbitrary order of penalty, the petitioners can always approach the Hon'ble Court of Law. Thus, it is not the case that against the order of penalty, the

[19] 2003 (6) SCC 697

petitioners are remedy less.

(153) We are also of the opinion that if no penal clause is incorporated in enactment the purpose to be achieved by such enactmentwill be lost. The enactment would be nothing but a toothless tiger. It is only with the sword of penalty that the mechanism provided under the Act for regulating fee of unaided educational institutions can be implemented.

(154) Therefore, we find that the Central Government for U.T. Chandigarh has rightly adopted Section 14 of the 2016 Act and the same being incidental to the main Act and being more effective in achieving the goals of regulating the fee structure of the private unaided educational institutions cannot in any manner be held as *ultra-vires* of Section 87 of the 1966 Act.

ISSUE NO. (v)

(155) The above said issue was no more *res-integra* and has been discussed by the Hon'ble Supreme Court of India time and again in various judgements which are required to be considered before dealing with the issue.

i) ***T.M.A. Pai Foundation*** versus ***State of Karnataka***[20].

(156) As per the law laid down by the Supreme Court **in T.*M.A. PaiFoundation*** versus. ***State of Karnataka,*** (supra) maximum autonomy has to be given to the institutions, which exist by virtue of the funds generated by themselves in the matter of administration and quantity of fee to be charged. The Hon'ble Supreme Court observed that in the establishment of an educational institution, the object should not be to make a profit inasmuch as education is essentially charitable in nature. The Hon'ble Supreme Court also observed that the collection of fee could be regulated. Relevant paragraph of the judgement reads as under:

> "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 maladministration by those in charge of Management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body,

[20] **2002 (8) SCC 481**

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

57. We, however, wish to emphasize one point, and that inasmuch as the occupation of education is, in a sense, regarded as charitable**, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution**."

(Emphasis Supplied)

(157)Further the Hon'ble Supreme Court of India in ***T.M.A. Pai's case (supra)*** while considering the case of private unaided professional institutions held that a rational fee structure should be adopted by the management which would not include any capitation fee or intention of profiteering. The State was empowered to devise appropriate machinery so as to ensure that no capitation fees is charged and there is no profiteering by the institutions. Paragraph 69 of the ***T.M.A. Pai's case (supra)*** reads as under:-

"69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. **A rational fee structure should be adopted by the Management which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no**

> **profiteering though a reasonable surplus for furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers**."

(Emphasis supplied)

(158) The Hon'ble Supreme Court further while considering the claims of Minority Institutions in para No. 107, **observed that any regulation framed in the National Interest must necessarily apply to all the educational institutions, whether the majority or the minority. Such limitation must necessarily be read into Article 30. The right under Article 30 (1) cannot be such as to override the National Interest or to prevent the Government from framing any regulations in that behalf**. Further the Hon'ble Supreme Court observed that the right under Article 30 (1) cannot be held to be absolute or above other provisions of the law and thus there is no reason as to why regulations or conditions concerning welfare of the students and teachers should not be made applicable to minority institutions. The relevant paragraphs of the judgement reads as under:-

> "135.We agree with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. **We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.**
>
> **136. Decisions of this Court have held that the right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General**

laws of the land applicable to all persons have been held to be applicable to the minority institutions also - for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).”

(Emphasis Supplied)

(159) Thus it is evident from the above that in ***T.M.A. Pai Foundation's*** case(supra), the Hon’ble Supreme Court held in the case of minority as well as non-minority institutions that statutory provisions for regulating the facets of administration and regulation of fee are permissible to be provided by the state or other controlling authorities, subject to the condition that such provisions do not infringe upon the day-to-day management and functioning of the Institute and further to not dictate the fees to be charged by the unaided institutions.

(i) Islamic Academy of Education versus **State of Karnataka**[21]**;**

(160) The ***T.M.A. Pai Foundation's*** case (supra) came up for interpretation before the Hon’ble Constitution Bench of the Hon’ble Supreme Court in the ***Islamic Academy's*** case (supra). The Hon’ble Constitution Bench also considered the question of regulation of fee collected by Institutes. In ***Islamic Academy's*** case (supra) it was observed that that there can be no fixing of rigid fee structure by the Government and that each institute must have freedom to fix its own fee structure but at the same time it was observed that the

[21] 2003 (6) SCC 697

Government/Appropriate Authorities should consider framing of appropriate regulations, if not already framed, to ensure that no profiteering or capitation fees has been charged by an Institute and if any institute is found indulging in charging of capitation fees or profiteering the Institute can be appropriately penalized. Further the Hon'ble Supreme Court in order to give effect to the judgement in ***T.M.A. Pai Foundation's*** case (supra) directed that the State Governments to setup, a committee to regulate the fee structure of the Institutes. Paragraph No.7 of the said judgment of the Supreme Court held as under:-

> "**7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structureby 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 paragraph 56 of 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, there are statutes/regulations which govern the fixation of fees and as this Court has not yet considered the validity of those statutes/regulations, **we direct that in order to give effect to the judgment in T.M.A. 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 instituteare 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 either 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, whereunder 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."**

(Emphasis Supplied)

(ii) *Modern School* versus ***Union of India*[22]**

(161) The Hon'ble Supreme Court considered the concept of reasonable surplus, profit, income and yield in a minority and non-

[22] 2004 (5) SCC 583

minority institution and as to what constitutes reasonable surplus, in the case of ***Modern School*** (supra). Further, it has been observed by the Hon'ble Supreme Court **that the right to establish an Institution under Article 19 (1) (g) and Article 30 (1) is subject to reasonable regulations** which may be framed having regard to public interest and national interest. The relevant paragraphs reads as under:

> "14. At the outset, before analysing the provisions of the 1973 Act, we may state that it is now well settled by a catena of decisions of this Court that in the matter of determination of the fee structure unaided educational institutions exercise 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 has been held, have to plan their investment and expenditure so as to generate profit. What is, however, prohibited is commercialisation of education**. Hence, we have to strike a balance between autonomy of such institutions and measures to be taken to prevent commercialisation of education.** However, in none of the earlier cases, this Court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of the 1973 Act.
>
> 15 ..............T.M.A. Pai Foundation case for the first time brought into existence the concept of education as an "occupation", a term used in Article 19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) & 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice. **However, the right to establish an institution under Article 19(1)(g) is subject to reasonable restriction in terms of clause (6) there of. Similarly, the right conferred on minorities, religious or linguistic, to establish and administer educational institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which inter alia may be framed having regard to public interest and national interest.** In the said judgment, it was

observed (vide para 56) that economic forces have a role to play in the matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. However, capitation fee and profiteering were held to be forbidden. Subject to the above two prohibitory parameters, this Court in T.M.A. Pai Foundationcase held that fees to be charged by the unaided educational institutions cannot be regulated. Therefore, the issue before us is as to what constitutes reasonable surplus in the context of the provisions of the 1973 Act. This issue was not there before this Court in T.M.A. Pai Foundation case."

(iii)*P.A. Inamdar* versus ***State of Maharashtra***[23]**.**

(162) The Hon'ble Supreme Court of India in the case of ***P.A. Inamdar (supra)*** again reiterated that every institute is free to devise its own fee structure subject to the limitations that there can be no profiteering or charging of capitation fee. Paragraph Nos. 139 & 141 of the said judgment read as under:

> **"139. To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article 30(1) of the Constitution, as per the law declared in Pai Foundation, 2002 (8) SCC 481. Every institution is free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form** (Paras 56 to 58 & 161 [answerto Question 5(c)] of Pai Foundation are relevant in this regard).....
>
> 141. Our answer to Question 3 is that every institution is free to devise its own fee structure **but the same can be regulated in the interest of preventing profiteering**. No capitation fee can be charged."

(163) Further the Hon'ble Supreme Court with regard to non-minority unaided institutions observed that the same can also be subjected to the restrictions which are reasonable and in the interest of students. The Hon'ble Supreme Court in ***P.A. Inamdar's case (supra)*** also approved the Fee Committee constituted by the Hon'ble Supreme

[23] 2005 (6) SCC 537

Court in ***Islamic Academy's*** case (supra) for minority and non-minority institutes. The Relevant paragraphs of ***P.A. Inamdar's (supra)*** reads as under:-

> "**Q.4. Committees formed pursuant to Islamic Academy**
>
> 142. Most vehement attack was laid by all the learned Counsel appearing for the Petitioner-applicants on that part of Islamic Academy which has directed the constitution of two committees dealing with admissions and fee structure. Attention of the Court was invited to paras 35,37, 38, 45 and 161 (answer to question 9) of Pai Foundation wherein similar scheme framed in Unni Krishnan was specifically struck down. Vide para 45, Chief Justice Kirpal has clearly ruled that the decision in Unni Krishnan insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct and to that extent the said decision and the consequent directions given to UGC, AICTE, MCI, the Central and the State Governments etc. are overruled. Vide para 161, Pai Foundation upheld Unni Krishnan to the extent to which it holds the right to primary education as a fundamental right, but the scheme was overruled. However, the principle that there should not be capitation fee or profiteering was upheld. Leverage was allowed to educational institutions to generate reasonable surplus to meet cost of expansion and augmentation of facilities which would not amount to profiteering. It was submitted that Islamic Academy has once again restored such Committees which were done away with by Pai Foundation.
>
> **143. The learned senior Counsel appearing for different privateprofessional institutions, who have questioned the scheme of permanent Committees set up in the judgment of Islamic Academy,very fairly do not dispute that even unaided minority institutions can be subjected to regulatory measures with a view to curb commercialisation of education, profiteering in it and exploitation of students.** Policing is permissible but not nationalisation or total take over, submitted Shri Harish Salve, the learned senior Counsel. **Regulatory measures to ensure fairness and transparency in admission procedures to be based on merit have not been opposed**

as objectionable though a mechanism other than formation of Committees in terms of Islamic Academy was insisted on and pressed for. Similarly, it was urged that regulatory measures, to the extent permissible, may form part of conditions of recognition and affiliation by the university concerned and/or MCI and AICTE for maintaining standards of excellence in professional education. Such measures have also not been questioned as violative of the educational rights of either minorities or non-minorities.

144. The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissive as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. **Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution**.

145. The suggestion made on behalf of minorities and non-minorities that the same purpose for which Committees have been set up can be achieved by post-audit or checks after the institutions have adopted their own admission procedure and fee structure, is unacceptable for the reasons shown by experience of the educational authorities of various States. Unless the admission procedure and fixation of fees isregulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

146. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community.

Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on an uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and on a reasonable fee-structure.

147. In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which **have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining feestructure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.**

148. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or ad hoc arrangement made in exercise ofthe power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committeeswhich were supposed to be permanent in nature.

151. On Question-4, our conclusion, therefore, is that the judgment in Islamic Academy, in so far as it evolves the scheme of two Committees, one each for admission and fee structure, does not go beyond the law laid down in Pai Foundation and earlier decisions of this Court, which have been approved in that case. The challenge to setting up of two Committees in accordance with the decision in Islamic Academy, therefore, fails. However, the observation by way clarification, contained in the later part of para 19 of Islamic Academy which speaks of quota and fixation of percentage by State Government is rendered redundant and must go in view of what has been already held by us in the earlier part

of this judgment while dealing with Question No. 1."

(Emphasis Supplied)

(164) It is evident from above that the Hon'ble Supreme Court in ***P.A. Inamdar's*** case (supra), while upholding the committees constituted by the Hon'ble Supreme Court in ***Islamic Academy's*** case (supra) for minority as well as non-minority institutions held that known minority unaided institutions can also be subjected to similar restrictions which are reasonable and in the interest of the student community. Further a perusal of paragraph 155 in ***P.A. Inamdar's*** case (supra), makes it evident that the Hon'ble Supreme Court observed it is high time that the State Governments and the Union of India provide for a suitable mechanism or authority to regulate the admission process and fee structure of educational institutions and until such time, any such regulation is brought into force, the committees regulating admission procedure and fee structure for minority as well as non-minority institutions, as set up by the Hon'ble Supreme Court in ***Islamic Academy's*** case (supra) shall continue to exist. Paragraph 155 of ***P.A. Inamdar's*** case (supra), reads as under:-

> **" 155. It is for the Central Government, or for the State Governments, in the absence of a Central legislation, to come out with a detailed well thought out legislation on the subject. Such a legislation is long awaited. States must act towards this direction. Judicial wing of the State is called upon to act when the other two wings, the Legislature and the Executive, do not act.** Earlier the Union of India and the State Governments act, the better it would be. The Committees regulating admission procedure and fee structure shall continue to exist, but only as a temporary measure and an inevitable passing phase until the Central Government or the State Governments are able to devise a suitable mechanism and appoint competent authority in consonance with the observations made hereinabove. Needless to say, any decision taken by such Committees and by the Central or the State Governments shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction."

(Emphasis supplied)

(165) It is thus evident from above that the Hon'ble Supreme

Court held that legislation regulating the fee of the unaided educational institutions is permissible and in fact the state governments were expectedto bring into force the piece of legislation, regulating the admission process and fee regulation of the unaided private educational institutions be it minority or non-minority. The adaption of the 2016 Act of State of Punjab by the Central Government to the Union Territory of Chandigarh is in consonance with the observations made in ***P.A. Inamdar's*** case (supra) and in view of the directions issued and undertaking rendered by the Chandigarh administration before this Court in ***Anti-corruption & Investigation Cell's*** case (supra).

(iv) Modern Dental College and Research Centre versus **Stateof Madhya Pradesh**[24]

(166) In the case of ***Modern Dental College (supra)*****,** the State Act regulating the Fixation of Fee came up for consideration. The Hon'ble Supreme Court observed that fixation of fixed fee structure would be an unacceptable restriction, however the State Governments are empowered to forbid charging of capitation fee and profiteering as the occupation of education is a charitable activity. The Hon'ble Supreme Court while relying upon, ***T.M.A. Pai Foundation's*** case (supra), ***Islamic Academy of Education's*** case (supra) ***and P.A. Inamdar's*** case (supra) held that though occupation is a fundamental right which gives the right to educational institutions to admit the students and also fix the fee, but at the same time such rights can be restrained by imposing reasonable restrictions. The relevant paragraph of the ***Modern Dental College' case (supra)*** reads as under:-

> "45. This argument has to be rejected in view of the unambiguous and categorical interpretation given by the Supreme Court in P.A. Inamdar with respect to certain observations, particularly in paragraph 68 in T.M.A. Pai Foundation. In this behalf, we would like to recapitulate that in T.M.A. Pai Foundation, a Bench of eleven Judges dealt with the issues of scope of right to set up educational institutions by private aided or unaided, minority or non-minority institutions and the extent of Government regulation of the said right. It was held that the right to establish and administer an institution included the right to admit students and to set up a reasonable fee structure. **But**

[24] 2016 (7) SCC 353

the said right could be regulated to ensure maintenance of proper academic standards, atmosphere and infrastructure. Fixing of rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. **However, occupation of education was not business but profession involving charitable activity. The State can forbid charging of capitation fee and profiteering. The object of setting up educational institution is not to make profit**. There could, however, be a reasonable revenue surplus for development of education. For admission, merit must play an important role. The State or the University could require private unaided institution to provide for merit based selection while giving sufficient discretion in admitting students. Certain percentage of seats could be reserved for admission by management out of students who have passed CET held by the institution or by the State/University. Interpretation of certain observations in paragraph 68 of the judgment in T.M.A. PaiFoundation has been a matter of debate to which we advert to in detailhereinafter.

46. As pointed out above, immediately after the judgment in T.M.A. Pai Foundation, a group of writ petitions were filed in this Court, which were dealt with by a Bench of five judges in Islamic Academy of Education. Four of the Judges were the same who were party to the judgment in T.M.A. Pai Foundation. The issue considered was the extent of autonomy in fixing the fee structure and making admissions. **This Court held that while there was autonomy with the institutionsto fix fee structure, there could be no profiteering and no capitation fee could be charged as imparting of education was essentially charitable in nature. This required setting up of a Committee by each of the States to decide whether fee structure proposed by an institute was justified and did not amount to profiteering or charging of capitation fee. The fee so fixed shall be binding for three years at the end of which a revision could be sought.**

48. The matter was then considered by a larger Bench of

seven judges in P.A. Inamdar. **It was held that the two Committees for monitoring admission procedure and determining fee structure as per the judgment in Islamic Academy of Education were permissible as regulatory measures aimed at protecting the students community as a whole as also the minority themselves in maintaining required standards of professional education on non-exploitative terms. This did not violate Article 30(1) or Article 19(1)(g). It was observed that unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practise of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb (emphasis added).** On this ground, suggestion of the institutions to achieve the purpose for which Committees had been set up by post-audit checks after the institutions adopted their own admission procedure and fee structure were rejected. The Committees were, thus, allowed to continue for regulating the admissions and the fee structure until a suitable legislation or regulations framed by the States. **It was left to the Central Governments and the State Governments to come out with a detailed well thought out legislation setting up a suitable mechanism for regulating admission procedure and fee structure.** Paragraph 68 in T.M.A. Pai Foundation case was explained by stating that observations permitting the management to reserve certain seats was meant for poorer and backward sections as per local needs. It did not mean to ignore the merit. It was also held that CET could be held, otherwise merit becomes casualty. There is, thus, no bar to CET being held by a State agency when law so provides.

49. Thus, the contention raised on behalf of the appellants that the private medical colleges had absolute right to make admissions or to fix fee is not consistent with the earlier decisions of this Court. **Neither merit could be compromised in admissions to professional institutions nor capitation fee could be permitted. To achieve these objects it is open to the State to introduce regulatory measures. We are unable to accept the submissions that the State could intervene only after proving that merit**

> **was compromised or capitation fee was being charged. As observed in the earlier decisions of this Court, post-audit measures would not meet the regulatory requirements. Control was required at the initial stage itself. Therefore, our answer to the first question is that though 'occupation' is a fundamental right, which gives right to the educational institutions to admit the students and also fix the fee, at the same time, scope of such rights has been discussed and limitations imposed thereupon by the aforesaid judgments themselves explaining the nature of limitations on these rights**."
>
> **(Emphasis supplied)**

(167) Further the Hon'ble Supreme Court in paragraph 77 considers the parameters for fixation of fee structure as held in ***Modern School's*** Case (supra). Even further the Hon'ble Supreme Court in paragraph 92 observes that with regard to fixation of fee , the State should act as a regulator and satisfy itself that the fee which is proposed by the Educational Institution does not have the element of profiteering and also that no capitation fee etc. is charged. The relevant portion of paragraph 92 reads as under:-

> " 92 Likewise, when it comes to fixation of fee, as already dealt with indetail, **the main purpose is that State acts as a regulator and satisfiesitself that the fee which is proposed by the educational institution does not have the element of profiteering and also that no capitation fee etc. is charged. In fact, this dual function of regulatory nature is going to advance the public interest inasmuch as those students who are otherwise meritorious but are not in a position to meet unreasonable demands of capitation fee etc. are not deprived of getting admissions.** The impugned provisions, therefore, are aimed at seeking laudable objectives in larger public interest. Law is not static, it has to change with changing times and changing social/societal conditions."

(168) In ***Modern Dental College and Research Centre's*** case (supra), the Constitution Bench of the Hon'ble Supreme Court further while considering the provisions of Articles 19(1)(g), 19(6), 26 and 30 in relationto the right to freedom of occupation of private unaided minority and non- minority educational institutions, observed that the activity of education is neither trade nor profession, i.e.,

commercialisation and profiteering cannot be permitted. It is open to impose reasonable restrictions in the interest of general public. The education cannot be allowed to be a purely economic activity as it is a welfare activity aimed at achieving more prosperous society to bring out social transformation and upliftment of the nation.

(169) Further in ***Modern Dental College and Research Centre's*** case (supra) the Hon'ble Supreme Court, observed that unless the admission procedure and fixation of fees are regulated and controlled at the initial stage, the evil of unfair practice would be impossible to curb. **The Hon'ble Supreme Court while noting the menace of the fee prevailing in the various educational institutions and in the context of Articles 19(1)(g), 19(6), 30, and considering the Schedule VII, Entry 25 of List III and Entry 63-66 of List I, held that regulation of the fee structure is permissible in "professional unaided minority" and "non-minority institutions".**

(170) The ratio of law laid down in the ***Modern Dental College's*** case (supra) has been followed by Supreme Court of India in the recent case titled as *"**Indian School, Jodhpur v**ersus **State of Rajasthan", Civil Appeal No. 1724 of 2021***, decided on **03.05.2021**. The Hon'ble Supreme Court in ***Indian School's*** case (supra) while adjudicating the validity of Rajasthan Schools (Regulation of Fee) Act, 2016 observed that it is within the jurisdiction of the Government to provide regulatory mechanism for determination of the school fees. The relevant observation read as under:-

> "19. After this jurisprudential exposition, it is not open to argue that the Government cannot provide for external regulatory mechanism for determination of school fees or so to say fixation of "just" and "permissible" school fees at the initial stage itself. "

(171) The Hon'ble Supreme Court in ***Sindhi Education Society and Anr.*** versus ***Chief Secretary, Government of NCT of Delhi and Ors.***[25] opined that measures to regulate are admissible to the affiliation of minority institutions. The Hon'ble Supreme Court in the relevant paragraphs, as reproduced hereunder, made following observations:-

> "**47**. Still another seven-Judge Bench of this Court, in Ahmedabad St. Xavier's College Society, (1974) 1 SCC 717, was primarily concerned with the scope of Articles 29

[25] 2010 (3) SCT 586: 2010 (8) SCC 49

and 30 of the Constitution, relating to the rights of minorities to impart general education and applicability of the concept of affiliation to such institutions. Of course, the Court held that there was no fundamental right of a minority institution to get affiliation from a university. **When a minority institution applies to a university to be affiliated, it expresses its choice to participate in the system of general education and courses of instructions prescribed by that university, and it agrees to follow the uniform courses of study. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health, hygiene of students and the other facilities are germane to affiliation of minority institutions**.

55. The respondents have placed reliance upon the law stated by the Bench that any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or the minority. Such a limitation must be read into Article 30. The rule under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make a right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.

56. The appellant also seeks to derive benefit from the view that the courts have also held that the right to administer is not absolute and is subject to reasonable regulations for the benefit of the institutions as the vehicle of education consistent with the national interest. Such general laws of the land would also be applicable to the minority institutions as well. **There is no reason why regulations or conditions concerning generally the welfare of the students and teachers should not be made applicable in order to provide a proper academic atmosphere.** As such, the provisions do not, in any way, interfere with the right of administration or management under Article 30(1). Any law, rule or regulation, that would put the educational

institutions run by the minorities at a disadvantage, when compared to the institutions run by the others, will have to be struck down. At the same time, there may not be any reverse discrimination.

92. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public interest and national interest of the country. Regulation can also be framed to prevent maladministration as well as for laying down standards of education, teaching, maintenance of discipline,public order, health, morality, etc. It is also well settled that 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 tothe minority group and, at the same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the rightin Article 30(1) is not substantially impaired and further, the citizen's right under Article 29(2) is not infringed."

(Emphasis supplied)

(172) From a combined reading of the judgments of the Supreme Court, it is clear that Institutes/Schools cannot indulge in commercialization of education, which would mean that the fee structure has to be kept within the bound so as to avoid profiteering. At the same time reasonable surplus is permissible which may be required for development of various activities in the schools for the benefit of the students themselves. The guiding principle in the process is to strike a balance between autonomy of such institution and measures to be taken in avoiding commercialization of education.

(173)It can be safely deduced from the aforesaid judgments that the Right to Establish and Administer an Institution phrase employed in Article 30(1) of the Constitution, comprises the following rights: (a) to admit students; (b) to set up a reasonable fee structure; (c) to constitute a governing body; (d) to appoint staff (teaching and non-teaching); and (e) to take action if there is dereliction of duty on the part of any of the employees.

(174) However the right to administer is not absolute and such regulations are, permissible insofar as they do not restrict the right of

administration of the minority community but facilitate and ensure better and more effective exercise of that right for the benefit of the institution.

(175) Minority Institutions cannot resist the regulations, which are conducive to maintain the standard. However no regulation would be valid,if it has the effect of displacing the minority administration or restricting the right of the minorities to administer their educational institutions.

(176) It is a settled position that educational institutions are vested with right to establish and administer an institution including the right to admit students and to set up a reasonable fee structure. However, occupation of education is not a business but profession involving charitable activities. Therefore it is well permissible to promulgate regulatory measures aimed for protecting the student community as the whole and as well as to ensure maintenance of required standards of education which are non-exploitative. The imposition of reasonable restrictions by the State government aimed to ensure transparency and to curb the menace of profiteering and charging of capitation fees do not violate Article 30 (1) or Article 19 (1) (g) of the Constitution of India.

(177) The right under Article 30(1) cannot be such as to override the National Interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution, but the right under Article 30 is not so absolute as to be above the law.

(178) The Hon'ble Supreme Court of ***Indian Christian Medical College Vellore Association*** versus ***Union of India***[26] held that, Article 19 (1) (g) and Article 30of the Constitution of India do not come in the way of securing transparency. The right enshrined in the Article 19 (1) (g) and Article 30 are subject to reasonable restrictions. Further it is held that Reasonable regulatory measures can be provided without violating such rights available under Article 30 of the Constitution to administer an institution. The relevant paragraphs of ***Christian Medical College's case (supra)*** reads as under:-

> *"***58. Thus, we are of the opinion that rights under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India do not come in the way**

[26] 2020 (8) SCC 705 : AIR 2020 SC 4721: 2020 (5) JT 87

of securing transparency and recognition of merits in the matter of admissions. It is open to regulating the course of study, qualifications for ensuring educational standards. It is open to imposing reasonable restrictions in the national and public interest. The rights under Article 19(1)(g) are not absolute and are subject to reasonable restriction in the interest of the student's community to promote merit, recognition of excellence, and to curb the malpractices. Uniform Entrance Test qualifies the test of proportionality and is reasonable. The same is intended to check several maladies which crept into medical education, to prevent capitation fee by admitting students which are lower in merit and to prevent exploitation, profiteering, and commercialisation of education. The institution has to be a capable vehicle of education. The minority institutions are equally bound to comply with the conditions imposed under the relevant Acts and Regulations to enjoy affiliation and recognition, which apply to all institutions. In case they have to impart education, they are bound to comply with the conditions which are equally applicable to all. The regulations are necessary, and they are not divisive or disintegrative. Such regulatory measures enable institutions to administer them efficiently. There is no right given to maladminister the education derogatory to the national interest. The quality of medical education is imperative to sub-serve the national interest, and the merit cannot be compromised. The Government has the right for providing regulatory measures that are in the national interest, more so in view of Article 19(6) of the Constitution of India.

59. The rights of the religious or linguistic minorities under Article 30 are not in conflict with other parts of the Constitution. Balancing the rights is constitutional intendment in the national and more enormous public interest. Regulatory measures cannot be said to be exceeding the concept of limited governance. The regulatory measures in question are for the improvement of the public health and is a step, in furtherance of the directive principles enshrined in Articles 47 and 51(A)(j) and enable the individual by providing full opportunity in pursuance of his objective to excel in his pursuit. **The rights to**

> **administer an institution under Article 30 of the Constitution are not above the law and other Constitutional provisions.Reasonable regulatory measures can be provided without violating such rights available under Article 30 of the Constitution to administer an institution.** Professional educational institutions constitute a class by themselves. Specific measures to make the administration of such institutions transparent can be imposed. The rights available under Article 30 are not violated by provisions carved out in Section 10D of the MCI Act and the Dentists Act and Regulations framed by MCI/DCI. The regulatory measures are intended for theproper functioning of institutions and to ensure that the standard of education is maintained and does not fall low under the guise of an exclusive right of management to the extent of maladministration. The regulatory measures by prescribing NEET is to bring the education within the realm of charity which character it has lost. It intends to weedout evils from the system and various malpractices which decayed the system. The regulatory measures in no way interfere with the rights to administer the institution by the religious or linguistic minorities.
>
> 60. Resultantly, we hold that there is no violation of the rights of the unaided/aided minority to administer institutions under Articles 19(1) (g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India by prescribing the uniform examination of NEET for admissions in the graduate and postgraduate professional courses of medical as well as dental science. The provisions of the Act and regulation cannot be said to be ultra vires or taking away the rights guaranteed under the Constitution of India under Article 30(1) read with Articles 19(1)(g), 14,25, 26 and 29(1). Accordingly, the transferred cases, appeal, and writ petitions are disposed of."

(Emphasis supplied)

(179) That it would also be relevant to discuss the observations made by the Full Bench of this Court in ***Navdeep Kaur Gill*** versus ***State of Punjab***[27], which upheld the *vires* of the **Punjab Private**

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[27] 2014 (3) SCT 110

Health Sciences Educational Institutions (Regulation of Admission, fixation of fee and making reservation) Act, 2006, whereby the State of Punjab had devised an act to regulate the procedure of admission and fixation of fees in all the private medical institutions (non-minority and minority). The relevant observations of the Hon'ble Full bench reads as under:-

> "46. Fee is to be determined having regard to norms of infrastructure and facilities provided by the concerned councils set up under the Central laws. There can be no objection to regulatory measures in the matter of making of admissions or fixing of fee. Objection that the fee should be fixed by the College and not by the State cannot be accepted. The observations in judgments referred to above have been made in absence of legislation. **Once a legislation is enacted, its validity is to be tested on the touchstone of the Constitution. Though, establishment of educational institutions is a fundamental right under Article 19(1)(g) as held in T.M.A. Pai Foundation, the said right is not an absolute right. The same is subject to regulation.In absence of any law, under the judicial direction, the committees were constituted to oversee admission and fee fixation. The said judicial directions have now been substituted by the statutory mechanism. In the matter of fee fixation, the basis for fee is the norms of infrastructure and facilities prescribed by a council and an institution providing higher facilities is not allowed to charge higher fee. To this extent, there is departure from the observations made in above judgments to the effect that an unaided educational institution could fix its own fee structure subject to the same being not exploitative.**
>
> 47. Question for consideration is whether a legislation which restricts right to charge higher fee by providing higher infrastructure is within the legislative competence and can be justified as reasonable restriction in public interest. **It has been submitted on behalf of the State that havingregard to practical needs of the society as a whole, the legislation checks the fee being taken to unreasonable level merely on the plea that higher infrastructure was provided. Larger consideration of**

access to higher education even to economically lower sections of society is sought to be achieved by limiting the level of the fee to the minimum prescribed requirements of infrastructure and facilities. There is no bar for higher facilities being provided subject to no extra fee being charged. Limiting the fee to a minimum level is intended to keep in mind the angle of the common man. It is a matter of legislativechoice of policy.

48. Fixing fee equal to minimum needs of infrastructure cannot be held to be beyond the legislative power under Article 19(6) of the Constitution. In judging reasonableness of restriction, the Court has also to bear in mindthe directive principles of State policy. Restriction can be held to be reasonable if the same is to advance directive principles and is not otherwise arbitrary or excessive. A balance has to be struck between freedom under Article 19(1)(g) and social control permitted by way of restrictions. The approach of the Court has to have regard to prevailing conditions, values of life and social philosophy of the Constitution.

49. The judgment of the Kerala High Court in Pushpagiri Medical Society is distinguishable. Even otherwise, we are unable to follow all the observations made therein.

50. It is well settled that right under Article 19(1)(g) of the Constitution is subject to reasonable restrictions in public interest under Article 19(6) of the Constitution. We may refer to some of the judgments dealing with the scope of regulatory power of legislature under Article 19(6) of the Constitution.

57. We are, thus, of the view that the provision limiting the fee to the minimum infrastructure requirements cannot be held to be violative of fundamental right under Article 19(1)(g) of the Constitution. The restriction does not, in any manner, interfere with the right of educational institutions to establish and administer the same. Their cost in providing minimum infrastructure is taken care of. They are not debarred from providing better infrastructure if they could afford to.

There is no absolute right to establish institutions involving higher cost and limiting the same only to the students who

> can pay higher fee. As observed in P.A. Inamdar, a student paying high fee is likely to aim at earning more rather than serving which can be bane to the society. **Education after all is not business. Primarily, it is service to the society where earning is secondary or incidental. High fee will be inconsistent with such aim and will force a student to adopt a commercial approach. If the Act intends to encourage social values, where service oriented approach can be adopted and access to higher education can be provided to poorer sections, such aim will be consistent with the directive principles. In judging the validity of a legislation, the Court has to strike a balance between the need of the society and right of the individual. Right of the individual cannot be held to be sacrosanct so as to make the need of the society subordinate to its right.**
>
> 58. Thus viewed, the impugned Act as a whole cannot be held to be unconstitutional."

(Emphasis Supplied)

(180) That after considering the settled position in law as enumerated hereinabove and the conditions so imposed by the U.T. Administration, we are of the view that the imposition of the conditions by the Chandigarh Administration upon the petitioner schools can at no extent or by any stretch of imagination be called as unreasonable or restrictive in nature, as the same are regulatory. The same shall ensure that there is no charging of capitation fee or profiteering, as held in the case of ***T.M.A. Pai Foundation's*** case (supra) and followed thereafter in numerous judgements. By adhering to modifications/ restrictions carried out by the Central Government while adapting the 2016 Act to Chandigarh Administration (as reproduced in para No. 1 hereinabove), it shall be ensured that there is no backdoor charging of capitation fee by the schools and the funds of the private unaided institution are properly utilized to promote the field of education.

(181) The modifications carried out by the Central Government while adapting 2016 Act of State of Punjab, to the Union Territory of Chandigarh are not adversarial modifications/ additions but are meant to ensure balance between the competing interest of the students, the institution and the requirement and desire of the society for accessible quality education. The modifications/additions carried out by the Central Government do not in any manner infringe upon the autonomy

or day-to-day functioning of the Institution or in any manner prescribe rigid fee structure. The modifications/additions only facilitate in ensuring the goal of transparency.

(182) Therefore, in light of the observations made hereinabove and decision and findings on issue No. (iv), we are of the view that the modifications carried out by the Central Government while extending the 2016 Act of State of Punjab, to the Union Territory of Chandigarh does not violate the rights of the unaided educational institution or the rights of the minority unaided educational institutions.

(183) Before parting, we would like to note that none of the Counsel have addressed arguments with respect to the orders issued by U.T. Administration seeking compliance of the directions issued under 2016 Act as adapted to U.T. Chandigarh. However, since we have upheld the modifications carried out while adapting 2016 Act of State of Punjab to U.T.Chandigarh, by the Central Government with certain observations, we expect that Chandigarh Administration will grant reasonable time to the petitioners to comply with the directions.

(184) In view of the aforesaid discussion, we **dismiss both** the writ **petitions**, subject to the observations made by us hereinabove, especially while adjudicating upon the validity of Clause (b) of 4th proviso to Section 5 of the 2016 Act and Section 10 (4) to (6) of the 2016 Act.

(185) Since the main petitions itself have been decided / dismissed, no orders are required to be passed in the pending miscellaneousapplication(s), if any, and the same stand(s) disposed of.

Shubreet Kaur