Supreme Court of India
State Of Maharashtra & Anr vs Lok Shikshan Sansatha & Ors on 26 July, 1971
Equivalent citations: 1973 AIR 588, 1971 SCR 879
Author: C Vaidyialingam
Bench: Sikri, S.M. (Cj), Mitter, G.K., Vaidyialingam, C.A., Reddy, P. Jaganmohan, Dua, I.D.

PETITIONER:
STATE OF MAHARASHTRA & ANR.

Vs.

RESPONDENT:
LOK SHIKSHAN SANSATHA & ORS.

DATE OF JUDGMENT26/07/1971

BENCH:
VAIDYIALINGAM, C.A.
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VAIDYIALINGAM, C.A.
SIKRI, S.M. (CJ)
MITTER, G.K.
REDDY, P. JAGANMOHAN
DUA, I.D.

CITATION:
1973 AIR 588 1971 SCR 879
1971 SCC (2) 410

ACT:
Education-Grant-in-aid System, r. 3(1) and (2)-If vague or ambiguous-Executive instructions. Constitution of India, 1950, Arts. 14, 226 and 358-Jurisdiction of High Court in relation to policy of giving grants to educational institutions.
Grant-in-aid Code if violative of Art. 14. Period of Emergency-Article 358 if protects Executive instructions from attack under Art. 19.

HEADNOTE:
The grant-in-aid system was introduced in 1859 and its main object was to permit voluntary effort and reliance on local resources in the field ,of education apart from such contributions as may be available from the funds of the State. After the re-organisation of the State of Bombay a unified code of grant-in-aid to non-government secondary schools throughout the State was introduced by the State from the year 1963-64. Under r. 2(1) an application for permission to start a secondary school has to be made in the prescribed form and such application has to reach the

prescribed authorities by the end of October in the year preceding the year in which the school was proposed to be started. Under r. 2(2) the management which was permitted to open a school has so apply for recognition of the school and under r. 3, a school seeking recognition shall satisfy the Department that the school was actually needed in the locality that it did not involve any unhealthy competition with any existing institution and that the management was competent, reliable and was in the hands of a properly constituted authority or committee. Under r. 3(3) one of the conditions which has to be satisfied is regarding the financial stability of the proposed school. Other conditions which had to be satisfied by a proposed school are enumerated in the remaining 13, clauses of the rule. Rule 86(2) provides that schools which are not registered under the Societies Registration Act, would not be eligible for grant.

On October 6, 1965, the State issued a press-note calling attention of all the managements intending to start new secondary schools to the relevant provisions of the Code. It was also stated that applications received for starting new schools would be scrutinised and considered by the District Committee comprising of the Chairman of the Education Committee, Zila Parishad Parishad Education Officer and a member of the Secondary School Certificate Examination Board, Poona, or Vidarbha Board of Secondary Education, Nagpur, that is, by persons who were familiar with the conditions prevailing in the particular areas, and the requirements in the area for a new or additional school, and that permission to start a new school would be communicated to the applicants concerned by the Deputy Director of Education of the region by the end of February. The applicants were also informed that the appeals to the Government against the orders of the Deputy Director of Education could be filed up to end of March, 1966. On the same date, Government sent communications for taking steps for constituting the District Committees. The State also sent a circular on the same :date to the various educational authorities stating that the Disrict Committees

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should bear in mind, when considering the applications, the various matters, enumerated in items 1 to 14 Which related to the requirement of a school or an additional school in a particular area, its financial stability, the nature and competency of the management and several allied matters. It was obligatory on the District Committee to record its reasons in writing for recommending or not recommending a particular application, which would be considered by the Deputy Director of Education of the concerned region before granting or refusing permission to start a new school.

The applications of the three applicants-societies were scrutinised by the concerned District Committees along with the applications and objections of rival applicants. In the

case of the first applicant-society the District Committee recommended the rival applicant on the grounds that the applicant society had no funds but that the rival applicant was of good financial position and experience. The Deputy Director of Education accepted the recommendation and rejected the first applicants' application stating that the need of the place had been fulfilled by permitting the rival society to open a school at the place.

In the case of the second applicant the Deputy Director of Education rejected the application on two grounds, namely: (a) that the application was made after the prescribed date, and (b) that the society was not registered. The appeals of these applicants to the State Government were rejected and they filed writ petitions in the High Court for striking down r. 3 of the Grant-in-aid Code.

In the case of the third applicant, in spite of objections by a rival who was already conducting a school in that area the District Committee recommended the grant of permission to the applicant on the grounds that the applicant society was a good, experienced and popular society and it was also financially sound and that the population of the areas demanded as an absolute necessity an additional school from standard VIII onwards, The society which was already running a school filed a writ petition to quash the permission granted to the third applicant.

The High Court struck down cls. 1 and 2 of r. 3 of the Code as violative of Arts. 14 and 19 of the Constitution and directed the educational authorities to grant permission to the first two applicants to start schools, as desired by them. It dismissed the writ petition filed for quashing the permission granted to the third applicant. The High Court also made certain observations regarding the policy that should be adopted by the educational authorities in the matter of permitting the starting of a new school or an additional school in a particular area.

In appeals to this Court,

HELD:(1) The High Court had misunderstood the nature of its jurisdiction when dealing with the claims of the first two applicants. It was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment of the requirements of the residents of a particular locality and other categories of persons for whom it is essential to provide for education. If the overall assessment is arrived at after proper classification on a reasonable basis, it is not for courts to interfere with the policy leading up to such assessment. [887E-H]

(2)Clauses (1) and (2) of r. 3 are not vague or ambiguous in any respect. They should not be considered in isolation. If they are interpreted having due regard to the various other matters contained in other clauses of the rule and the

detailed instructions contained.
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of the rule and the detailed instructions contained in the circular letter, the District Committee had ample guidance for deciding the need of a particular locality to have a school or an additional school, as also the further questions regarding the competency and reliability of the management. [895D-E; F-H]
(3)The provisions of the Code are executive instructions and are in the nature of administrative instructions without any constitutional force. The State Government was competent to issue those executive instructions for the guidance of the educational authorities dealing with the applications for grant of permission to start schools, and they are perfectly valid. The applications in the present case were considered during the period when the Proclamation of Emergency was in operation. Article 19 could not therefore be invoked by the first two applicants and the view of the High Court that Art. 358 did not save the two clauses of r. 3 was erroneouse. [888A-B; 892C-E]
(4)(a) The High Court erred in striking down the two clauses on the ground that unless a school was started in accordance with the rules contained in the Code they would not be recognised by the Secondary School Boards and students studying in such schools would not be able to appear for the examinations held by the Board and the University, and therefore, were violative of Art. 14. The provisions regarding grant of permission and recognition of schools under the Code are merely intended for the purpose of receiving grant from the Government, and are not concerned with the effect of starting a school without complying with the requirements of the provisions of the Code or in the face of refusal of permission by the educational authorities. So far as the distribution of grant to the schools recognised under the Code was concerned it was not the case of any of the applicants that such grants were being made arbitrarily or any discrimination was shown in that regard. It was also not the case of the applicants that the District Committees had acted arbitrarily, nor was it their case that the Deputy Director of Education had not based his decision on the recommendations of the District Committees. There was thus no violation of Art. 14. [892G-H; 893B-C, D-I]
(b)The mere fact that there was no right provided for the applicant being heard before the application was rejected could not be a ground for holding that there was violation of the principles of natural justice. The particulars which had to be mentioned in the prescribed application form are very elaborate and complete. The provisions in the Code read along with the instructions given by the State in its circular letter referred to various relevant material factors that had to be taken into account for the purpose of deciding whether the application was to be granted or not.

When all the relevant circumstances, claims and objections of the applicants and their rivals had been taken into account by the District Committees and the educational authorities there was no violation of any principle of natural justice. It was not the case of the applicants that the reasons given for rejection of their applications were not covered by the provisions contained in the Code. [893H; 894D-E]

(5)The High Court erred in issuing a mandamus to the State without considering the Various reasons given by the Deputy Director of Education for rejecting the application of the first two applicants.

(a)The reason given by the Deputy Director of Education with respect to the first applicant for rejecting its application was that the need of the place had been fulfilled by permitting another society to open the school at the place, on the recommendations of the District Committee. It was open to the authorities to refuse permission if the school is not in a financially sound position. [896B-D, G]

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(b)In the case of the second applicant the reasons given were that the application was sent after the prescribed date and that the society was not registered. Therefore the rejection was on valid grounds. [897D-E]

(6)In the case of the third applicant, from the mere fact that by giving it permission to open another school some of the students of the rival society's school may seek admission in the new school, could not be a ground for stating that the rival society's legal rights had been infringed. In granting permission to another society no extraneous or irrelevant matters had been taken into account by the District Committee or the educational authorities. The reasons given by the District Committee for granting permission were valid reasons and the High Court rightly rejected the petition of the rival society. [898G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 160, 161 and 878 of 1968.

Appeals from the judgment and order dated December 2, 1966 of the Bombay High Court, Nagpur Bench in Special Civil Applications Nos. 420 and 421 of 1966 and 694 of 1965. Niren De, Attorney General, B. D. Sharma and S. P. Nayar, for the appellants (in C.As. Nos. 160 and 161 of 1968). W.S. Barlingay and A. G. Ratnaparkhi, for the appellant (in C.A. No. 878 of 1968) and respondents Nos. 1 and 2 (in C.A. No. 160 of 1968).

A.G. Ratnaparkhi, for respondents Nos. 1 and 2 (in C. A. No. 161 of 1968).

M.R. K. Pillai, for respondent No. 2 (in C. A. No. 160 of 1968).

Niren De, Attorney General, B. D. Sharma and S. P. Nayar, for respondent Nos. 1 and 2 (in C.A. No. 878 of 1968). Bishan Narain, S. K. Bisaria and T. L. Garg, for respondent No. 3 (in C.A. No. 878 of 1968).

The Judgment of the Court was delivered by Vaidialingam, J.-All these three appeals, on certificate, are directed against the common judgement and order dated December 2, 1966 of the Bombay High Court in Special Civil Applications Nos. 694 of 1965 and 420 and 421 of 1966. Civil Appeals Nos. 160 and 161 of 1968 are filed by the State of Maharashtra and the Deputy Director of Education, Nagpur against that part of the order of the High Court allowing Special Civil Applications Nos. 420 and 421 of 1966 after holding that cls. (1) and (2) of S. 3 of the Grant-in- aid Code (hereinafter to be referred as the Code) are invalid and directing the State of Maharashtra to grant the petitioners in the said Special Civil Applications permission to start schools in the areas concerned as desired by them. Civil Appeal No. 878 of 1968 is by the applicant in Special Civil Application No. 694 of 1965 against the order of the High Court dismissing his writ petition and declining to interfere with the order of the State and educational authorities granting permission to the third respondent in the appeal to open, a new school at Sakharkherda with VIII and IX classes.

We will first deal with Civil Appeals Nos. 160 and 161 of 1968 and refer to the facts leading up to those appeals. Civil Appeal No. 160 of 1968, as mentioned above, arises out of the ,order in Special Civil Application No. 420 of 1966. The applicant in the said application Loka Shikshan Sanstha Anjansinghi made an application dated October 30, 1965 to the Deputy Director of Education, Nagpur for permission to open a school during the year 1966-67 at Anjansinghi in Amravati district. The- appli,cation was sent in the prescribed form. Therein it was stated that the Management was not registered and that it will get itself registered by about the middle of January, 1966. Under the heading "Arrangements made for necessary furniture and apparatus" in col. 13, the applicant stated that they proposed to spend about Rs. 2,000 in respect of furniture, science, apparatus, teaching ,Aids, teachers library and pupil's library. The break up of the figures under these heads was also given. In col. 15 under the heading "Funds at the disposal of the management in addition to those in col. 13 above", the applicant stated Rs. 5,000 only. The applicant further stated under col. 17 that it required only a token grant in the first year of recognition and a regular grant at the prescribed rate from the second year. The Ashok Education Society, Ashoknagar, the third respondent in the writ petition, bad also applied to the educational authorities to start a school during the same year at Anjansinghi. The writ petitioner filed an objection dated March 8, 1966 before the Deputy Director of Education, Nagpur objecting to the grant of permission asked for by the Ashok Education Society, Ashoknagar on the ground that the said Society is an outside agency. In the said petition the applicant requested for favourable consideration of his application already submitted, to the authorities. The District Con,' mitee which scrutinized the applications of both the parties recommended that the application of the writ petitioner should be rejected as it had no funds. Another Society with good financial position and experience was recommended by the Committee. The, District Committee recommended that Ashok Education Society should be granted permission as it was a good, experienced and popular society and it was also financially sound. The Deputy Director of Education by his order dated April 12,1966 rejected the application of the writ petitioner

on the ground that the need of the place has been fulfilled by Permitting another society to open a school at the place. The petitioner was further informed that in case any school is started when permission has been refused, serious view will be taken by the educational authorities. The writ petitioner filed an appeal on April 21, 1966 to the State Government wherein he prayed for withdrawing permission granted to the Ashok Education Society, the third respondent and also requested that permission may be granted to the applicant society to open a school. This appeal was rejected by the Government by its order dated 10/16th May, 1966. The applicant society filed writ petition and prayed for striking down r. 3 of the Grant-in-aid Code framed by the State of Maharashtra as unconstitutional and violative of fundamental rights guaranteed under Art. 19(1)(c) of the Constitution and to quash the orders of the Deputy Director of Education and the State Government refusing permission to the petitioner Society to start a school at Anjansinghi. The applicant further prayed for a direction being issued to the educational authorities to grant permission to start the school as requested by it.

As common contentions had been raised by the State of Maharashtra in this writ petition and also in Special Civil Application No. 421 of 1966 before the High Court, we will refer to those contentions after adverting to the facts in Special Civil Application No. 421 of 1966.

Civil Appeal No. 161 of 1968 arises out of Special Civil Application No. 421 of 1966. The applicant therein Sri Nana Guru Shikshan Sanstha, Shirkhed sought permission of the Deputy Director of Education to start a school at Shirkhed from June 1966. The request was made by a letter dated October 29,1965 and the application was not made in the prescribed form. The Parishad Education Officer, Zila Parishad, Amravati by his communication dated November 15, 1965 forwarded the prescribed application form to the applicant with a request to have the particulars mentioned therein properly filled in and to submit the same immediately. The application in the prescribed form was sent by the applicant on November 3, 1965. In Column No. 4 under the heading ' whether the management is registered" the answer given was, "no". Under the same column to the further query "if not, whether it is intended to get it registered. If so when" the answer given was "within a month". In column 13, the expenditure proposed to be incurred regarding furniture etc. the applicant stated that about Rs. 800 was intended to be spent. The break up in respect of the various items was also given. Under column 15 regarding funds at the disposal of the management, it was stated that a sum of Rs. 5,000 was available. The third respondent therein Swami Vivekan and Shikashan Sanstha, Lehgaon had also made an application for opening a school at Shirkhed. The applicant filed an objection on January 5, 1966 to the grant of any permission to the third respondent. The Deputy Director of Education by his order dated April 11, 1966 rejected the application of the writ petitioner on two grounds namely, "(1) the application is after the prescribed date and (2) the Society is not registered." The petitioner was also informed that if a school is started when permission has been refused, serious view will be taken by the educational authorities. The appeal filed by the writ petitioner to the State Government was rejected by the latter by its order dated May 10/16th, 1966. The applicant filed Special Civil Application No. 421 of 1966 praying for striking down r. 3 of the Grant-in-aid Code as unconstitutional and violative of Art. 19(1)(c) of the Constitution. The orders refusing permission to the Society to start a school were also sought to be quashed. A further prayer was made for directions being issued to the authorities to grant permission to the Society to start a second school at Shirkhed as desired by it.

The State Government contested both the Special Civil Appli- cations. It was pointed out that the rules contained in the Grant in-aid Code were all executive instructions given by the State to the educational authorities for proper guidance in the matter of considering applications for starting schools which required grants to be made by the Government. None of the rules contained therein violated any fundamental rights of the applicants. Even if Art. 19 can be invoked, the restrictions regarding the starting of schools were all reasonable restrictions in the interest of general public. No restriction has been placed on the applicants forming associations or unions as contemplated under Art. 19(1)(c) and that in any event the restrictions were saved by Cl.

(iv) of Art. 19. The reasons given by the Deputy Director of Education for rejecting the applications of the two petitioners were valid as the District Committee constituted for the purpose had considered all the relevant matters before rejecting their applications and granting permission to the respective third respondents therein. The High Court by its common judgment has taken the view that cls. (1) and (2) of r. 3 of the Grant-in-aid Code are invalid as they are too vague to afford any standard both as to the need of a school in the locality and also as to the unhealthy competition with an existing school. The said clauses are equally vague as there is no standard to find out the competency and reliability of the management inching of the school. There is further no provision in these sub-clauses for hearing a party before the authorities concerned take a decision in the matter of grant or refusal of permission to start a school. The High Court is further of the view that by such executive instructions the State is able to prevent the two writ petitioners from carrying on their legitimate activities of running schools. The said clauses also do not satisfy the test of being reasonable restrictions in public interest. On this reasoning the High. Court has held that the two clauses, namely, (1) and (2) of rule 3 are violative of the rights guaranteed to the writ petitioners under Art. 19(1) of the Constitution. Though it was argued on behalf of the writ petitioners that clauses (1) and (2) of r. 3 of the Code contravene the provisions of Art. 19(1)(c) (g) and

(f), there is no clear indication in the judgment of the High Court as to which clause of Art. 19(1) is violated. It is the further view of the High Court that as the State has no power to issue instructions as those contained in cls. (1) and (2) of r. 3, Article 358 will not save those provisions notwithstanding the fact that there was a Proclamation of Emergency during the relevant period. Though no attack based on Art. 14 was made in either of the writ petitions, it is seen that during the course of arguments, this article was relied on and it was contended that the said two clauses of r. 3 are arbitrary as they enable the State to discriminate between one institution and another. The High Court in considering this contention has held that in the matter of distribution of grant, the State must comply with the fundamental requirements of constitutional law embodied in Art. 14. According to the High Court the effect of cls. (1) and (2) of r. 3 is that apart from the fact that the such schools are not eligible for receiving the grants, the students studying in such schools cannot appear for examinations held by the Secondary School Boards as the latter will not recognise such institutions.As the students of such schools cannot take their university education, cls. (1) and (2) of r. 3, according to the High Court, offend Art. 14 and hence they are invalid. After holding that cls. (1) and (2) of r. 3 of the Code are violative of Arts. 14 and 19, the High Court struck down those provisions and directed the educational authorities to grant permission to the two writ petitioners to start schools as desired by them.

The learned Attorney-General, appearing on behalf of the State in Civil Appeals Nos. 160 and 161 of 1968 raised the following contentions: (1) The High Court has committed a very serious mistake in invoking Art. 19 in view of the mandatory provisions of Art. 358 of the Constitution, (2) even assuming that Art. 19 can be invoked, the provisions contained in cls. (1) and (2) of r.3 are reasonable restrictions in the interest of general public and as such those clauses are valid; (3) the view of the High Court that the said clauses offend Art. 14 is erroneous; (4) that the clauses struck down by the High Court. are mere executive instructions given by the State for the guidance of the educational authorities when considering the applications received for permission to open schools in particular areas. Such executive instructions cannot be struck down on the ground that they are vague., Alternatively.

under this head it was contended that the two clauses are not vague in any respect; and (5) the High Court has committed a serious mistake in striking down the orders of the educational authorities without considering the reasons given by such authorities for rejecting the applications of the two writ petitioners.

Dr. Barlingay, learned counsel for the contesting respon- dents has supported the view taken by the High Court for striking down -Is. (1) and (2) of r.3 of the Code. The counsel relied on the reasons given by the High Court for striking down the two clauses as violative of Arts. 14 and

19. The counsel further urged that though the two clauses of r.3 in question may on the face of it appear to be innocuous, nevertheless the application of those principles by the- educational authorities may lead to possible discrimination between the institutions concerned. According to him no standards have been laid down to assess the need of a school in a particular area. Further, there is no criteria laid down to enable the educational authorities to decide the circumstances under which the starting of a new school may result in an unhealthy competition with an existing school. The position is the same also in regard to judging the competency and reliability of a particular management who proposes to start a school. The more serious ground of levelled against these clauses (1) and (2) of r.3 by Dr' Barlingay was that there was no right given to an applicant for being heard before his application is rejected by the educational authorities. Before we deal with the above contentions advanced before us on behalf of both sides, it is necessary to state that the High Court in the judgment under attack has made certain observations regarding what according to it should be the policy adopted by the educational authorities in the matter of permitting the starting of a new school or of an additional school in a particular locality or area. It is enough to state that the High Court has thoroughly misunderstood the nature of the jurisdiction that was exercised by it when dealing with the claims of the two writ petitioners that their applications had been wrongly rejected by the educational authorities. So long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other categories of persons for whom it is essential to provide facilities for education. If the overall assessment is arrived at after a proper classification on a reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment.

It should also be made clear that as accepted by the State in its counter-affidavit filed before the High Court the provisions of the Code are executive instructions and are in the nature of administrative instructions without any constitutional force. It is on this. basis that we have to consider the correctness of the decision of the High Court when it struck down cls. (1) and of r. 3 of the Code. It is necessary to advert to the circumstances under which the Code came to be framed as also to certain instructions given by the State to the educational authorities when considering the applications for the grant of permission to open schools.

The Grant-in-aid system appears to have been first introduced in 1859 and its main object was to promote voluntary effort and reliance on local resources in the field of education apart from such contributions as may be available from the funds of the State. After the States re- organisation took place, in order to bring about uniformity in the matter, the State of Bombay appointed in 1958 an Integration Committee for Secondary Education to examine the different Education Codes and administrative practices in force at the secondary stage in the various regions which were added to the State of Bombay under the states orga- nisation and to make proposals for a unified system of Secondary Education as well as the assistance to be given to non-government Secondary schools.' The Committee submitted its report in 1959. In December, 1960 the Government of Maharashtra appointed a Committee comprised of officials and non-officials to- suggest a unified code for consideration of the Government. A revised Draft Code was submitted by the Committee to the Government in or about August, 1961. The Secondary Schools Code, with which we are now concerned was framed by the Government as a common code for the recognition of and grant-in-aid to nongovernmental secondary schools throughout the State. The said Code came into force with effect from the year 1963-64. Chapter 11 related to recognition and grant-in-aid. Rule 1 dealing with, recognition provided that secondary schools may be recognised by the Department provided they conform to the rules contained in the Code. Rule 2 dealt with the matters relating to the applications for starting and recognition of schools. Under r. 2.1 an application for permission to start a secondary school has to be made in the form given in appendix 1 (1) of the Code to the authorities referred to therein and such; applications have to reach those authorities by the end of October, in the year preceding the year in which the school is proposed to be started. The said clause further provided that no school should be started unless the written previous permission of the Department had been obtained and that the schools started without such permission shall not ordinarily be considered for recognition. Under r. 2.2, the management which is permitted to open a school has to apply for re,cognition of the school in the form given in appendix 1(2) of the Code within one month of the opening of the school.

Rule 3 which consists of 16 clauses deals with the conditions of recognition. The said rule provides that a school seeking recognition has to satisfy the Department as regards the conditions enumerated in cls. 1 to 16 therein. Clauses (1) and (2) of r. 3 which are attacked as invalid are as follows:

> "Rule 3: Conditions of Recognition: A school seeking recognition shall satisfy the Department as regards the following conditions:-

(1) The school is actually needed in the locality and it does not involve any unhealthy competition with any existing institution of the same category in the neighborhood.
(2) The Management is competent and reliable and is in the hands of a properly constituted authority or managing Committee.

... ..."

We may at this stage point out that one of the conditions which has to be satisfied under r. 3 is regarding the financial stability of the proposed school as stated in cl. (3) of r. 3 therein. This aspect may have a bearing in considering the correctness of the High Court's decision in Civil Appeal No. 160 of 1968.

Rule 86 deals with "Kinds of Grants". Rule 86.1 enumerates the various types of grants which a recognised school is eligible to get from the Government.

Rule 86.2 provides as follows "Proprietary schools (i.e. schools not registered under either the Societies' Registration Act XXI of 1860 or the Bombay Public Trust Act, 1950 or any other Act that may be specified by Government and communal schools will not be eligible for any kind of grant from public funds."

At this stage we may mention that the provisions contained in r. 2.1 that an application for starting a Secondary School has to be in the form given in appendix 1 (1) of the Code and that the application should reach the educational authorities within n the further provision under r.86.2 that the schools which are not registered under the Societies Registration Act, will not be eligible for grant, win have a considerable bearing when considering Civil Appeal 'No. 161 of' 1968, On October 6, 1965 the State of Maharashtra issued a press, note, copies of which were sent to all the educational authorities. The Director of Publicity was also directed to give wide publicity to the press note by publishing the same in all the Dailies in the cities and districts. By that press note the attention of all the managements intending,to start new Secondary Schools was drawn to the provisions contained in r. 2 of the Code regarding the applications being. made in the prescribed form to the concerned office and to the applications being made sufficiently early so as to reach the authorities concerned at the latest by the end of October. in the year preceding the year in which the school is proposed to be started. It was further stated in the press note that the applications received for starting new schools will be considered by the District Committee comprising of the Chairman of the Education Committee, Zila Parishad, Parishad Education Officer and a member of the Secondary School Certificate Examination Board, Poona or Vidarbha Board of Secondary Education, Nagpur and that permission to start new schools will be communicated to the applicants concerned by the Deputy Director of' Education of the region by the end of February, 1966. The proposed applicants were also informed that appeals to the Government against the orders of the Deputy Director of Education can be filed upto the end of March;, 1966. This press note emphasised: (a) that the applications be made in the prescribed form and (b) that the applications should be received by the educational authorities at the latest by the end of October. No doubt some of these aspects are already contained in r. 2 of the Code. Another important point to be taken note of in this press note is that though the applications are made to the concerned educational authorities, those applications are scrutinised by the District

Committees concerned, and whose members must be familiar with the conditions prevailing in particular localities or areas.

On the same date the Government sent a communication to the Chairman, Secondary School Certificate Examination Board. Poona and the Chairman Vidarbha Board of Secondary Educa- tion, Nagpur on the subject of appointment of District Committees to consider the applications received for opening new secondary schools. The composition of the District Committees was also' mentioned therein. The respective Chairmen were requested by the State to move the Board to nominate one member for each of the District Committees in the areas with which the Board was concerned. The Chairman was also requested to communicate the names of such members to the Parishad Education Officer of' the district concerned, the Deputy Director of Education of the region' and the Director of Education, Poona under intimation to the Government.

The State also sent a circular dated October 5, 1965 to the various educational authorities drawing their attention to r. 2 of the Code. They were also informed that the Government had directed that the applications for opening new secondary schools should be considered by the District Committee comprised of the various persons mentioned therein. It was further stated that the District Committee should bear in mind when considering the applications, the various matters enumerated as item Nos. 1 to 14. Those various matters to be taken into account relate to the requirement of a school or an additional school in a particular area, its financial stability, the nature and competency of the management and several allied matters. It was obligatory on the District Committee to record its reasons in writing for recommending or not recommending a particular application. In paragraph 4 of the circular it was stated that permission to start a new school may be granted by the Deputy Director of Education of the concerned region after taking into consideration the recommendations of the District Committee and with the prior approval of the Government. The educational authorities were also directed to dispose of the applications within the period mentioned in the circular.

From the relevant provisions of the Code read with the press note and the circular referred to above, it is clear that though the applications are made to the educational authorities, they are not disposed of by those authorities or their own individual discretion. On the other hand, it is clear that the applications are dealt with by the District Committees, whose members are familiar with the conditions prevailing in particular areas or localities and who also are in the know of things regarding the requirement of a new or an additional school in the particular areas. It is really on the basis of the recommendations made by such Committees that the educational authorities take a decision one way or the other.

After having cleared the grounds, as stated above, we will now deal with the contentions of the learned Attorney- General. The learned Attorney-General is well-founded in his contention that the High Court was not justified in invoking Art. 19 in the circumstances of this case. We have already given the relevant dates when the applications were filed by the writ petitioners before the educational authorities as well as the dates when they were rejected. The judgment of the High Court is dated December 2, 1966. There is no controversy that the Proclamation of Emergency was issued on October 26, 1962 and it was. revoked only on January 10, 1968 The relevant part of Art,

358 is as follows :

> "358. While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take....."

Therefore, it will be seen that during the period when a Proclamation of Emergency is in operation, Art. 19 will not operate as a bar in respect of any law or any executive action coming within the terms of Art. 358. We will be showing in the latter part of the judgment that cls. (1) and (2) of r. 3 read with the various instructions issued by the State cannot be considered to be vague or ambiguous as erroneously held by the High Court. Those instructions, in so far as they go, are perfectly valid and the State Government was competent to issue those executive instructions for the guidance of the educational authorities dealing with applications for grant of permission to start schools. If so, it follows that the view of the High Court that Art. 358 does not save cls. (1) and (2) of r. 3 is erroneous. In this view Art 19 could not have been invoked by the writ petitioners during the period when the Proclamation of Emergency was admittedly in operation. As Art. 19 is thus out of the picture, the question whether cls. (1) and (2) of r. 3 impose reasonable restrictions and are thus saved, does not arise for consideration. We may state that Dr. Barlingay found considerable difficulty in supporting the judgment of the High Court on this aspect in the face of Art. 358 of the Constitution. This disposes of the first and second contentions of the learned Attorney- General.

Coming to Art. 14, it is accepted by the High Court that the writ petitioners did not make in their petitions any attack on cls. (1) and (2) of r. 3 based upon the said article. It was only during the course of arguments that Art. 14 appears to have been invoked. The High Court struck down the two sub-clauses on the ground that unless a school is started in accordance with the rules contained in the Code, they will not be recognised by the Secondary School Boards and the students studying in such schools cannot appear for the examinations held by the Board and the University. The approach made by the High Court in our view in this regard is erroneous. The provisions regarding grant of permission and recognition of schools under the Code are mainly intended for the purpose of receiving grant from the Government. We are not concerned in these proceedings regardIng the effect of starting a school without complying with the requirements of the provisions of the Code or in the face of refusal of permission by the educational authorities when such schools so started do not require or receive any grant from the State. That problem does not arise for consideration before us. Hence we do-not think it necessary to refer to the provisions of the Maharashtra Secondary Education Board Regulation, 1966, the effect of which may be that no student having education in a school for the starting of which no permission has been given or such permission has been refused, may not be able to appear for the examinations held by the Boards concerned. So far as the distribution of grant to the schools recognised under the Code is concerned, it is not the case of any of the petitioners that such grants are being made arbitrarily or any discrimination is shown in that regard. But Dr. Barlingay pressed before us the circumstances that though cls. (1) and (2) of r. 3 may appear to be innocuous, there is a potential danger of discrimination when the said clauses are applied without any guidance by the educational authorities. He also contended that there is no right given to the applicant to be heard by the educational authorities before his application is re-

fused. On this ground the counsel urged that cls. (1) and (2) of r. 3 violate Art. 14.

We have already referred to the press note and the circular letter issued by the State Government from which, it is clear that the applications are dealt with in the first instance by the District Committees, whose members are familiar with the requirements of the particular areas or localities and the conditions prevailing therein regarding the requirements of a school or an additional school. The district Committees have to take into account several material and relevant factors contained not only in the Code but also specifically emphasised in the circular letter of the Government dated October 5, 1965. It is only on the basis of the recommendations made by those Committees, that the educational authorities take a decision regarding the grant or refusal of permission to start a school. The District Committees are also bound to record their reasons in writing for recommending or not recommending the application. An appeal lies against the order passed by the Deputy Director of Education to the Government. It is not the case of any of the writ petitioners that the District Committees have acted arbitrarily. Nor is it their case that the Deputy Director of Education of the region has not based his decision on the recommendations of the District Committees. We are not satisfied that there is any violation of Art. 14.

From the mere fact that there is no right provided for the appellant being heard before his application is rejected, it cannot be held that there is a violation of the principles of natural justice. On the other hand, it is seen that the District Committees have considered the claims of the writ petitioners as well as of the respective third respondents therein and recommended to the educational authorities that the claims of the latter are to be accepted. The reasons for rejection of the applications have also been given in the orders passed by the educational authorities.

When all the relevant circumstances have been taken into account by the District Committee and the educational autho- rities, there is no violation of any principle of natural justice merely for the reason that the applicants were not given a hearing by the educational authorities before their applications weren't ejected. The particulars which have to be mentioned in the prescribed application form are very elaborate and complete. The provisions in the Code read along with the instructions given by the State in the circular letter dated October 5, 1965 refer to various relevant and material factors that had to be taken into account for the purpose of deciding whether the application is to be granted or not. As we have already pointed out, it is not the case of any of the writ petitioner that these relevant factors have not been considered by the District Committees. Nor is it their case that the reasons given for rejection of the applications are not covered by the provisions contained in the Code. Clauses (1) and (2) of r. 3 are not to be read in isolation as has been done by the High Court. On the other hand they must be read along with the other various clauses contained in the same rule as well as the detailed instructions given by the Government in the circular letter dated October 5, 1965. It follows that the reasoning of the High Court that these two sub-clauses violate Art. 14 cannot be accepted.

Coming to the fourth contention of the learned Attorney, it is evident from the judgment of the High Court that cls. (1) and (2) of r. 3 have been struck down for they are vague and do not afford any standard or criteria for judging whether a school or an additional school is needed in an area or locality and whether the management is competent and reliable. We have already pointed out that

the definite stand taken by the State in its counter affidavit filed before the High Court was that the provisions of the Code are executive instructions and are in the nature of administrative instructions without any statutory force. When it is admitted that the provisions contained in the Code, which include cls. (1) and (2) of r. 3 are executive instructions, two questions arise, namely, (1) whether the High Court was justified in striking down such executive instructions even assuming that those instructions were vague and (2) whether the said clauses are vague. The learned Attomey-General invited our attention to the two decisions of this Court reported in State of Assam and Another v. Ajit Kumar Sharma and others(1) and Municipal Committee, Amritsar and another V. State of Punjab and Ors.

(2) [1969] 3 S. C. R. 447.

(1) [1965] 1 S.C.R. 890.

In the first decision this Court has laid down that where conditions for receiving grant-in-aid are laid down by mere executive instructions, it is open to a private institution to accept those instructions or not to accept them. That is a matter entirely between the Government and the private institution concerned. In the second decision it was laid down that "the rule that an Act of a ,competent legislature may be "struck down" by the Courts on the ground of vagueness is alien to our Constitutional system..... A law may be declared invalid by the superior Courts in India if the Legislature has no power to enact the law or that the law violates any of the fundamental rights guaranteed in Part III of the Constitution or is inconsistent with, any constitutional provision, but not on the ground that it is vague..... Based upon these two decisions, the learned Attomey-General urged that even on the basis that the two sub-clauses in question are vague, they could not have been struck down on that ground. Alternatively, his further contention is that those clauses are not vague. We do not think it necessary to go into the question whether the courts have got powers to strike down even executive instructions on the ground of their being vague when such executive instructions are admittedly issued by the authorities concerned for the guidance and for being acted upon. We express no opinion on that point in these proceedings. We are of the view that the two clauses in question are not vague or ambiguous in any respect. The fallacy committed by the High Court consists in considering cls. (1) and (2) of r. 3 in isolation. We have already pointed out that r. 3 of the Code consists of as many as 16 clauses, which are conditions to be fulfilled for recognition being accorded. We have also referred to the circular letter dated October 5, 1965 issued by the State Government enumerating the various matters to be taken into account by the District Committees when considering appli- cations for grant of permission to start a school or for having an additional school in the area or the locality. Rule 3 will have to be read along with those instructions as well as the various particulars which have to be filled up in the prescribed form. If cls. (1) and (2) of r. 3 are interpreted having due regard to the various other matters, referred to above, the District Committee has got ample guidance to decide the need of a particular locality to have a school or an additional school as also the further question regarding the competency and reliability of the management. There will be sufficient material before the District Committee to consider whether the starting of a school or an additional school into a particular area or locality will involve any unhealthy competition. In view of the clear and detailed guidance furnished not only by r. 3 but also by the instructions contained in the circular letter dated October 5, 1965, it is clear that

there is no- ambiguity in. either. cls. (1) or (2) of r. 3. In considering the question of vagueness the High Court has not adverted to the various matters.

referred to by us earlier. Therefore. we are of the opinion that the striking down of cls. (1) and (2) of r. 3 by the High Court as being vague, is erroneous.

The last contention of the learned Attomey-General which is on merits is that without considering the reasons given by the Deputy Director of Education for rejecting the two applications of the two writ petitioners, the High Court has issued a mandamus to the State to grant permission to those two applicants. In our opinion, this contention is also well-founded. The application of the petitioner in Special Civil Application No. 420 of 1966 which is the subject matter of Civil Appeal No. 160 of 1968 was rejected by the Deputy Director of Education on the ground that the need of the place has been fulfilled by permitting another society to open the school at the place. The appeal filed to the State Government was unsuccessful. In the counter-affidavit filed by the State in the writ petition they had categorically referred to the recommendations of the District Committee on the applications filed by the said writ petitioner as also the third respondent therein. Regarding the writ petitioner the report of the District Committee was that it had no funds and that it was recommending another society with good financial position and experience. In this view the District Committee stated that it was not recommending the writ petitioner for the grant of permission. On the other hand, the District Committee recommended the application of Ashok Education Society, Ashoknagar (third respondent) on the ground that it was financially sound and it was a very good and experienced society and that it was also a popular society. For these reasons the application of this society was recommended to be granted by the District Committee. It was on the basis of this recommendation of the District Committee that the Deputy Director of Education rejected the application of the writ petitioner and granted permission to the third respondent therein. The applications of both the writ petitioner and the third respondent were before the District Committee. The High Court has not found fault with these recommendations. On the other hand it has held that it is open to the authorities to refuse permission if the school is not in a financially sound position. The writ petitioner also was not able to satisfy us that the conclusions arrived at by the District Committee, which were accepted by the Deputy Director of Education were not based upon particulars furnished in the application.

Coming to the application filed by the writ petitioner Special Civil Application No. 421 of 1966 which is the subject matter of Civil Appeal No. 161 of 1968. we have already referred to the fact that-the said society merely made a request for opening a school by means of a letter dated October 29. 1965. Admittedly the applicant did not comply with the requirement of r. 2.1 Of the Code that the application should be in the prescribed form. No doubt, later on ' on November 3, 1965 the said society sent a fresh application in the prescribed form, but this was not within the period mentioned in r. 2.1 of the Code. So the said writ petitioner did not comply with r. 2.1 read along with the press note and the circular letter, referred to above. That clearly shows that the application filed by the writ petitioner was not in the first instance in the prescribed form and that when it was sent in the prescribed form it was beyond time. Further, we have also referred to r. 86.2 which specifically says that the schools which are not registered under the Societies Registration Act, will not be eligible for any kind of grant from the public funds. Even in the application filed by the writ petitioner in the

prescribed form on November 3, 1965, it was stated under head No. 4 that the management was not registered and that it intends to get itself referred within a month. So apart from two infirmities, pointed out above, there was this additional infirmity of nonregistration. Even on the date when the appeal was filed to the State Government on April 26, 1966, the society was not regis- tered. As admitted by the said society in its writ petition, it was registered under the Societies Registration Act, 1860, only on April 27, 1966. The order dated April 11, 1966 of the Deputy Directorof Education rejecting the application was based on two grounds:(a) that the application was sent after the prescribed date and(b) that the society was not registered. That these two reasons are valid is clear from the facts mentioned above. The appeal taken to the State Government was unsuccessful. From the above circumstances it is clear that the rejection of the application was on valid grounds. The High Court, so far as we could see, has not found that these reasons are not based on the materials on record. No such contention has also been taken before us by the said writ petitioner. If so, it follows that the order of the High Court directing the State Government to issue permission to the two writ petitioners ignoring the above circumstances is clearly erroneous. From what is stated above, the judgment of the High Court allowing Special Civil Application Nos. 420 and 421 of 1966 cannot be sustained.

Coming to appeal No. 878 of 1968, the facts lie within a very narrow compass. For the year 1965-66, the third respondent in Special Civil Application No. 694 of 1965, out of which the appeal arises, had made an application on October 29, 1964 for starting a new school at Sakharkherda during the year 1965-66. The writ petitioner filed objections to the grant of permission to the third respondent. On the recommendation of the District Committee. the third respondent was allowed to open standards VIII and IX with one division only during the year 1965-66. The writ petitioner was filed to quash the permission granted to the third respondent. The State Government in its counter- affidavit has very elaborately referred to the various matters mentioned by the third respondent in his application and also to the recommendation made by the District Committee. The District Committee had recommended permission being granted to the third respondent on the ground that the management had very good experience in running schools and that it was also financially sound. It was also stated that at the place in question even when the writ petitioner was conducting a school with standards V to X, there was another school run by the Zila Parishad with standards V to VII. It was pointed out by the State that the population in the area demanded additional school with standard VIII onwards and it was an absolute necessity. They had also given details regarchng the long experience that the third respondent bad in running schools in several places as also the soundness of its financial position. Before the High Court the attack made by the writ petitioner was slightly different from that of the other two writ petitioners in Special Civil Applications Nos. 420 and 421 of 1966. The attack on the grant of permission to the third respondent was made by this writ petitioner really based on cls. (1) and (2) of r. 3. According to the writ petitioner the locality was not in need of any additional school as it will involve unhealthy competition. The High Court rejected the writ petition on the ground that the petitioner therein cannot make any grievance of the grant made to the third respondent to start a school after a proper consideration of the merits of the claim of the latter.

Dr. Barlingay, learned counsel for the writ petitioner, who is appellant in this appeal, found considerable difficulty to satisfy us that any legal rights of the appellant herein had been infringed

by grant of permission to the third respondent. We have already referred to the fact that the State has pointed out that even when the writ petitioner was running a school with classes V to X, the Zila Parishad was running another school in the same area with classes V to VII. The State had also pointed out that the population of the area demanded an additional school. From the mere fact that by the opening of another school, some of the students of the appellant school may seek admission in the new school it cannot be stated that any of the appellant's legal rights have been infringed. Dr. Barlingay has not been able to satisfy us that in granting permission to the third respondent any extraneous or irrelevant matters have been taken into account by the District Committee or the educational authorities. Nor was he able to satisfy us that the reasons given by the District Committee for the grant of permission to. the third respondent on the ground that it had a long experience in running schools and that its financial position is also good, are erroneous. If so, it follows that there is no merit in this appeal. In the result the judgment and order of the High Court allowing Special Civil Applications Nos. 420 and 421 of 1966 are set aside and Civil Appeals Nos. 160 and 161 of 1968 are allowed. The writ petitioners in Special Civil Applications Nos. 420 and 421 of 1966 will pay the costs of the appellants in both the appeals. There will be only one hearing fee to be paid by the two writ petitioners in equal proportion.

The judgment and order of the High Court dismissing Special Civil Application No. 694 of 1965 are confirmed and Civil Appeal No. 878 of 1968 will stand dismissed. The appellants will pay the costs of the first respondent therein. V.P.S.