

M/S G.S. Convent School vs State Of U.P. And 3 Others on 20 September, 2019

Equivalent citations: AIRONLINE 2019 ALL 1901, (2019) 11 ADJ 274 (ALL) (2019) 6 ALL WC 5296, (2019) 6 ALL WC 5296

Author: Ajay Bhanot

Bench: Ajay Bhanot

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

In Chamber

Case :- WRIT - C No. - 4400 of 2019

Petitioner :- M/S G.S. Convent School-

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Satya Prakash Sharma

Counsel for Respondent :- C.S.C., Ram Bilas Yadav

WITH

Case :- WRIT - C No. - 16082 of 2019

Petitioner :- C/M Ganga Bal Montessori Primary School And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Anil Kumar Srivastava

Counsel for Respondent :- C.S.C.,Yatindra

WITH

Case :- WRIT - C No. - 56169 of 2010

Petitioner :- C/M Hans Raji Devi Kanya Laghu Vidyalaya And Another

Respondent :- State Of U.P. Thru Its Secry. Secondary Edu. And Others

Counsel for Petitioner :- R.C. Dwivedi

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 16059 of 2019

Petitioner :- C/M Mathura Patan Gramin Junior High School And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ghanshyam Das Mishra

Counsel for Respondent :- C.S.C.,Awadhesh Kumar

WITH

Case :- WRIT - C No. - 23242 of 2019

Petitioner :- C/M Ramraj Smarak Shiksha Niketan

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ajay Kumar Srivastava, Sri Samir Sharma

(Senior Advocate)

Counsel for Respondent :- C.S.C., Bhanu Pratap Singh

WITH

Case :- WRIT - C No. - 26002 of 2019

Petitioner :- C/M Ganga Devi Memorial Vidyalaya And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arvind Kumar Srivastava

Counsel for Respondent :- C.S.C., Yatindra

WITH

Case :- WRIT - C No. - 25962 of 2019

Petitioner :- C/M Adarsh Janhit Bal Vidyalaya And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arvind Kumar Srivastava

Counsel for Respondent :- C.S.C., Yatindra

WITH

Case :- WRIT - C No. - 26204 of 2019

Petitioner :- C/M Jangali Baba Uchchatar Madhyamik Vidya Mandir And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Awadhesh Kumar Malviya, Manoj Kumar Singh

Counsel for Respondent :- C.S.C., Sanjay Chaturvedi

WITH

Case :- WRIT - C No. - 11712 of 2019

Petitioner :- C/M Sherwani Junior High School Beranwa And Another

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Anand Mohan Pandey

Counsel for Respondent :- C.S.C., Ashok Kumar Yadav

WITH

Case :- WRIT - C No. - 11739 of 2019

Petitioner :- C/M Maa Shukli Devi Shiksha Prasar Samiti And Another

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Prabhakar Awasthi

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 18878 of 2018

Petitioner :- C/M Adarsh Shiksha Samiti

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Brijesh Kumar

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 36458 of 2018

Petitioner :- Adarsh Janta Shishu Vidyalay Panchmohini

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Brijesh Kumar

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 42845 of 2018

Petitioner :- C/M Sri Krishna Junior High School And 5 Others

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Raj Kumar Singh, Sunil Kumar Singh

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 24385 of 2019

Petitioner :- C/M Vivekanand Public School And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vinod Kumar Singh

Counsel for Respondent :- C.S.C.,Nisheeth Yadav

WITH

Case :- WRIT - C No. - 23695 of 2019

Petitioner :- C/M Of Varanasi Shiksha Samiti And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Utsav,Maithali Sharan Pipersenia

Counsel for Respondent :- C.S.C.,Nisheeth Yadav

WITH

Case :- WRIT - C No. - 21238 of 2019

Petitioner :- Shri Brinda Prasad Hindu Mahila Bal Asram Tatha Hitkarini Sanstha

Respondent :- State Of U P And Another

Counsel for Petitioner :- Krishna Chandra Sinha,Sunil

Counsel for Respondent :- C.S.C.,Ashok Kumar Yadav

WITH

Case :- WRIT - C No. - 22064 of 2019

Petitioner :- C/M Lakhana Public Academy

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Yogesh Kumar Saxena

Counsel for Respondent :- C.S.C.,Vikram Bahadur Singh

WITH

Case :- WRIT - C No. - 19697 of 2019

Petitioner :- Shwetambari Public School Naipur Kalan And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Lavlesh Kumar

Counsel for Respondent :- C.S.C.,Nisheeth Yadav

WITH

Case :- WRIT - C No. - 26751 of 2019

Petitioner :- The Alakhnanda Millard School

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Dinesh Kumar Misra

Counsel for Respondent :- C.S.C., Ram Bilas Yadav

WITH

Case :- WRIT - C No. - 3332 of 2010

Petitioner :- C/M Sarvodaya Junior High Sch. Meerut And Others

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 11652 of 2019

Petitioner :- Divya Children Public School And Another

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Sharad Sinha, Mahesh Sharma

Counsel for Respondent :- C.S.C., Anil Kumar, Vikram Bahadur Singh

WITH

Case :- WRIT - C No. - 19879 of 2019

Petitioner :- Saint Sai Convent School Rameshwar

Respondent :- State Of U P And Another

Counsel for Petitioner :- Ajay Kumar Giri,Surendra Kumar

Counsel for Respondent :- C.S.C.,Nisheeth Yadav

WITH

Case :- WRIT - C No. - 23982 of 2019

Petitioner :- Bal Vidhyalay Madhyamik School

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Virendra Kumar Yadav,Amulya Ratan Srivastava

Counsel for Respondent :- C.S.C.,Nisheeth Yadav

WITH

Case :- WRIT - C No. - 23694 of 2019

Petitioner :- C/M Swami Dwarkeshanand Saraswati Children Welfare Society And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Maithali Sharan Pipersenia,Utsav

Counsel for Respondent :- C.S.C.,Nisheeth Yadav

WITH

Case :- WRIT - C No. - 23693 of 2019

Petitioner :- C/M Pratap Bhanu Jain Purva Madhyamik Vidyalaya

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Awadh Behari Singh,Manish Singh

Counsel for Respondent :- C.S.C.,Akhilesh Chandra Srivastava

WITH

Case :- WRIT - C No. - 6562 of 2019

Petitioner :- C/M Dr. Ambedkar Public School

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Ravindra Pratap Singh

Counsel for Respondent :- C.S.C.,Pradeep Singh Sengar

WITH

Case :- WRIT - C No. - 10099 of 2019

Petitioner :- Ajaj

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Hinchh Lal Pandey,Sharda Babu

Counsel for Respondent :- C.S.C.,Pranesh Dutt Tripathi

WITH

Case :- WRIT - C No. - 42870 of 2018

Petitioner :- Smt.Kunti Devi And 6 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Vinay Kumar Singh, Sanjeev Singh

Counsel for Respondent :- C.S.C., Ashutosh Mani Tripathi, Daya Shanker Mani Tripathi, Mrign

WITH

Case :- WRIT - C No. - 5351 of 2019

Petitioner :- C/M Madani Junior High School And 2 Others

Respondent :- State Of U P And Another

Counsel for Petitioner :- Raj Kumar Singh, Sunil Kumar Singh

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 3813 of 2019

Petitioner :- National Skill Development Modern Model Institute

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Rakesh Singh Yadava, Hawaldar Ram

Counsel for Respondent :- C.S.C., Sanjay Chaturvedi

WITH

Case :- WRIT - C No. - 6917 of 2019

Petitioner :- Sri Chaitanya Sanskrit Shiksha Sansthanam (Sanskrit Mahavidyalay) And An

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Raghwendra Prasad Mishra

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 8054 of 2019

Petitioner :- C/M Jharkhandi Baba Laghu Madhyamik Vidyalaya

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Anil Kumar Tiwari

Counsel for Respondent :- C.S.C., Shyam Krishna Gupta

WITH

Case :- WRIT - C No. - 8646 of 2019

Petitioner :- C/M Chhatrapal Krishak Junior High School And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Madan Lal Srivastava

Counsel for Respondent :- C.S.C., Ashok Kumar Yadav

WITH

Case :- WRIT - C No. - 8645 of 2019

Petitioner :- Guru Nanak Inter College

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Gaurav Pundir

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 38374 of 2018

Petitioner :- C/M Dr. Ambedkar Gramin Samagra Sewa Sansthan And Another

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Vimal Chandra Pathak,Manoj Kumar Chaudhary

Counsel for Respondent :- C.S.C.

WITH

Case :- WRIT - C No. - 26903 of 2019

Petitioner :- C/M Janta Kanya Junior High School And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Arvind Kumar Srivastava

Counsel for Respondent :- C.S.C.,Ashok Kumar Yadav

WITH

Case :- WRIT - C No. - 27058 of 2019

Petitioner :- C/M Bohare Jamuna Prasad Public School And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Yogendra Kumar Srivastava, Anita Srivastava

Counsel for Respondent :- C.S.C., Akhilesh Chandra Srivastava

WITH

Case :- WRIT - C No. - 23237 of 2019

Petitioner :- C/M Happy Model School D.I.G. Colony

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ram Vishal Mishra, Bala Nath Mishra, Vijai Shanker Shukla

Counsel for Respondent :- C.S.C., Nisheeth Yadav

WITH

Case :- WRIT - C No. - 27884 of 2019

Petitioner :- C/M Rajendra Prasad Munni Devi Shiksha Samiti And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Niklank Kumar Jain

Counsel for Respondent :- C.S.C., Bhupendra Kumar Yadav

Hon'ble Ajay Bhanot, J.

Introduction

1. The writ petitions in this bunch have been instituted by various schools and school managements. One set of writ petitions pray for grant of government aid. The second set of petitions pray for grant

of recognition to the schools from the U.P. Basic Shiksha Parishad (U.P. Board of Primary Education).

Submissions of the counsels

2. The learned counsels for the petitioners submit that the petitioners claim the reliefs in the writ petitions by virtue of the rights conferred by Article 21A of the Constitution of India read with the Right of Children to Free and Compulsory Education Act, 2009, the Rules framed thereunder and the judgement of the Hon'ble Supreme Court in the case of State of U.P. v. Pawan Kumar Dwivedi, reported at (2014) 9 SCC 692 and the judgment of this Court in Paripurna Nand Tripathi Vs. State of U.P., reported at 2015 (3) ADJ 567. Learned counsels for the petitioners also pressed the Government Order dated 08.05.2013 and the Government Order dated 11.01.2019 in aid of their claims. Some counsels admit the schools lack playgrounds. But the requirement for playgrounds has been waived in the Government Order dated 08.05.2013. The need to have a playground in the school premises is optional in the Government Order dated 11.01.2019. As per the Government Order dated 11.01.2019 the playground need not be in the name of the school, nor is it required to be in the school premises. It is contended that the petitioners satisfy the criteria for affiliation and grant of aid posited by the Government Order dated 08.05.2013 and the Government Order dated 11.01.2019. Grant of government aid and recognition respectively, on the foot of the Government Order dated 08.05.2013 and Government Order dated 11.01.2019 as are applicable to the respective cases.

3. Sri Neeraj Tripathi, learned Additional Advocate General assisted by Sri Shashank Shekhar, learned Additional Chief Standing Counsel for the respondent-State would contend that the rights of the institutions are governed and regulated by the the Right of Children to Free and Compulsory Education Act, 2009 read with The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011. They further submit that the Government Orders dated 08.05.2013 and 19.01.2013 prescribe the mandatory criteria which need to be satisfied before the institutions can claim government aid or demand recognition.

4. I have heard the learned counsel for the parties.

5. On the face of it, the prayers made in the writ petitions are innocuous and orders were passed routinely by this court to decide the representations of the petitioners for grant of aid or recognition as the case may be. I too was inclined to dispose of these writ petitions on similar lines. However, some facts were troubling.

6. Admittedly, many petitioners' schools do not have playgrounds. While others do not have playgrounds in the school premises or in their names. This deficiency as stated earlier, is defended on the strength of the Government Orders dated 08.05.2013 and 11.01.2019 respectively. However, this inadequacy does not seem to be consistent with the Right of Children to Free and Compulsory Education Act, 2009 and Article 21A of the Constitution of India.

7. Thus, in the course of arguments, fault lines were exposed in the respective cases of the petitioners and the Government Orders. These facts necessitated a more searching enquiry of the issues at hand.

8. It is important to be simple but dangerous to be simplistic. The issues may look innocuous on the surface but the provisions carry distant consequences. Avoiding an in depth consideration of the issues would amount to an abdication of judicial functions by this Court.

9. The State was given adequate opportunity to state their defence in regard to absence of playgrounds in schools in the Government Order dated 08.05.2013 and the vague provisions for playgrounds in the Government Order dated 11.01.2019 and reconcile the same to Article 21A of the Constitution of India, the Right of Children to Free and Compulsory Education Act, 2009. The respondents were also called upon to enter details of implementation of the Right of Children to Free and Compulsory Education Act, 2009. Counter affidavits of the respondents are in the record and have been perused.

10. The ceaseless quest for knowledge is a salient feature of Indian civilization. The position of knowledge in Indian civilization is in ways distinct from the endeavours of other civilizations. Hellenic thought is founded on reason while Middle Eastern philosophy rests on revelation. Indian quest for knowledge, while always embracing reason and not denying revelation, insists on realization as its goal.

11. The constant war against ignorance was a consistent preoccupation of the founding fathers of modern India. Eradication of ignorance in all forms and educating all young Indians by all means, is the avowed object of the Indian Parliament in promulgating Article 21A of the Constitution and enacting the Right of Children to Free and Compulsory Education Act, 2009. Literacy may equip one for livelihood but education empowers all for life. The legislature chose education over literacy.

12. By promulgating Article 21A of the Constitution of India and enacting the Right of Children to Free and Compulsory Education Act, 2009, the legislature partly redeemed a promise made by the nation on the fateful midnight of August 1947. But the promise can be redeemed in full measure only by a faithful implementation of the legislative and constitutional mandate.

13. Best legislation and most noble intentions of the legislature can be thwarted by indifferent application of the law or defeated by poor implementation of the enactments. In the instant case, the stakes are too high and the intention too sacrosanct for the authorities to fail the legislature.

14. An education system manifests the reach of human vision, the power of human will, and the efficacy of human organization to regulate and alter the course of evolution of human society and the destiny of human beings.

15. The promulgation of the Right of Children to Free and Compulsory Education Act, 2009 is a reflection of national vision, national will and national organization. The implementation of the Right of Children to Free and Compulsory Education Act, 2009, is the test of national vision,

national will and national organization.

Responsibility of Courts (Ashoka Thakur v. Union of India and others, reported at 2008 (6) SCC 1)

16. The Courts have a special responsibility to uphold and implement the fundamental right to education under Article 21A of the Constitution and the Right to Education Act, 2009. In the scheme of the fundamental rights guaranteed under the Constitution, the Hon'ble Apex Court seated the right to education conferred by Article 21A of the Constitution at the summit. While holding so, the Hon'ble Supreme Court in the case of Ashoka Thakur vs. Union of India and others, reported at 2008(6) SCC 1 also emphasized the special duties of the judiciary in implementing the aforesaid right. The Hon'ble Supreme Court in Ashoka Thakur (supra) held thus:

"482.....It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education.
"

17. Article 21A of the Constitution of India, being the pivot on which the controversy hinges is extracted hereunder for ease or reference.

"21A. Right to education.-The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

18. The statement of objects and reasons of the Right of Children to Free and Compulsory Education Act, 2009 manifests the legislative intent. The objects and reasons of the Right of Children to Free and Compulsory Education Act, 2009 are as follows:

"STATEMENT OF OBJECTS AND REASONS -The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of

learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,--

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) "compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) "free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in article 21-A of the Constitution.

6. The Bill seeks to achieve this objective."

19. Certain amendments were made in the Right of Children to Free and Compulsory Education Act, 2009 by amending Act No.30 of the 2012. Regard has to be paid to the statement of objects and reasons of the Amendment Act, 2012, which is as under:

Amendment Act 30 of 2012-Statement of Objects and Reasons.-Consequent upon the enactment of the Constitution (Eighty-sixth Amendment) Act, 2002, the Right of Children to Free and Compulsory Education Act, 2009 which provides for free and compulsory education to all children of the age of 6 to 14 years was enacted.

2. Clause (d) of section 2 of the aforesaid Act of 2009 defines the expression "child belonging to disadvantaged group" to mean a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification. However, children with disabilities, even though disadvantaged, are not specifically included in that clause. Children with disabilities constantly experience barriers to the enjoyment of basic rights, and to their inclusion in society. It is, therefore, proposed to include children with disabilities in the definition of "child belonging to disadvantaged group" with a view to ensuring that their specific needs are given precedence in the elementary education system in the country, and enable them, over time, to participate as full and equal members of the community in which they live. Secondly, the proviso to sub-section (2) of section 3 of the Act states that "a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1995 (Act 1 of 1996) shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act" It has been pointed out that Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1995, does not cover children with cerebral palsy, mental retardation, autism and multiple disabilities, who are covered under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1992 (44 of 1999). Accordingly, it is proposed that children with cerebral palsy, mental retardation, autism and multiple disabilities are also explicitly covered under the Right of Children to Free and Compulsory Education Act, 2009.

3. Sections 21 and 22 of the Right of Children to Free and Compulsory Education Act, 2009 provides for the constitution and functions of the School Management Committee and preparation of school development plan by the School Management Committee. However, unaided schools, not receiving any kind of aid or grants from the appropriate Government or local authority to meet their expenses, are exempted from constituting School Management Committees. Article 30 of the Constitution provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It is, therefore, proposed to amend section 21 of the aforesaid Act so as to provide that the School Management Committees constituted under sub-section (1) of section 21 of the aforesaid Act in respect of minority institutions shall function only in an advisory capacity. It is also proposed to amend section 22 of the Act so as to provide that the functions envisaged under the said section 22 for School Management Committees

would not apply to minority institutions.

4. The Bill seeks to achieve the above objects."

Scheme of the Right of Children to Free and Compulsory Education Act, 2009

20. The scheme of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the Act of 2009'), is an authoritative guide to the nature of the rights of the petitioners, the rights of the children, the duties of the State authorities as well as the obligations of educational institutions. The scheme of the Right of Children to Free and Compulsory Education Act, 2009 is considered in the succeeding paragraphs.

21. Section 1(4) of the Right of Children to Free and Compulsory Education Act, 2009 confers rights upon the Children without diluting the mandate of Articles 29 and 30 of the Constitution of India. Section 1(4) reads as under:

"1(4) Subject to the provisions of articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education."

22. Section 2 contains the definition clauses. Section 2(a) defines appropriate government as under:

"2(a) "appropriate Government" means--

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of--

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;"

23. Sections 2 (c), 2(d), 2(e) and 2(ee) give the definition of child and children of the different groups and categories. The provisions of Sections 2(c), 2(d), 2(e) and 2(ee) state thus:

"2(c) "child" means a male or female child of the age of six to fourteen years;

(d) "child belonging to disadvantaged group" means [a child with disability or] a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified

by the appropriate Government, by notification;

(e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

[(ee) "child with disability" includes,--

(A) a child with "disability" as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

(B) a child, being a person with disability as defined in clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);

(C) a child with "severe disability" as defined in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).]"

24. The other clauses of Sections 2(f), 2(h), 2(l), 2(m), 2(n), 2(o), 2(p) and 2(q), which are relevant, speak as follows:

"2(f) "elementary education" means the education from first class to eighth class;

(h) "local authority" means a Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Schedule" means the Schedule annexed to this Act;

(n) "school" means any recognised school imparting elementary education and includes--

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

(o) "screening procedure" means the method of selection for admission of a child, in preference over another, other than a random method;

(p) "specified category", in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government;

(q) "State Commission for Protection of Child Rights" means the State Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006). "

25. Chapter II of the Right of Children to Free and Compulsory Education Act, 2009 vests the right of the compulsory education in all children between the ages of 6 to 14 years. Sections 3 and 4, which create the entitlement, are extracted hereunder:

"3. Right of child to free and compulsory education.--[(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.] (2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

[(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.]

4. Special provisions for children not admitted to, or who have not completed, elementary education.--Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years."

26. Chapter III is critical to the controversy and deals with the duties of the appropriate government, local authorities and parents. Understanding the duties of appropriate government and local authorities provide the insight into the obligations cast by the legislature upon various authorities to achieve the goal set out by the Right of Children to Free and Compulsory Education Act, 2009. Sections 6, 7, 8 and 9 being particularly relevant to the instant controversy are stated below:

"6. Duty of appropriate Government and local authority to establish school.--For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

7. Sharing of financial and other responsibilities.--(1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall--

(a) develop a framework of national curriculum with the help of academic authority specified under section 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

8. Duties of appropriate Government.--The appropriate Government shall--

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.--The term "compulsory education" means obligation of the appropriate Government to--

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in section 4;

(f) ensure and monitor admission, attendance and completion of elementary education by every child;

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers.

9. Duties of local authority.--Every local authority shall--

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

(e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;

(f) provide infrastructure including school building, teaching staff and learning material;

(g) provide special training facility specified in section 4;

(h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(i) ensure timely prescribing of curriculum and courses of study for elementary education;

(j) provide training facility for teachers;

(k) ensure admission of children of migrant families;

(l) monitor functioning of schools within its jurisdiction; and

(m) decide the academic calendar."

27. The provisions under Chapter IV pertain to responsibilities of schools. The schools while claiming their rights under the Right of Children to Free and Compulsory Education Act, 2009 cannot be blind to their obligations created by the statute. The said provisions which merit consideration are extracted below:

"12. Extent of school's responsibility for free and compulsory education.--(1) For the purposes of this Act, a school,--

(a) specified in sub-clause (i) of clause (n) of section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

(3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

13. No capitation fee and screening procedure for admission.--(1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1),--

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

(b) 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.

14. Proof of age for admission.--(1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) or on the basis of such other document, as may be prescribed.

(2) No child shall be denied admission in a school for lack of age proof. "

28. Sections 18 and 19 control the spirit of the Right of Children to Free and Compulsory Education Act, 2009 and the substance of the instant controversy. The provisions set the standards and norms including the infrastructure requirements for schools to obtain recognition. The consequences of breach of infrastructure requirements are set forth with clarity. The imperative terms of the provisions will be discussed later. The provisions have to be read in conjunction with Section 36 of the Right of Children to Free and Compulsory Education Act, 2009.

18. No School to be established without obtaining certificate of recognition.--(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

19. Norms and standards for school.--(1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of Section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues."

36. Previous sanction for prosecution.--No prosecution for offences punishable under sub-section (2) of section 13, sub-section (5) of section 18 and sub-section (5) of section 19 shall be instituted except with the previous sanction of an officer authorised in this behalf, by the appropriate Government, by notification. "

29. Schools of specific categories under the Right of Children to Free and Compulsory Education Act, 2009 have to constitute the school management committee under Section 21 of the Right of Children to Free and Compulsory Education Act, 2009. Section 21 read as under:

21. School Management Committee.--(1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

Provided that at least three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:

Provided also that fifty per cent. of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:--

(a) monitor the working of the school;

(b) prepare and recommend school development plan;

(c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and

(d) perform such other functions as may be prescribed.

[Provided that the School Management Committee constituted under sub-section (1) in respect of,--

(a) a school established and administered by minority whether based on religion or language; and

(b) all other aided schools as defined in sub-section (ii) of clause (n) of section 2, shall perform advisory function only.]"

30. The duties of teachers and their responsibilities towards the students are described in Section 24 of the Right of Children to Free and Compulsory Education Act, 2009. Section 24 is reproduced below:

"24. Duties of teachers and redressal of grievances.--(1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely:--

(a) maintain regularity and punctuality in attending school;

(b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;

- (c) complete entire curriculum within the specified time;
- (d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;
- (e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and
- (f) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed. "

31. Chapter V of the Right of Children to Free and Compulsory Education Act, 2009 contains the provisions pertaining to curriculum and evaluation procedure. These are germane to the controversy. Sections 29 and 30 of the Right of Children to Free and Compulsory Education Act, 2009 is extracted hereunder:

"29. Curriculum and evaluation procedure.--(1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:--

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;

(f) medium of instructions shall, as far as practicable, be in child's mother tongue;

(g) making the child free of fear, trauma and anxiety and helping the child to express views freely;

(h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same."

"30. Examination and completion certificate.--(1) No child shall be required to pass any Board examination till completion of elementary education.

(2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed. "

32. Chapter VI of the Right of Children to Free and Compulsory Education Act, 2009 provides for the protection of rights of children. The agencies have been created to ensure an eternal vigilance over the state of education of the children, redressal of grievances and implementation of the Right of Children to Free and Compulsory Education Act, 2009. The provisions contained in Chapter VI reveal the legislative intent to ensure that the legislative goals are not defeated by executive inaction or apathy. The relevant provisions of Sections 31, 32 and 34 of the Right of Children to Free and Compulsory Education Act, 2009 are stated below:

31. Monitoring of child's right to education.--(1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:--

(a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;

(b) inquire into complaints relating to child's right to free and compulsory education; and (c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

(3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute

such authority, in such manner and subject to such terms and conditions, as may be prescribed.

32. Redressal of grievances.--(1) Notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.

(2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.

(3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be.

(4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be, as provided under clause (c) of sub-section (1) of section 31.

34. Constitution of State Advisory Council.--(1) The State Government shall constitute, by notification, a State Advisory Council consisting of such number of Members, not exceeding fifteen, as the State Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.

(2) The functions of the State Advisory council shall be to advise the State Government on implementation of the provisions of the Act in an effective manner.

(3) The allowances and other terms and conditions of appointment of Members of the State Advisory Council shall be such as may be prescribed."

33. Section 38 of the Right of Children to Free and Compulsory Education Act, 2009 vests rule making power in the appropriate government to make rules to carry out the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

"38. Power of appropriate Government to make rules.--(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:--

(a) the manner of giving special training and the time-limit thereof, under first proviso to section 4;

- (b) the area or limits for establishment of a neighbourhood school, under section 6;
- (c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of section 9;
- (d) the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12;
- (e) any other document for determining the age of child under sub-section (1) of section 14;
- (f) the extended period for admission and the manner of completing study if admitted after the extended period, under section 15;
- (g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of section 18;
- (h) the form, the period, the manner and the conditions for issuing certificate of recognition, under sub-section (2) of section 18;
- (i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of section 18;
- (j) the Other functions to be performed by School Management Committee under clause (d) of sub-section (2) of section 21;
- (k) the manner of preparing School Development Plan under sub-section (1) of section 22;
- (l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of section 23;
- (m) the duties to be performed by the teacher under clause (f) of sub-section (1) of section 24; (n) the manner of redressing grievances of teachers under sub-section (3) of section 24;
- (o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of section 30;
- (p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of section 31;
- (q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of section 33;

(r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of section 34.

(3) Every rule made under this Act and every notification issued under sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form 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 under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made; before the State Legislatures."

34. In exercise of powers under Section 38 of the Right of Children to Free and Compulsory Education Act, 2009, the Government of India framed the Right of Children to Free and Compulsory Education Rules, 2010 (hereinafter referred to as 'the Central Rules of 2010'). The Government of Uttar Pradesh also framed the U.P. Right of Children to Free and Compulsory Education Rules, 2011 (hereinafter referred to as 'the U.P. Rules of 2011'). The U.P. Rules of 2011 also merit reference in light of the controversy at hand. The definition clauses in Rule 1 are reproduced hereunder:

"2. Definitions.- (1) In these rules, unless the context otherwise requires;

(a) "Act" means the Right of Children to Free and Compulsory Education Act, 2009;

(b) "Anganwadi" means an Anganwadi Centre established under the Integrated Child Development Services Scheme of the Ministry of Women and Child Development of the Government of India;

(c) "Appointed date" means the date of commencement of the Act i.e. April 1, 2010;

(d) "Chapter", "section" and "Schedule" means respectively Chapter, section of, and Schedule to, the Act;

(e) "Form" means a form given in the Appendix to these rules;

(f) "Neighbourhood" means a population area specified in Rule 4;

(g) "Pupil cumulative record" means record of the progress of the child based on comprehensive and continuous evaluation;

(h) "School Mapping" means planning school location to overcome social barriers and geographical distance;

(i) "Specify Norms" means the norms and standards specified schedule to the Act;

(j) "Zila Shiksha Adhikari" means a District Level Officer in Department of Basic Education or Department of Secondary Education, as the case may be.

(2) Words and expressions used in these rules not defined but defined in the Act shall have the same meanings respectively assigned to them in the Act."

35. Rule 5 provides for duties of the State Government and the local authorities.

"5. Duties of State Government and local authority (Sections 8 and 9).- (1) A child attending a school of the State Government or local authority referred to in sub-clause (i) of Clause (n) of Section 2 of the Act a child attending a school referred to in sub-clause (ii) of Clause (n) of Section 2 of the Act in pursuance of Clause (b) of sub-section (1) of Section 12 of the Act and a child attending a school referred to in sub-clauses (iii) and (iv) of Clause (n) of Section 2 of the Act in pursuance of Clause (c) of sub-section (1) of Section 12 of the Act shall be entitled to free text books each year and uniform once in each year:

Provided that a child with disability shall also be provided free special learning, support material and equipments.

Explanation - In respect of the child admitted in pursuance of Clause (b) of sub-section (1) of Section 12 and a child admitted in pursuance of Clause (c) of sub-section (1) of Section 12, the responsibility of providing the free entitlement shall be of the school referred to in sub-clause (ii) of Clause (n) of Section 2 and of sub-clauses (iii) and (iv) of Clause (n) of Section 2, respectively.

(2) For the purposes of determining and establishing neighbourhood schools, the local authority (Gram Panchayat/ Nagar Nigam/ Nagar Palika/Nagar Panchayat, as the case may be) shall undertake school mapping, and identify all children, including children in remote areas, children with disability, children belonging to disadvantaged group, children belonging to weaker section and children referred to in Section 4, least by 31st March and every year.

(3) The local authority shall be responsible to ensure that no child is subjected to caste, class, religious or gender abuse or discrimination in the school.

(4) The local authority shall ensure that a child belonging to a weaker section and a child belonging to disadvantaged group is not segregated or discriminated against in the classroom, during mid day meals, in the play grounds, in the use of common drinking water and toilet facilities, and in the cleaning of toilets or classrooms.

6. Maintenance of records of children by local authority [Section 9(d)].- (1) The local authority (Gram Panchayat/Nagar Nigam/Nagar Palika/Nagar Panchayat, as the case may be) shall maintain a record of all children, in its jurisdiction, through a survey, from their birth till they attain 14 years of age.

(2) A unique identity number shall be allotted to each child by the Zila Shiksha Adhikari to ensure and monitor enrolment, attendance, learning achievement and completion of elementary education of every child.

(3) The record, referred to in sub-rule (1), shall be-

(a) updated annually;

(b) maintained transparently, in the public domain, and used for the purposes of ensuring and monitoring admission, attendance and completion of elementary education by every child residing within its jurisdiction.

(4) The record, referred to in sub-rule (1) shall, in respect of every child, be maintained on the prescribed format including the following detail-

(a) name, sex, date of birth, place of birth;

(b) parents' or guardians' name, address, occupation;

(c) pre-primary school /Anganwadi centre where the child attends (up to the age of 6 years);

(d) elementary school where child is admitted;

(e) present address of the child;

(f) class in which the child is studying;

(g) for children between age of 6-14 years, if education is discontinued in the territorial jurisdiction of the local authority, the cause of such discontinuance;

(h) whether the child belongs to the weaker section within the meaning of Clause (e) of Section 2 of the Act;

(i) whether the child belongs to a disadvantaged group within the meaning of Clause (d) of Section 2 of the Act;

(j) details of children requiring special facilities or residential facilities on account of migration and sparse population, age appropriate admission and disability.

(5) The local authority shall ensure that the names of all children enrolled in the schools under its jurisdiction are publicly displayed in each school.

(6) The Zila Shiksha Adhikari shall ensure that the information referred to in sub-rule (4) is displayed and updated on the district website."

36. Responsibilities of the schools to admit children belonging to weaker sections and disadvantaged groups and right to claim expenditure from the State Government are stated in Rules 7 and 8. The same read as under:

7. Admission of children belonging to weaker section and disadvantaged group (Section 12(l)(c). - (1) The schools referred to in sub-clauses (iii) and (iv) of Clause (n) of Section 2 shall ensure that children admitted in pursuance of Clause (c) to Section 12(1) shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

(2) The schools referred to in sub-clauses (iii) and (iv) of Clause (n) of Section 2 shall ensure that children admitted in pursuance of Clause (c) to Section 12(1) shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as textbooks, library and Information, Communication and Technology (ICT) facilities, extra-curricular activities and sports.

[(3) The areas or limits of neighbourhood specified in Rule 4(1)(c) shall apply to admissions made in pursuance of clause (c) of sub-section 12(1):

Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) of Section 12(1), extend these limits with the prior approval of the State Government.] (4) The local authority (Gram Panchayat/Nagar Nigam/Nagar Palika/Nagar Panchayat, as the case may be) shall maintain a namewise list and record of all children belonging to weaker section and disadvantaged group, studying in private and specified category schools under its jurisdiction.

8. Admission of children and reimbursement of per child expenditure by the State Government [Sections 12(l)(b) and (c) and 12(2). - (1) The process of admission of children referred to in Clauses (b) and (c) of Section 12(1) shall be totally transparent. The detail of such children applying for admission shall be maintained by the school regularly, which shall include the name, address, sex,

caste, date of birth of the child and the name, address, occupation and monthly income of father/ mother/ guardian, detail of whether child belongs to weaker section or disadvantaged group. Such information shall be made public through website. Out of the total applicants, all the children who applied for admission, but not admitted for whatsoever reason, shall be informed in writing with the reason thereof. It shall also be binding for the school to follow the process of admission prescribed by the State Government from time to time.

(2) The total annual recurring expenditure incurred by the State Government, from its own funds, and funds provided by the Central Government and by any other authority on elementary education in respect of all schools established, owned or controlled by it or by the local authority, divided by the total number of children enrolled in all such schools as on 30th September, shall be the per child expenditure incurred by the State Government.

Explanation-For the purpose of determining the per child expenditure, the expenditure incurred by the State Government or local authority on schools referred to in sub-clause (ii) of Clause (n) of Section 2 and the children enrolled in such schools shall not be included.

(3) Every school referred to in sub-clause (iv) of Clause (n) of Section 2 shall maintain a separate bank account in respect of the amount received by it as reimbursement under sub-section (2) of Section 12.

(4) Every school referred to in sub-rule (3) seeking reimbursement, shall provide the list of children, with their unique identity number and details of item wise expenditure incurred by the school with all requisite details along with evidence on the form, prescribed by the Director of Education (Basic) by 31st October of every year:

Provided that where such schools are already under obligation to provide free education to a specified number of children on account of it having received any land, building equipment or other facilities either free of cost or at a concessional rate, such schools shall not be entitled for reimbursement to the extent of such obligation.

(5) The Zila Shiksha Adhikari after necessary verification will transfer the amount of reimbursement due in the account referred to in sub-rule (3) and shall make the information public through website.

(6) If at any stage, the school is found having sought and received reimbursement on the basis of concealment of facts or wrong claim, it will have to deposit twice the amount so received, in the Government exchequer with action for withdrawal of recognition of the school and proceeding under the relevant sections of Indian Penal Code, and the amount shall be recoverable by the Collector as arrears of land revenue."

37. Rules 11 and 12 relate the recognition and withdrawal of recognition to the schools. These lie at the heart of the controversy. Rules 11 and 12 read as under:

11. Recognition to school (Section 18). - (1) Every school, other than a school established, owned or controlled by the Central Government, State Government or local authority, established before the commencement of the Act shall make a self-declaration in Form-1 to the concerned Zila Shiksha Adhikari, who shall be the authorised officer, regarding its compliance or otherwise with the norms and standards specified in the Schedule and fulfilment of the following conditions, namely-

(a) the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860) or a public trust constituted under any law for the time being in force;

(b) the school is not run for profit to any individual, group or association of individuals or any other persons;

(c) the school conforms to the values enshrined in the Constitution;

(d) the school building or structures or the grounds are used only for the purposes of education and skill development;

(e) the school is open to inspection by any officer authorised by the State Government, or local authority;

(f) the school furnishes such reports and information as may be required by the Zila Shiksha Adhikari/Director of Education or any other authorised officer from time to time and complies with such instructions of the State Government/local authority as may be issued to secure the continued fulfilment of the condition of recognition or the removal of deficiencies in working of the school.

(2) Every self-declaration received in Form-I shall be placed by the Zila Shiksha Adhikari in public domain through website within fifteen days of its receipt.

(3) The Zila Shiksha Adhikari shall conduct on site inspection of such schools which claim in Form-I to fulfil the norms, standards and the conditions mentioned in sub-rule (1) within three months of the receipt of the self-declaration.

(4) After the inspection referred to in sub-rule (3) is carried out, the inspection report shall be placed by the Zila Shiksha Adhikari in public domain and schools found to be conforming to the norms, standards and the conditions shall be granted recognition by the Zila Shiksha Adhikari in Form II, within a period of 60 days from the date of inspection.

(5) The list of schools which do not conform to the norms, standards and conditions mentioned in sub-rule (1) shall be prepared and made public by the Zila Shiksha Adhikari through a notification mentioning the deficiencies and shall be displayed on

website. Such schools may request the Zila Shiksha Adhikari for an on site inspection for grant of recognition anytime within the next two years.

(6) Schools, which do not conform to the norms, standards and conditions mentioned in sub-rule (1) even after three years from the commencement, of the Act, shall cease to function.

(7) Every school, other than a school established, owned or controlled by the Central Government, State Government or local authority, established after the commencement of the Act shall conform to the norms, standards and conditions mentioned in sub-rule (1) in order to qualify for recognition.

(8) Every Zila Shiksha Adhikari shall maintain a register of recognised schools and allot a number to every such school.

12. Withdrawal of recognition to school [Section 18(3)]. - (1) Where the Zila Shiksha Adhikari on his own motion, or on any representation received from any person, has reason to believe, to be recorded in writing, that a school recognised under Rule II, has violated one or more of the conditions for grant of recognition or has failed to fulfil the norms and standards specified in the Schedule, he shall act in the following manner-

(a) issue a notice to the school specifying the violations of the condition of grant of recognition and seek its explanation within one month;

(b) in case the explanation is not found to be satisfactory or no explanation is received within the stipulated time period, the Zila Shiksha Adhikari shall cause an inspection of the school, to be conducted by a Committee of three members comprising of Government representatives and one educationist. The Committee shall make due inquiry and submit its report, along with its recommendations for continuation of recognition or its withdrawal, within a period of 20 days of such inspection to the Zila Shiksha Adhikari. The Committee referred to above shall be constituted by the District Magistrate and the District Magistrate shall have power to change the members of the Committee.

(2) The Zila Shiksha Adhikari, on the basis of the recommendations of the Committee shall send letter within 10 days seeking explanation from the concerned school and give 30 days time for submitting the explanation and after due examination of the explanation received or in case the explanation is not received then on the basis of records /documents, send his recommendations to the State Education Department within a period of one month thereafter:

Provided that the District Magistrate shall have the authority to get the recommendation of the Committee to be re-examined before its submission to the State Education Department.

(3) The State Education Department, shall, on the basis of the recommendations referred to in sub-rule (2), take decision within 30 days of the receipt of the recommendations and convey it to the Zila Shiksha Adhikari, (4) The Zila Shiksha Adhikari shall, on the basis of the decision of the State Education Department, pass a speaking order canceling the recognition granted to the school within 7 days from the receipt of the decision. The order of derecognition shall be operative from the immediately succeeding academic year and shall specify the neighbourhood schools to which the children of the derecognised schools shall be admitted.

(5) The order made under sub-rule (4) shall be conveyed to the respective local authority and shall be placed in the public domain through display on website."

38. Duties of the teachers stated in Rule 19 are as under:

19. Duties to be performed by teachers [Section 24(l)(f)]. - A teacher shall-

(a) be accountable to respective local authority and School Management Committee in regard to maintain regularity and punctuality in attending school, regular teaching, regular correction of the written work of the students and completion of entire curriculum within the specified time;

(b) monitor the regular attendance, learning ability and progress of every child in school thereof, share students' performance with parents on a regular basis;

(c) cooperate " in managing the affairs of School Management Committee, when required;

(d) help the local authority for admission of all children in school, as required, within the jurisdiction of local authority;

(e) shall maintain a file containing the pupil cumulative record for every child to check child's understanding of knowledge and his or her ability to apply the same and for continuous evaluation, and on the basis of which shall award the completion certificate.

(2) In addition to the duties mentioned in sub-rule (1) and the functions specified in Clauses (a) to (e) of sub-section (1) of Section 24, a teacher shall perform the following duties assigned to him or her-

(a) participation in training programmes;

(b) participation in curriculum formulation, and development of syllabi, training modules and textbook development;

(c) cooperate in internal and external school assessment initiatives.

(3) The appointing authority of teachers shall incorporate duties mentioned in Section 24(1) of the Act and responsibility as laid down in Rules 19(1) and (2) above, in the service rules of the teachers as conditions of service. The service rules shall also provide for consideration of outcomes of internal and external school assessments as conducted under Rules 22(3-a) and (3-b) in deciding rewards and punishments as well as career growth of teachers."

39. The curriculum and the creation of academic authorities is made in part VII, Rule 22.

22. Academic Authority (Section 29). - (1) For the purpose of Section 29 the State Council of Educational Research and Training shall lay down the curriculum and evaluation procedure for elementary education.

(2) The State Council of Educational Research and Training while laying down the curriculum and evaluation procedure, shall perform following functions-

(a) formulate the relevant and age appropriate syllabus and textbooks and other learning material;

(b) develop in-service teacher training design; and

(c) prepare guidelines for putting into practice continuous and comprehensive evaluation.

(3) The State Council of Educational Research and Training through internal and external organisations shall design and implement a process of holistic school quality assessment on a regular basis-

(a) Performance of schools shall be assessed independently at least once a year through a departmental assessment and mandatorily every two years through an assessment conducted by an external agency. For the annual independent assessment the State Council of Educational Research and Training shall constitute an appropriate question bank on the basis of which the District Institute of Education and Training shall conduct an assessment on a random sample basis for each blockwise to the District Magistrate and Zila Basic Shiksha Adhikari by last week of December every year.

(b) External agency for the purpose could be, inter alia, drawn from amongst Faculty of Education Department of various Universities and Colleges, various Research Institutes, reputed National Level Organisations/Non-Government Organisation involved in Basic Education. Detailed terms of references be drawn and results be furnished within six months from the assignment of the assessment by the external agency. The report shall be published as a State Level School and Learning Assessment Report.

Parametres for the external biennial assessment will, inter alia be as follows-

- Students' learning achievement levels;
- Availability and use of textbooks, teacher guides and teaching learning materials in classroom teaching;
- Opportunity to students for individual and group work;
- Regular correction of the written work by the teachers;
- Teachers' punctuality in attending schools and regularity in conduct of teaching learning;
- Sharing of students' performance with parents on a regular basis;
- Observation of teachers ability to teach and conduct classroom;
- Percentage coverage of annual curriculum.

The report shall, inter alia, furnish the outcomes of the school assessment districtwise in descending order to the State Government State Council of Educational Research and Training and Sarva Shiksha Abhiyan Programme, for relevant action thereafter and will furnish blockwise outcomes of the assessment to the District Magistrate and Zila Basic Shiksha Adhikari for remedial action."

40. The creation of State Commission for Protection of Child Rights and manner of furnishing complaints are stated in Rules 24 and 25. Rules 24 and 25 read as under:

"24. Performance of functions by the State Commission for Protection of Child Rights (Section 31).- (1) Till such time as the State Government sets up the State Commission for Protection of Child Rights, it shall constitute an interim authority known as the Right to Education Protection Authority (REPA).

(2) The Right to Education Protection Authority (REPA) shall consist of the following, namely-

(a) a Chairperson who is a person of high academic repute or has been a High Court Judge or has done outstanding work for promoting the rights of children; and

(b) two members, or whom at least one shall be a woman, from the following areas, from amongst persons of eminence, ability, integrity, standing and experience in-

(i) education;

(ii) child health care and child development;

(iii) juvenile justice or care of neglected or marginalised children or children with disability;

(iv) elimination of child labour or working with children in distress;

(v) child psychology or sociology; or

(vi) educational or administrative management.

(3) The National Commission for Protection of Child Rights Rules, 2006 shall, so far as pertains to the terms and conditions, mutatis mutandis apply to the Right to Education Protection Authority (REPA).

(4) All records and assets of the Right to Education Protection Authority (REPA) shall be transferred to the State Commission for Protection of Child Rights immediately after its Constitution.' (5) In performance of its functions, the State Commission for Protection of Child Rights or the Right to Education Protection Authority (REPA), as the case may be, may also act upon matters referred to it by the State Advisory Council.

(6) The State Government shall consist a Cell in the State Commission for Protection of Child Rights or the Right to Education Protection Authority (REPA) as the case may be, which may assist the Commission or the Right to Education Protection Authority (REPA) in performance of its functions under the Act.

25. Manner of furnishing complaints before the State Commission for Protection of Child Rights (Section 31). - (1) The State Commission for Protection of Child Rights or the Right to Education Protection Authority (REPA) as the case may be, shall set up a child help line, accessible by letter/telephone/SMS and which would act as the forum for aggrieved child or guardian to register complaint regarding violation of rights under the Act, in a manner that records his/her identity but does not disclose it.

(2) Initially a complaint shall be made to Village Education Committee/Ward Education Committee through its member-secretary. After decision of Village Education Committee/Ward Education Committee, appeal may be made to block level Assistant Basic Shiksha Adhikari/Nagar Shiksha Adhikari, as the case may be. Second appeal may be made to Zila Panchayat under Section 10 for matters related to rural area and to Municipality under Section 10-A for matters related to urban area of the Uttar Pradesh Basic Education Act, 1972.

All complaints shall be monitored by Uttar Pradesh Basic Shiksha Parishad through transparent and prompt action online mechanism."

Education-General "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be."

(Thomas Jefferson)

41. The legislative concept of education distilled from the scheme of the Right of Children to Free and Compulsory Education Act, 2009 is stated in the succeeding paragraphs. Education is the supreme act of nation building and the paramount activity of civilizational progress. When education has flourished, societies have prospered. The purpose of education is to produce enlightened citizens. An enlightened citizenry is the strongest bulwark of the rule of law and holds the real promise of future achievements. Education is the iron clad assurance against a decay of any civilization or fall of any nation.

42. True education nurtures individual excellence and fosters social responsibilities. All children have different aptitudes but the same potentialities. The purpose of an education system is to unlock the immense but diverse possibilities in each child.

43. Education is a holistic process, which engages human life at different levels, physical, intellectual, social and moral. Education develops an integrated personality by honing intellectual skills, exercising physical abilities, and enhancing social interface.

Concept of education under the Right of Children to Free and Compulsory Education Act, 2009:

44. The approach of the legislature to education is multifaceted and not unifocal. Section 29 of the Right of Children to Free and Compulsory Education Act, 2009 underscores the fact that the legislative approach is global.

45. The acknowledgment and awakening of the latent potentiality in each child is mandated in the Right of Children to Free and Compulsory Education Act, 2009. The provisions clearly show the legislative intent to develop a culture of learning through the activities, discovery and exploration in a child centered manner. Thus creating an educational culture where a child develops a rational process of thinking.

46. The legislature was acutely aware of pit-falls of obsession with scholastic achievements to the exclusion of all other aspects of human personality and growth. Scholastic achievements and training have due importance in the statute. The emphasis made by the legislature "to the all around development of the child" has to be given due weight.

Environment Consciousness & Education

47. The mandate of Section 29 to bring the academic curriculum in conformity with "the values enshrined in the Constitution," "all around development of the child," "building up of child's knowledge, potentiality and talent, "comprehensive and continuous evaluations of child", "understanding of knowledge and his or her ability to apply the same" highlights legislative purpose.

Education as contemplated under the Act should not only foster individual excellence but also cultivate social responsibility.

48. Environmental degradation poses a mortal threat to planet. Many forms of life have disappeared, while others stand on the brink of extinction. Human race bears the entire blame for environmental degradation. Human race has to shoulder full responsibility for nurturing the environment back to health and discharge its duties for protection of the environment. Knowledge of the environment, understanding of environmental issues and readiness to contribute to protection of the environment has to form part of any concept of education.

Sports and Education.

"From the solemn gloom of the temple children run out to sit in the dust, God watches them play and forgets the priest."

(Rabindranath Tagore)

49. Section 29(2) (a) and (d) of the Right of Children to Free and Compulsory Education Act, 2009, needs further attention. The legislative purpose is not far to seek.

50. Sports and various regimes of physical activities are integral to education. Sporting infrastructure is indispensable for learning in schools. Sporting activities strengthen nerves and sinews, and enhance physical and mental strength. Sports develop camaraderie, instill discipline and imbibe leadership tenets. Sports ensure good health and foster character qualities which contribute to the overall growth of the personality. The diverse individual and social skills learnt on the sports field always endure to the benefit of an individual and cumulatively to the strength of a nation. Emotional intelligence is sharpened more in an open play-field than in an enclosed classroom.

51. Yuval Noah Harari in his book "Sapiens" after referencing various studies and scientific researches states that "playing is the mammalian way of learning social behaviour."

52. The spirit of the game imbibed while playing the game has a critical role in developing the personality of a person.

53. At the intersection of the life and law, literature at times shows the way. The enduring importance of sports, was best brought out in the poem Vitai Lampada. A tense situation, faced up in a critical school cricket match, imparts lessons which hold one in good stead to deal with dire challenges, in later life.

54. The team spirit imbibed on sports field, is for all times. The lessons learnt, for persevering, in the face of adverse situations, are seared in one's soul. The exhortations of one's teammates, are etched in one's memory forever. And even beyond that, the legacy is left for generations to follow. So, "play up, play up, play the game."

55. The importance of sports in education was emphasized by this Court in *Apple Grove School Vs. The Union of India and others*, reported 2019 (3) ADJ 874 thus:

"18. The schools of today are the cradle of Indian leadership of tomorrow. The schools of today owe it to the future generations to provide the best infrastructure and facilities to ensure that they nurture excellence. Education is not only about learning from books in an enclosed classroom, but it is equally about imbibing sterling character traits in open playfields. The importance of sports and playgrounds to develop strength, mental and physical is too obvious to be stated. Education is not about cramming but learning. Education is about honing intellectual abilities, developing sterling character traits and building physical strength. An integrated and all around development of the human personality and spirit is the essence of education. Sports play a paramount role in all these endeavours. If sporting activities are integral to education, playing fields are indispensable to schools. In fact many are persuaded by the view with good reason, that the Battle of Waterloo was won on the playing fields of Eton."

56. The various provisions of the Right of Children to Free and Compulsory Education Act, 2009, relating to promotion of sports, integrate sports into curriculum of the schools. The obligation cast on the authorities, and the schools, to create an environment for overall development including the "physical abilities of a child", is reflected in the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

57. The provisions of the Right of Children to Free and Compulsory Education Act, 2009 relating to infrastructure, also create sports facilities. Promotion of sports by the schools, and creation of infrastructure for sports, in the schools, are clearly mandatory under the Right of Children to Free and Compulsory Education Act, 2009.

Commercialization of Education.

58. In education lie full prospects of nation building, but education also offers great possibilities of private profiteering. Opportunities of nation building cannot be approached with the minds of dishonest traders. Acts of nation building cannot be compromised by yielding to expediency or short term gains. The future of the many cannot be jeopardized for the benefit of the few.

59. The courts long upheld the right to education and were simultaneously alerted to the vagaries of profiteering in education. The courts have consistently and firmly set their face against the commercialization of education or profiteering in education.

60. The legislature while enacting the the Right of Children to Free and Compulsory Education Act, 2009 was conscious of the law laid down by the Hon'ble Supreme Court against commercialization of education. It was also cognizant of readiness of school managements to compromise the interests of students in their consuming quest for profits.

61. Mushrooming schools without proper infrastructure are the blatant examples of profiteering in education. The legislative response to the malady of commercialization of education was equal to the menace.

School Infrastructure under the Right of Children to Free and Compulsory Education Act, 2009

62. The provisions regarding minimum infrastructure requirements other facilities in schools stated in the earlier part of the judgment, will now be construed.

63. Sections 18 and 19 of the Right of Children to Free and Compulsory Education Act, 2009, Schedule of the Right of Children to Free and Compulsory Education Act, 2009, Rule 11 and Form I of the U.P. Rules, Form 2 Rule 11(4) of the U.P. Rules and also Rules 15 read with Form I of the Central Rules, 2010 and Rule 15 of the Central Rules are directly in issue. Section 30(6) of the Right of Children to Free and Compulsory Education Act, 2009 would also assist interpretation of the provisions relating to infrastructure.

64. Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 contemplates that after the commencement of the Act no school shall be established without obtaining a certificate of a recognition from the competent authority. The norms and standards for establishing the schools are provided in Section 19 of the Right of Children to Free and Compulsory Education Act, 2009 and duly specified in the Schedule.

65. The words employed by the legislature, in the aforesaid provisions as well as the Schedule, provide the first and most reliable guide to the intent of the legislature. The legislative purpose discussed in the preceding part of the judgment shall also assist in determining the nature of the provisions.

66. The rules of interpretation of statutes are well well by judicial authority. In this regard, the law laid down by the Hon'ble Supreme Court in the case of State of Haryana Vs. Raghubir Dayal, reported at (1995) 1 SCC 133 and in the case of Sharif-Ud-Din Vs. Abdul Gani Lone, reported at (1980) 1 SCC 403 are instructed. The Full Bench of this Court in the case of Vikas Trivedi Vs. State of U.P. and others, reported at (2013) 2 UPLBEC 1193 also delineated the rules of statutory interpretation with clarity. These authorities shall guide the enquiry into the mandatory nature or otherwise of the provisions in issue.

67. Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 commences with the negative phrase namely, "no school", and further uses the word "shall" while requiring the schools to obtain a certificate of recognition from the competent authority. Similarly, the proviso to Section 18(2) of the Right of Children to Free and Compulsory Education Act, 2009 also commences with a negative words "no such recognition" and also employs the word "shall" while requiring a school to fulfill norms and standards specified in Section 19 of the Right of Children to Free and Compulsory Education Act, 2009.

68. The consequences of contravention of preconditions of infrastructure for recognition are also provided in Section 18 of the Right of Children to Free and Compulsory Education Act, 2009. Contravention of the said provisions is on the pain of withdrawal of recognition. Section 18(5) of the Right of Children to Free and Compulsory Education Act, 2009 is a penal provision which contemplates imposition of fine upon the erring institution.

69. Section 36 of the Right of Children to Free and Compulsory Education Act, 2009 states that violations of Section 18(5) and Section 19(5) of the Right of Children to Free and Compulsory Education Act, 2009 are offences for which prosecution can be instituted with the previous sanction of the officer authorized in this behalf by the appropriate government by notification. These features establish that Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 is mandatory in nature.

70. Section 19 of the Schedule stands on a similar footing. Section 19 of the Right of Children to Free and Compulsory Education Act, 2009 also employs negative words "no school" at the commencement of the provision. The word "shall" has also been used. Section 19(1) of the Right of Children to Free and Compulsory Education Act, 2009, states that no school shall be established or recognized under Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 unless it fulfills the norms and standards specified in the Schedule of the Right of Children to Free and Compulsory Education Act, 2009.

71. The provision provides a time-frame to pre-established schools to fulfill the infrastructural norms in the Schedule at their own expenses.

72. Sub-Section (3) of the Section 19 of the Right of Children to Free and Compulsory Education Act, 2009 describes the consequences which flow from failure of a school to fulfill the prescribed norms and standards under Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 as well as the Schedule of the Right of Children to Free and Compulsory Education Act, 2009. Schools can violate the norms and standards prescribed under the Act on the pain of withdrawal of recognition. Section 19(5) of the Right of Children to Free and Compulsory Education Act, 2009 is a penal provision which contains consequences of running unrecognized institutions and has to be read with Section 36 of the Right of Children to Free and Compulsory Education Act, 2009.

73. The reasons for which Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 has been held mandatory apply to Section 19 of the Act as well. Section 19 of the Right of Children to Free and Compulsory Education Act, 2009 is mandatory.

74. The Schedule of the Right of Children to Free and Compulsory Education Act, 2009 which is relatable to Section 19 of the Right of Children to Free and Compulsory Education Act, 2009 provides for the mandatory norms and standards for a school, including the requirements for infrastructure. The relevant part of the Schedule can be quoted with profit to take the discussion forward. Serial nos.2 and 7 of the schedule being relevant to the issue is extracted hereunder:

Sl. No. Item Norms and Standards Building All-weather building consisting of--

- (i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;
- (ii) barrier-free access;
- (iii) separate toilets for boys and girls;
- (iv) safe and adequate drinking water facility to all children;
- (v) a kitchen where mid-day meal is cooked in the school;
- (vi) Playground;
- (vii) arrangements for securing the school building by boundary wall or fencing.

Play material, games and sports equipment Shall be provided to each class as required.

75. Under the Schedule of the Right of Children to Free and Compulsory Education Act, 2009, the building means and includes the playground in the school premises.

76. The Schedule of the Right of Children to Free and Compulsory Education Act, 2009 envisages that the playground is a part of the building of the school. The requirement of "barrier free access" also under the Schedule of the Right of Children to Free and Compulsory Education Act, 2009, is complied with only if the playground, the building and other infrastructure in a school are a part of one contiguous or compact plot of land and form part of one composite campus. Similarly, the purpose of perimeter demarcation by boundary wall or fencing can be fulfilled only when the playground, building and other infrastructure are located in one campus.

77. In case the school building and the playgrounds are situated in separate plots of land which are not compact or contiguous, but separated by land which is not part of the school campus, the school will not satisfy the criteria of barrier free access. It will render futile the provision of barricading the perimeter boundary. The Schedule being relatable to Section 19 of the Right of Children to Free and Compulsory Education Act, 2009 is also a mandatory provision.

78. The provisions relating to norms and standards of infrastructure under the Right of Children to Free and Compulsory Education Act, 2009 are mandatory. Further, a playground is also a mandatory and an integral part of a school under the Right of Children to Free and Compulsory Education Act, 2009. The scheme of the Right of Children to Free and Compulsory Education Act, 2009 unequivocally mandates that the playground, and the school building shall be part of one campus which shall be constituted in a contiguous land area or a compact of land.

79. Playgrounds are essential to education like classrooms, laboratories, libraries. A school cannot be visualized without classrooms, just so, a school is incomplete without a playground.

80. The consequences of a playground which was not part of one compact campus or a contiguous land area of the school, came up squarely for consideration before this Court in the judgment rendered in the case of Apple Grove School v. The Union of India and others, reported at 2019 (9) ADJ 692.

81. In Apple Grove School (supra) the importance of situating the playground and the school buildings in one compact and contiguous of plot was stated thus:

"19. The Court notices the fact that massive unplanned urban development has diminished open spaces and playgrounds for the coming generations. Similarly in the rush for profits school managements make the first compromises with play-fields. Sports and all that it offers by way of learning takes a back seat.

20. The playground will serve its purpose only if there is contiguity between school buildings and the playground. The playground and the school building should be part of one compact and contiguous land area. In case the playground and the school buildings/academic blocks are situated in plots of land which are separated by other plots or residential areas or roads, the access of the students to the play field from the academic blocks will not be free. The playground will play its part and make its contribution only if the access of the students to the playground is free and unimpeded. Young students should be able to run with gay abandon to the play field during their sports classes or after their academic classes without any impediment and kick the ball soaring into the sky. In case the students have to pass through the residential areas, traffic snarls, labyrinth of streets to access the playground, the purpose of a play field would be defeated.

21. Students should have a "walk in" or rather a "run in" access to the playground."

82. This Court in the case of Apple Grove School (supra) has found that the playground which is not situated in the school campus is of no avail to the children. The scheme is not workable. Such playground does not serve the purpose of a playground, but is an eye-wash by the management, to obtain recognition of the institution.

83. Seen in light of the law laid down in Apple Grove School (supra), a playground which is not a part of the contiguous land area or a compact piece of land where the rest of the infrastructure of the school including school buildings stand, would render the scheme of the Right of Children to Free and Compulsory Education Act, 2009 unworkable. In fact, a playground so situated would negate the purpose of the playground.

Declarations & Inspections under the Right of Children to Free and Compulsory Education Act, 2009

84. The Form-1, which is part of appendix to The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011, is relatable to sub-rule (1) of rule 15 of the Central Rules, 2010.

The Form-1 pertains to the self declaration-cum-application for grant of recognition of schools. The parts of the Form-1, which are relevant, are extracted hereunder:

"Appendix FORM-I [See sub-rule (1) of Rule 11] Self Declaration-Cum-Application For Grant of Recognition of School The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 C. Nature and area of School Medium of Instruction Type of School (Specify entry & exit classes)

(a) Boys/Girls/Co-education

(b) Aided/Unaided

(c) Primary/Upper primary If aided, the name of agency and percentage of aid If School Recognised If so, by which authority Recognition number Does the school has its own building or is it running in a rented building.

(Relevant documents for evidence of proof to be enclosed) Whether the school buildings or other structures or the grounds are used only for the purposes of education and skill development?

Total area of the school Built in area of the school (with building plan) F. Other Facilities Whether all facilities have barrier free access Teaching Learning Material (Attach list) Sports & Play equipments (Attach list) Facility of books in Library Books (No. of books) (Attach list) Periodical/Newspapers Type and number of drinking water facility Sanitary Conditions

(i) Type of W.C. & Urinals

(ii) Number of Urinals/Lavatories separately for boys

(iii) Number of Urinals/Lavatories separately for girls

85. The Form-I in the appendix of the U.P. Rules, is entirely congruent to the Form-I in the appendix to the Right of Children to Free and Compulsory Education Rules, 2010 framed by the Central Government.

86. The Form-I also contemplates existence of playground. The details of the total area of the school and built up area with building plan are required to be provided by the school.

87. Form-II, which is part of appendix of the U.P. Rules of 2011 also merits consideration. Rule 11 (4) of the U.P. Rules, 2011 as seen earlier contemplates a physical on-site inspection of the schools premises by the District Education authorities.

88. The prescribed format of the inspection report of the District Education Officer is in Form-II in the appendix of The Uttar Pradesh Right of Children to Free and Compulsory Education Rules of 2011. The Form-II is reproduced below:

Form II [See sub-rule (4) of Rule 11] Gram :

E-mail :

Phone :

Fax :

Office of the Zila Shiksha Adhikari (Name of District/State) No. Dated :

The Manager, Sub.-Recognition Certificates for the school under sub-rule (4) of Rule 11 of the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 for the purpose of Section 18 of Right of Children to Free and Compulsory Education Act, 2009.

Dear Sir/Madam, With reference to your application dated and subsequent correspondence with the school/inspection in this regard, I convey the grant for provisional recognition to the (Name of the school with address) for Class.....to Class.....for a period of three years w.e.f.....to.....

The above sanction is subject to fulfilment of following conditions-

1. The grant for recognition is not expendable and does not in any way imply any obligation to recognize/affiliate beyond Class VIII.
2. The school shall abide by the provisions of Right of Children to Free and Compulsory Education Act, 2009 (Annexure I) and the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 (Annexure II).
3. The school shall admit in Class I, to the extent of % of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. Provided, further that in case of pre-primary classes also, this norm shall be followed.
4. For the children referred to in Paragraph 3, the school, if covered under Section 12(2) of the Act, shall be reimbursed accordingly. To receive such reimbursements school shall provide a separate bank account.
5. The society/school shall not collect any capitation fee and subject the child or his or her parents or guardians to any screening procedure.
6. The school shall not deny admission-

(a) to any child for lack of age proof;

(b) on the ground of religion, caste or race, place of birth or any of them.

7. The school shall ensure that,-

(i) no child admitted shall be held back in any class or expelled from school till the completion of elementary education in a school;

(ii) no child shall be subjected to physical punishment or mental harassment;

(iii) no child is required to pass any board examination till the completion of elementary education;

(iv) every child completing elementary education shall be awarded a certificate as laid down under Rule 23;

(v) inclusion of students with disabilities/special needs as per provision of the Act;

(vi) the teacher performs its duties specified under Section 24(1) of the Act; and

(vii) the teachers shall not engage himself or herself for private teaching activities.

8. The school shall follow the syllabus on the basis of curriculum laid down by the appropriate authority.

9. The school shall enroll students proportionate to the facilities available in the school as prescribed in the Section 19 of the Act.

10. No unrecognised classes shall run within the premises of the school or outside in the same name of school.

11. The school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860) or a public trust constituted under any law for the time being in force.

12. The school is not run for profit to any individual, group or association of individuals or any other persons.

13. 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 Statements of Accounts should be sent to the Zila Shiksha Adhikari every year.

14. The recognition Code Number allotted to your school is..... This may please be noted and quoted for any correspondence with this office.

15. The school furnishes such reports and information as may be required by the Director of Education/Zila Shiksha Adhikari from time to time and complies with such instructions of the State

Government/local authority as may be issued to secure the continued fulfilment of the condition of recognition or the removal of deficiencies in working of the school.

16. Renewal of Registration of Society, if any, be ensured.

17. The School Management/Trust and staff shall abide by the directions of the State Government issued from time to time.

18. Other conditions as per Annexure 'III' enclosed.

Yours faithfully, Zila Shiksha Adhikari"

89. The distinction, between the prescribed format of the inspection report, to be submitted by the Education Officer, under the Central Rules, 2010, and the Zila Shiksha Adhikari, under the Uttar Pradesh Rules of 2011, stands out.

90. Item number 8 of the prescribed format of inspection in Form-II under the Central Rules of 2010 is extracted under:

Form-II "8. The school shall maintain the standards and norms of the school as specified in section 19 of the Act. The facilities reported at the time of last inspection are as given under:-

Area of school campus Total built up area Area of play ground No. of class rooms
Room for Headmaster-cum-Offic-cum-Storeroom Separate toilet for boys and girls
Drinking Water Facility Kitchen for cooking Mid Day Meal Barrier free Access
Availability of Teaching Learning Material/Play Sports Equipments/Library"

91. The aforesaid item, is conspicuous by its absence, in the prescribed format, of the report of the Zila Shiksha Adhikari in Central Rules of 2010. Evidently, Form II under the U.P. Right of Children to Free and Compulsory Education Rules, 2011, provides for a less thorough inspection report, to be submitted by the District Shiksha Adhikari, as compared to, a more comprehensive and targeted report, to be submitted by the competent official, under the Central Rules, 2010.

92. Form-II in the appendix, of the U.P. Right of Children to Free and Compulsory Education Rules, 2011, dilutes the infrastructure requirements, by easing the standards of the inspection report, contemplated in sections 18 and 19 and Rule 11 (4) of the U.P. Right of Children to Free and Compulsory Education Rules, 2011.

93. The State authorities, cannot escape the reckoning, with the strict and mandatory standards of infrastructure, contemplated under the Right of Children to Free and Compulsory Education Act, 2009. As seen earlier, the standards of infrastructure, including the requirement of playgrounds, are mandatory, and cannot be deviated

from.

94. The physical inspection of the schools, has to be thorough, and the inspection report, has to be meticulous. The inspection report needs to implement the mandate of the Right of Children to Free and Compulsory Education Act, 2009.

95. The Form-II under the U.P. Right of Children to Free and Compulsory Education Rules, 2011 is inconsistent with the provisions of Section 19 read with Rule 11 (4) of the U.P. Right of Children to Free and Compulsory Education Rules, 2011 in so far as it does not provide for details of various infrastructural requirements as provided under the Item No.8 of the Form-II of the Rules, 2010 framed under the Central Rules.

Constitutionality of the Government Order dated 08.05.2013

96. The Government Order dated 08.05.2013 references the Right of Children to Free and Compulsory Education Act, 2009 and The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011. The Government Order records that the same is issued to effectuate the purpose of the Right of Children to Free and Compulsory Education Act, 2009 and the U.P. Right of Children to Free and Compulsory Education Rules, 2011.

97. Some of the petitioners-Institution have been granted recognition in pursuance of the criteria laid down in the Government Order dated 08.05.2013. The Government Order dated 08.05.2013 provides the infrastructure requirements of schools. The relevant provisions of the Government Order dated 08.05.2013 regarding specifications of the college building as well as playgrounds are extracted hereunder:

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98. The provisions relating to the school building are inadequate, inasmuch as, they do not contain any requirement of natural light and air ventilation. There are no provisions relating to light in the classroom, as well as cooling system, in the classrooms for summer seasons. Natural light, and a well ventilated classrooms, are essential for a healthy environment, which promotes learning and is conducive to good health of the students.

99. The Government Order dated 08.05.2013 contemplates a playground which has sufficient area to accommodate a badminton court or basketball court or volleyball court and a sport like kabaddi. Games like badminton, basketball, volley-ball are played in courts of a small area. Such courts are not playgrounds within the meaning of the Right of Children to Free and Compulsory Education Act, 2009. The size of a playground should be big enough to accommodate field sports like football, cricket, hockey and an outer track around the perimeter for athletic events. The playground should also have, sufficient space to plant shady trees, and other flora on the outer periphery. The playgrounds are also used for morning assemblies where the entire school assembles at one time. The playgrounds also hosts annual sporting events and other national festivals like Independence Day and Republic Day.

100. If the intention of the legislature to promote sports and to ensure all around development of children and to integrate sports in education is to be achieved, the size of the sports field has to be big enough to accommodate the said features. The reduced size of a play-field in the Government Order dated 08.05.2013 makes the statutory requirement of a playground illusory.

101. The most noteworthy feature in the Government Order dated 08.05.2013 is the special provision dispensing with the requirement of a playgrounds. The requirement of a playground for girls schools, as well for schools, in areas where the population density, is high, is completely waived. Above all, it is also provided that in the absence of a playground, no institution shall be denied recognition.

102. Time spent in schools cannot be in likeness of life on the conveyor belt. The purpose of schools is to humanize life and not to mechanise existence.

103. The preceding construction of the scheme of the Right of Children to Free and Compulsory Education Act, 2009 and Article 21A of the Constitution of India establishes that Clause 8 of the Government Order dated 08.05.2013 is in flagrant violation of the provisions of Right of Children to Free and Compulsory Education Act, 2009 as well as Article 21A of the Constitution of India. The Government Order dated 08.05.2013 is ultra vires the provisions of the Right of Children to Free and Compulsory Education Act, 2009 as well as Article 21A of the Constitution and the U.P. Right of Children to Free and Compulsory Education Rules, 2011.

104. The Government Order dated 08.05.2013 is consequently found to be unconstitutional and illegal and void ab initio. The consequences will follow.

105. The recognition granted to various schools under the Government Order dated 08.05.2013 does not vest any right in such institutions. Such institutions cannot claim any accrued right on the foot of a Government Order which is illegal, unconstitutional, and void ab initio.

106. As we shall see in the later part of the judgment, these schools shall be granted time to become compliant with the infrastructure norms made in conformity with the Right of Children to Free and Compulsory Education Act, 2009.

107. The Government Order dated 08.05.2013 records that the aforesaid Government Order is being issued in consequence to the Right of Children to Free and Compulsory Education Act, 2009, The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 as well as the judgments of the Hon'ble Supreme Court as well as this Court. It is ironical that after referencing the aforesaid provisions of law and judgments of various Courts, the Government Order flagrantly flouts the mandate of the Constitution, the Right of Children to Free and Compulsory Education Act, 2009 and judgments of the courts.

Constitutionality of the Government Order dated 11.01.2019

108. The Government Order dated 08.05.2013 was superseded by the Government Order dated 11.01.2019. The Government Order dated 11.01.2019 created a fresh set of guidelines for minimum infrastructure required for recognition of the Institutions to all the provisions. The parts of the Government Order dated 11.01.2019 relevant to the controversy, are extracted hereunder:

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109. The criteria for the school building in the Government Order dated 11.01.2019 contains a provision for natural light and ventilation. However, specific technical requirements regarding cross ventilation and natural light are lacking. Specific technical details for provisioning the classrooms with natural light and ventilation have to be given to make the provision fruitful. Experience tells us that any vague criteria for grant of recognition is prone to abuse, and the students are always at the receiving end. The school managements benefit from such provisions to the detriment of the students.

110. The criteria relating to the playground, has also undergone a change, in the Government Order dated 11.01.2019. However, a closer look at the provision in the Government Order, shows that, it is only a window dressing of the earlier provision. The amendments are superficial if not an eyewash. The validity of the amended provision, melts like cheap make up, under the arc light of judicial scrutiny.

111. The provision 17(»), which provides for a playground is silent, on the dimensions of the playgrounds. As stated earlier, without specific dimensions of the playgrounds, the purpose of the playground will stand defeated. The Government Order dated 08.05.2013 shows that even a badminton court passes for a playground.

112. There are other offending features in the provision 17(»). Clause 17(») in the Government Order dated 11.01.2019 provides that the playground should be available either in the premises of the educational institutions or close to the educational institution.

113. The Clause 17(») is vague and also renders illusory, the statutory requirement of a playground in a school. As seen earlier playgrounds which are not located in the premises containing the school building violates the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

114. In the light of the preceding discussion, the provision 17(») in the Government Order dated 11.01.2019 is violative of Article 21A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009 and The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011.

115. The provision in 17(») of having an option of a playground which is not in the school premises is also unworkable and contrary to the law laid down by this Court in the case of Apple Grove School (supra).

116. There is another aspect to this issue. The provisions for various high schools and intermediate schools which are recognized by the State Government as well as the colleges under the U.P. State Universities Act are required to have a playground which is situated in the same campus where the

school or college building stands. There is no concept of a playground which is located at a separate place from the college campus. The provision and the Government Order dated 11.01.2019 is discriminatory and violative of Article 14 of the Constitution of India. The children between the ages of the 6 to 14 years cannot be put in a class separate from students of higher age groups in regard to the right to enjoy a playground in the school campus.

117. The Clause 17(») of the Government Order dated 11.01.2019 is violative and ultra vires the Article 14 of the Constitution of India.

118. The Clause 17(») of the Government Order dated 11.01.2019 cannot stand and is quashed.

119. As in the case of the Government Order dated 08.05.2013, the recognition granted to those institutions on the foot of the criteria laid down in the Government Order dated 11.01.2019 does not confer any vested rights upon the aforesaid institutions. The provision is void ab initio.

120. The recognition granted to schools in pursuance of the aforesaid Government Orders dated 08.05.2013 and 11.01.2019 would also be void ab initio.

121. Running educational institution on the foot of Government Orders which are unconstitutional and void ab initio, does not vest any rights in such institutions.

122. The rights of such institutions in similar circumstances were adjudicated by this Court in Apple Grove School (supra) as follows:

"35. The argument is made only to be rejected. The long continuance of affiliation despite violation of the affiliation bye-laws does not accumulate any credit of equity in favour of the petitioner. On the contrary, the institution has incurred a debt which it cannot repay. The debt of students who went through the process of schooling without the experience of a play field. The debt of childhoods lost because of denial of opportunities to develop a love for the outdoor life and understanding comradeship through sporting activities. The considerations of the future of the young students of India is invaluable and cannot be weighed in balance with the immediate quest for profit of the petitioner.

36. The right of an educational institution to seek affiliation from a board of education subserves and is subservient to the right of education of the children."

123. As we shall see in the later part of the judgment, these schools shall be granted time to become compliant with the infrastructure norms made in conformity with the Right of Children to Free and Compulsory Education Act, 2009.

124. Some documents changed the course of human history, while can others alter the course of human evolution.

125. The Constitution of India has changed the course of Indian history. The constitutional values influence and animate our working as a nation.

126. The Government Orders dated 08.05.2013 and 11.01.2019 on the contrary threaten to change the course of evolution of human species. Children of succeeding generations who grow up without the benefit of play-fields will lose the concept of sports and games. Sports will become a distant memory which was indulged by ancient ancestors.

The case of disappearing playgrounds in Uttar Pradesh

127. This Court notices the fact that due to unregulated construction, unplanned colonies and multi-storied complexes made in violation of building bye laws and city master plans, the neighbourhood play fields have simply disappeared. Public parks and play-fields for children are most vulnerable to encroachment.

128. Untold damage has been caused by constructions which are not part of the master plan of the towns and cities and failure of the authorities to incorporate play-fields in various neighbourhoods.

129. The state of playgrounds in Uttar Pradesh is a fast moving narrative of disappearing play-fields. Unregulated and illegal construction, aided by the executive apathy, if not collusion of officials of Development Authorities, and other competent authorities, has caused irreversible damage, to the future of our children and the environment. Gaon Sabha lands are also depleted by the familiar pattern of illegal constructions coupled with the official inaction if not connivance.

130. Lands on which unauthorized constructions have been made cannot be reclaimed for planned urban development within a real time frame. The lands which could have been used as playgrounds are hence simply not available. Land resources are shrinking fast as they are being rapidly consumed by illegal constructions. The situation demands urgent action. It is met with crumbling complacency. Playgrounds have been lost on a dramatic scale and decision makers have not woken up.

131. The last nail has been driven in the coffin of playgrounds by the Government Orders dated 08.05.2013 and 11.01.2019.

132. One may visualize the routine of a young child who does not have any neighbourhood play-field. The child goes to a school and spends the day in an enclosed classroom, as the school lacks a play-field. The child for a better part of his life has been denied his right to play in an open field. The adverse consequences on the growth and personality of a child are not far to seek.

133. Children are born into this world where their future is damaged beyond repair through no fault of theirs. Children also suffer the consequences of the Government Orders which decide their future made by those who would not be a part of. All in all, the damage caused to the playgrounds has been ruthless. It cannot be business as usual. It is time for the courts to define the statutory responsibility and for the authorities to accept responsibility and current failure.

134. The situation is alarming but not beyond redemption, urgent action has to be taken to save the situation. The State authorities have to be alerted to their statutory duties. More important the State authorities have to be held accountable to their statutory obligations.

135. The scheme of the Article 21A of the Constitution and the Right of Children to Free and Compulsory Education Act, 2009 has the education and welfare of the child at its core. Every other activity revolves around this centre and all other authorities subserve this noble object. Schools cannot be treated like fail safe cottage industries, which require minimum investments and provide assured returns. Article 21A of the Constitution and the Right of Children to Free and Compulsory Education Act, 2009 contemplate establishment of temples of learning are called schools and not enterprises for profit called literacy kiosks or education shops.

Infrastructure-II

136. The need for school reforms was in the cognizance of the legislature, it is in the consciousness of the public, but has to be put in the conscience of the State Government.

137. The elements of the schools under the Right of Children to Free and Compulsory Education Act, 2009 including elevation, architecture, ventilation lighting provisions, playgrounds, and so on, as provided under the Act, have to be in such balance as to promote the welfare of the child, nurture the simple joys of childhood, and foster learning in a child friendly environment. The whole ecology of the school campus should promote the said aims. Unscientific architecture, over-crowded class-rooms, unsatisfactory ventilation and lighting, absent playgrounds, and other infrastructural and aesthetic inadequacies exact too much damage on the children. In such an eco system, children lose their importance and simple joys of childhood diminish in significance. The open glimpse of blue skies, the place under the sun, and love of environment are not only the pleasures of childhood, but the foundation on which the edifice of the nation stands. The schools though built in the present have to be planned for the future. The extra human dimension of schools is what is envisaged in the Right of Children to Free and Compulsory Education Act, 2009 and has to be accomplished by creating the appropriate infrastructure and ecology in the schools.

Norms and Inspection of Infrastructure.

138. During the course of the arguments, the learned counsel for the respondent-Basic Shiksha Parishad informed that the inspections in terms of the Right of Children to Free and Compulsory Education Act, 2009 of all the schools, which have been granted recognition by the Board (Parishad), have not been conducted in terms of the aforesaid provisions of the Right of Children to Free and Compulsory Education Act, 2009.

139. As stated earlier, the criteria and norms for the infrastructure have to be recreated. They have to be more specific and meticulously laid down to achieve the object of the Right of Children to Free and Compulsory Education Act, 2009. The inspections have to be more thorough to effectuate the purpose of the Right of Children to Free and Compulsory Education Act, 2009.

140. General technical requirements of building plans/building bye laws, elevation, ventilation, light requirements, color scheme options and so on have to be provided by town planners, architects, engineers and experts in the field in collaboration with educationists.

141. Technical aspects of the inspection like college of the school building, provisioning of ventilation, natural light, and other construction infrastructure have to be made in the presence of the qualified engineers of the State of U.P. Requirements of Building Plan

142. The requirements of building infrastructure regard to fire safety measures engaged the attention of the Hon'ble Supreme Court in the case of Avinash Mehrotra v. Union of India and others, reported at 2009(6) SCC 398. The Hon'ble Supreme Court in Avinash Mehrotra (supra) co-relating the nature of infrastructure to the quality of education in the context of Article 21A of the Constitution of India held thus:

34.....Similarly, we must hold that educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child study in a quality school, and a quality school certainly should pose no threat to a child's safety. We reached a similar conclusion, on the comprehensive guarantees implicit in the right to education, only recently in our opinion in Ashoka Kumar Thakur v. Union of India [(2008) 6 SCC 1] .

35. The Constitution likewise provides meaning to the word "education" beyond its dictionary meaning. Parents should not be compelled to send their children to dangerous schools, nor should children suffer compulsory education in unsound buildings.

36. Likewise, the State's reciprocal duty to parents begins with the provision of a free education, and it extends to the State's regulatory power. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right and civic duty. States thus bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education.

43. Many States have already begun implementation. The most forward-thinking States have enacted and enforced the National Building Code in their schools. Often these States have also created, empowered and funded a State-wide emergency response office. The coordinated efforts and concentration of knowledge in these administrative units make States better able to prepare for emergencies, as much as to respond once the problem has started. For example, the State of Gujarat has established such an emergency management office. Having already settled building codes and other large issues, the State can focus on other aspects of emergency management. With the assistance of outside experts, Gujarat recently created a colouring book to teach children how to respond to emergencies.

47. In view of what happened in Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. We direct that:

(i) Before granting recognition or affiliation, the State Governments and Union Territories concerned are directed to ensure that the buildings are safe and secure from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the engineers and officials concerned must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the officials concerned.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments."

Locus

143. Both the sets of petitioners claim relief on the foot that they satisfy the requirements of norms and standards of infrastructure posited in the Government Order dated 08.05.2013 and the Government Order dated 11.01.2019. The nature of the rights of the petitioners have to be determined. Similarly, the statutory duties of the authorities have to be clearly defined. These are prerequisites to be determined before this Court can grant or deny the relief sought.

144. The Government Orders dated 08.05.2013 and 11.01.2019, consequently arise for consideration in the instant controversy. This necessitated an enquiry into the validity thereof. This line of enquiry has been undertaken in the earlier part of the judgment. The enquiry has found that the Government Order dated 08.05.2013 and the Government Order dated 11.01.2019 are violative of Article 21A of the Constitution read with the Right of Children to Free and Compulsory Education Act, 2009 read with The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 framed thereunder.

145. The Government Orders create a protected zones for certain vested interest namely, the school managements. These provisions directly benefit the aforesaid schools managements to the

detriment of the students.

146. The category of citizens, who will be directly affected by the aforesaid Government Orders, are the children of the State of U.P. In a technical sense only the children are the parties aggrieved by the aforesaid Government Orders.

147. There is a huge pressure of demand for schools in the State. In this situation the parents or guardians are desperate and even vulnerable. The children on their part have no understanding of their rights and lack control over their environment. The parents and children have apparently submitted to fate accompli. Inaction of parents and innocence of children cannot become the basis of denial of rights of children conferred by the Article 21A of the Constitution and the Right of Children to Free and Compulsory Education Act, 2009.

148. The silence of the child is loud enough for the Constitution to hear. The constitutional mandate of this Court is to interpret the law, uphold the rights of citizens and compel performance of statutory duties.

149. In such a situation, even in the absence of a formal challenge to offending the provisions of the Government Orders by an aggrieved party, the same can be duly construed and if required quashed by the Court. The contrary course is not a lawful option. The Court cannot mandamus the authorities to decide representations and enforce rights made on the foot of illegal and unconstitutional Government Orders.

Evaluation procedure

150. The creation of a proper curriculum and evaluation procedure is also a central feature of the Right of Children to Free and Compulsory Education Act, 2009. Section 29 of the Right of Children to Free and Compulsory Education Act, 2009 discloses that while scholastic achievements an endeavours have retained their pride of place, the emphasis is also made in the provision on "all around development" including "physical abilities" to the fullest extent. These provisions can be brought to fruition only when such activities are conducted and due credits are given to the children for the same. Such evaluation should depict the development of mental and physical abilities and potentialities of a child.

151. Appropriate Government Orders in this regard have to be taken out by the State and implemented at the levels of the schools.

152. Activities like Scouts and Guides and NCC may be encouraged at school level. Yoga may also be given as an option for children to learn apart from encouraging sports. Music, painting, among other extra curricular activities also may have a place in the curriculum.

153. The activities to ensure overall development of the child have to be part of the evaluation of children and due credits need to be given.

Conclusion

154. In the wake of preceding narrative and the record of the respondents authorities, this Court was minded to convert the petitions into a public interest litigation to monitor the implementation of the Right of Children to Free and Compulsory Education Act, 2009, in light of the law laid down by the Hon'ble Supreme Court in the case of Ashok Thakore (supra). However, the Court was persuaded by the submissions of Sri Neeraj Tripathi, learned Additional Advocate General, assisted by Sri Shashank Shekhar Singh, learned Additional Chief Standing Counsel, who stated with honest conviction that the State Government accords highest priority to imparting quality education to the children of the State and shall make all endeavours to implement with sincerity the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the directions of this Court. Solemn statements by senior most law officers of the State made at the Bar, have to be given full weight by the Courts.

155. The matter is accordingly remitted to the State Government and a writ of mandamus is issued to the Additional Chief Secretary, Basic Education, Government U.P. Lucknow and the authorities mentioned hereunder to execute the following directions:

I. The respondents authorities shall create norms for recognition as well as for grant of government aid to schools consistent with this judgment;

I-A. The norms for recognition and grant of government aid to schools shall include the playgrounds of appropriate size and require mandatory plantation of trees and flora in the school campus for grant of recognition as well as government aid;

I-B. The norms for recognition and grant of government aid to schools shall also include detailed building bye-laws and architectural requirements after taking inputs from urban planers, architects, educationists and other experts and in conformity with this judgment;

II. The exercise of creating the infrastructure norms mentioned above for recognition of schools and grant of government aid shall be completed within a period of five months from today;

III. The procedures and details of inspection of the schools shall also be created afresh in light of the directions in this judgment;

IV. The applications of all the petitioners and all other pending applications for recognition and grant of aid shall be considered after creation of the norms in accordance with the said norms and in light of directions of Hon'ble Supreme Court in Pawan Kumar Dwivedi (supra) and this Court in Paripurna Nand Tripathi (supra). Even in matters where the application for grant of recognition or for government aid has been rejected for any reason, the same shall be considered afresh along with all pending applications;

V. The Government Orders regarding evaluation norms and directions for providing safe transportation, weight of school bags, shall also be issued and implemented;

VI. The Chief Secretary, State of U.P. shall constitute a committee of various departments to ensure concert in functioning and coordination in implementation of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and directions in this judgment. Appropriate authority shall also regularly interface with the Government of India for grant of funds in terms of the provisions of the Right of Children to Free and Compulsory Education Act, 2009;

VII. The said committee shall submit a compliance report to the Chief Secretary on the state of implementation of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the directions in this judgment, on a six monthly basis;

VIII. The Chief Secretary, State of U.P., shall issue appropriate directions from time to time to the said committee and ensure that the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and directions in this judgment, are implemented rigorously and on a time bound basis;

IX. A website shall be created by the State Government at the state level as well as the district level under the caption "Saakshar Pradesh Shashakt Desh" (¢ ¢ ¢ ¢), which shall upload the progress of implementation of these directions, and the provisions of the Right of Children to Free and Compulsory Education Act, 2009, details of schools in various neighbourhoods, inspections made by the State Authorities, and other data as may be deemed appropriate on an up to date basis;

X. The existing schools which were granted affiliation under the Government Order dated 08.05.2013 and the Government Order dated 11.01.2019, shall be granted time till the end of the next academic session i.e. till 31.03.2021 to comply with the above said requirements and new norms for grant of recognition and government aid;

XI. After 31st March, 2021, the State Government shall proceed in accordance with law against the said schools, which fail to fulfill the new infrastructure requirements and norms. (This shall not apply to ongoing proceedings against non-compliant schools). However, at all times, the welfare of the students shall be protected and arrangements for admission to alternative schools shall be made in regard to children from schools which are not compliant with the norms for recognition and grant of aid.

156. The writ petitions are decided finally.

Order Date :- 20.09.2019 Ashish Tripathi