

(2004) 11 AHC CK 0160

In the Allahabad High Court

Case No : Writ Petition No.2049 (M/S) of 2003 (connected with writ petition Nos. 6415 (S/S) of 2002, 7179 (M/B) of 2002, 2759 (PIL) of 2003 and 4704 (S/S) of 2003)

Arun Chandra and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 17-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 7, 10, 16B, 16C(1)
Proviso

Citation : (2004) 11 AHC CK 0160

Hon'ble Judges : Khem Karan, J and G.K.Gupta, J

Final Decision : Allowed

Judgement

Khem Karan, J.—These five writ petitions under Article 226 of the Constitution of India, relating to the affairs of Colvin Taluqdars, Inter College, Lucknow (for short the College) raise almost common question of law and facts, hence are being disposed of by this common judgment and order.

BACKGROUND FACTS:

2. Established more than a century ago in 1892, by Colvin School Society, a body registered under the Societies Registration Act, 1860, in the beginning this College imparted education, from Classes VI to XII, but later on a primary section was also opened. It functioned as a unit of erstwhile Canning College (now known as Lucknow University Lucknow), and was receiving from it an annual grant of Rs.25,000/ or so. There came an Intermediate Education Act, 1921, to regulate the Secondary Education in the State. As the name of the College gives a clue, erstwhile zemindars and taluqdars, had greater sway in the Management of the College. With a view to retain its distinct identity the Management prevailed over the then provincial Government, (see G.O. No.459 E/XV733 (camp) dated 30.9.1926 made available by Sri D.K. Misra, alongwith his written submission) to the constitution of Management Committee as under:

1. The Commissioner Lucknow Division as President.
2. The Deputy Commissioner Lucknow.
3. The District Inspector of Schools, Lucknow Division.
4. Two eminent educationists to be nominated by the managing Committee, of whom one was to be an officer or teacher of Lucknow University.
5. Two Zamindars of Agra Province to be nominated by British Indian Association Oudh.
6. Two exstudents of Colvin Taluqdars School, to be nominated by British Indian Association Oudh.
7. Eight members of the British Indian Association Oudh, to be nominated by the Association.

The Principal of the College was to be the exofficio Secretary, but with no right to vote and the term of the managing Committee was to be three years.

3. The nature of the Constitution of the Committee of Management, was substantially the same even on 17.4.1977, when British Indian Association, Avadh (AnjumaneHind Avadh), decided to have the Scheme of Administration indicated in Annexure6 to writ petition No.7179 (M/B) of 2002. There is nothing in the pleadings of the College/Management to say that any substantial change has taken place even after 1977, in the colour of the said constitution of the Committee of Management.

4. The above mentioned G.O. dated 30.9.1926 and the letter No.G/4386, dated 25.1.1934, written by the Director of Public Instructions, United Provinces, to the District Inspector of Schools (for short DIOS), Lucknow, reveal that the College was subject to the U.P. Education Code and also to the control of the Govt. and its officers. This letter dated 25.1.1934 (photocopy of which has been made available by Sri D.K. Misra along with his written submissions) would show that on the request of the College and on recommendation of DIOS Lucknow, the College was exempted from operations of paragraphs 86, 88(b), 93, 96(d), 109 and 358 (b) of the Education Code but the request for exempting it from the operation of other paragraphs, was turned down.

5. It transpires from perusal of Govt. Order No.A/966/XV3007/78/1952, March 15, 1953 (copy of which has been made available by Sri D.K. Misra alongwith this written submission) that on the repeal of the Canning College and British India Association Act, 1920 by Section 339 of U.P.Z.A. & L.R. Act, 1950, the Govt. of U.P. sanctioned recurring grant of Rs.25,000/ a year, for maintenance of the College. This grant was increased from time to time and there appears no dispute that the College, received this financial assistance upto 199394. Annexure13 to writ petition No.4704 of 2003 also speaks to the same effect and according to it, this College received annual financial assistance from 196970 to 199293.

6. On insertion of Sections 16A, 16B, 16C etc., by U.P. Act No.35 of 1958, w.e.f. 1959, it became compulsory for every recognized institution (as referred to in Section 2(b) of the Act of 1921) like this College, to have a Scheme of Administration, duly approved by the Director of Education. It transpires from perusal of judgment dated 20.4.1976 (Annexure 6 to writ petition No.2049 of 2003) delivered by this Court in writ petition No.533 of 1970, Chandra Mohan Asthana v. Committee of Management Colvin College, that this College had no Approved Scheme of Administration, even after lapse of about 16 years by then, to the insertion of Sections 16A, 16B etc. It would be useful to quote the following critical observations of this Court made in the said judgment:

?In this view of the matter, in my opinion, it is beyond the competence of Director of Education or the State Govt. to grant any exemption to this institution. I have also no hesitation in observing that an extremely definite attitude has been adopted and followed by the institution in not submitting the Scheme of Administration. The managing Committee consists of very Senior Administrative Officers of the Government and very important personalities; merely on this score it appears that the institution had the courage to fleet and circumvent the provisions of the Amendment Act. I would like to observe that inertness on the part of the Director of Education with respect to this institution hardly can be appreciated. The above mentioned provisions of the Amendment Act of 1958 came into force in the year 1969 (perhaps in 1959) and it is surprising and shocking that even with a lapse of 16 years the Director of Education and the Secretary of Education have only been a silent spectators to the activities of the managing committee of the institution???there is no provision in the Act for an autonomous institution. If the institution is harping and wanting to have autonomy, it is open to it to separate itself and surrender its recognition by the Board of High School and Intermediate Education. Actually the Director of Education should have taken steps under the Act to withdraw the recognition of the institution??

7. It was on 18.7.1964, that the Govt. leased out to the College, about 89 acres of valuable land, just on the University road, vide lease deed dated 18.7.64, (Annexure No.27 to writ petition No.4704 of 2003) on nominal yearly rent of few hundred rupees. This lease was for a period of 30 years, with a facility of renewal upto a period of 90 years.

8. The College managed to get No Objection Certificate from the Govt., in the year 1980, for seeking affiliation from Council for the Indian School Certificate Examination, New Delhi (hereinafter referred to ICSE). There is no dispute that while giving No Objection Certificate, the Govt. imposed certain conditions including one that classes VI, VII and VIII as well as U.P. Board Wing Classes should continue. ICSE granted affiliation for preparing students for examination to be conducted by it, presumably subject to the simultaneous running of U.P. Board Classes and Classes VI, VII and VIII and consequently these Classes continued as usual.

9. As no principles of Scheme of Administration referred to in Sections 16A and 16B were provided by U.P. Act No.35 of 1958, the Schemes submitted by different institutions, differed on vital points and so with a view to obviate this anomaly and with a view to bring about uniformity in such Schemes of Administration, the legislature inserted Sections 16CC and 16CCC by U.P. Act No.1 of 1981 and Third Schedule by U.P. Act No.9 of 1981. These combined together envisaged a Scheme of Administration consistent with the principles enumerated in the said Schedule. Schemes already approved or deemed approved, were to be altered or amended accordingly in the manner provided in Section 16CCC.

10. It transpires from perusal of letter dated 23.7.1981 (Annexure12 to writ petition No.7179 of 2002), written by the Director of Education to the Manager of the College, letter dated 10.9.1982 (Annexure4 to writ petition No.7179 of 2002) written by the Deputy Director of Education (College says, it was not received by it), letter dated 17.2.1983 written by Director with reference to earlier letter dated 23.7.1981 (Annexure13 to writ petition No.7179 of 2002), letter dated 23.2.1985 (Annexure14 to writ petition No.7179 of 2002), written by Deputy Director of Education to Govt. of U.P., D.O. Letter dated 7.10.1985 (Annexure15 to writ petition No.7179 of 2002) written by Secretary Education to Govt. of U.P., letter dated 2.2.1988 (Annexure5 to writ petition No.7179 of 2002) and letter dated 10.6.1998 (Annexure16 to writ petition no.7179 of 2002) of Secretary Education to Govt. of U.P., that in spite of various letters and show cause notices issued from time to time in between 1981 to 1998, the College bothered least, to have Approved Scheme of Administration consistent with the principles, set out in 3rd Schedule of the Act of 1921.

11. It was on 22.8.2001 that the Committee of Management resolved (Annexure2 to writ petition N.6415 of 2002) for seeking total disaffiliation from U.P. Board from academic Session 20022003 and it is alleged that accordingly a letter dated 14.1.2002/18.1.2002 (copy of which is Annexure SCA2 to writ petition No.4704 (S/S) of 2003) was sent to the Director with a copy to the Secretary of Board, informing them that U.P. Board Wing as well as Senior Basic Section (from classes VI, VII and VIII) were to be closed w.e.f. academic Session 20022003 and requesting the Board to allow present students of Classes IX and XI to appear in Board's Examination of 20022003. The College notified that there shall be no admissions in classes VI, VII & VIII, in academic Session of 20022003. The DIOS Lucknow wrote letters dated 18.7.2002 and 7.8.2002 (Annexures4 & 1 to writ petition No.6415 of 2002) expressing his grave concern over the decision for closing Classes VI, VII & VIII and directing the Management to continue those classes also.

12. Writ petitionsreliefs claimed therein and the responses of the respective oppositeparties.

Aggrieved of these two letters dated 18.7.2002 and 7.8.2002 of DIOS, Lucknow the Management filed a writ petition No.6415 (S/S) of 2002 before this Court at

Lucknow for (a) quashing the same, (b) prohibiting the DIOS from insisting on the compliance of the directions contained therein and (c) for commanding the Secretary of U.P. Board to accord disaffiliation from academic session 2002-2003. On 14.11.2002 this writ petition came up before this Court, Sri S.C. Yadav, the then learned counsel for the State informed the Court on the basis of instructions received, that his clients had no objection to disaffiliation and consequently this Court stayed the operation of those two letters of DIOS. The grounds taken in this writ petition inter alia are that U.P. Board or DIOS, Lucknow have no concern with the running of classes VI, VII and VIII as the same are governed by the provisions of Basic Education Act of 1972 and none of the authorities under the said Act of 1972 has taken any objection to the closure of those junior classes. The DIOS, Lucknow has filed counteraffidavit on behalf of opposite parties No.1 to 4 saying that U.P. Basic Education Act, 1972 is not applicable to those classes and he was well within his powers to ask the College not to stop admissions in classes VI, VII and VIII. It has also been said that derecognition of the College will not be in the public interest.

13. On issuance of notice dated 13.11.2002 by the Principal asking the auditor (sic editor) Dainik Hindustan, Lucknow to publish in its issue of 14.11.2002, a notice that College was to be closed sine die, due to boycott of work by Class IV employees, Parent Teacher Association and another filed a writ petition No.3738 (M/S) of 2002 on 21.11.2002, for quashing that communication, for commanding the State of U.P. to appoint authorized controller under Section 16D(4) of the Act of 1921 as per the recommendation dated 23.3.1985 of the Director, to command the Divisional Commissioner in his capacity as President of the Committee of Management to ensure smooth running of the College and also to command College authorities to abstain from getting the lease renewed in the name of Manager cum Secretary etc. The grounds inter alia were that communication dated 13.11.2002 was nothing but a prelude to the process of disaffiliation from U.P. Board, that the resolution of the Committee of Management for disaffiliation from U.P. Board was against the report of three members of Committee, constituted by earlier resolution dated 14.3.2002, that the Management was under notice, vide letter dated 23.7.1981 of the Director and vide letters dated 7.10.1985 and 10.6.1998 of the Government, as to why the Authorized Controller should not be appointed. It was also stated that District Inspector of Schools had asked for certain information from the College in the context of request for disaffiliation, but the same was not being furnished. This writ petition No.3738 (M/S) of 2002 was dismissed as infructuous on 8.5.2003, but with the observation that if the petitioner wanted to file any public interest litigation, he might approach the appropriate forum.

14. On the appointment of Director in the College by the Management, the DIOS, Lucknow again raised objections through his letters dated 17.2.2003 and 2.5.2003 saying that under the provisions of the Act of 1921 no such post was contemplated. Aggrieved of these two letters of DIOS, the management filed a writ petition no.1480 (M/S) of 2003 contending inter alia that after the total

affiliation of the college with ICSE and after disaffiliation of U.P. Board Wing, in terms of Govt. Order dated 30.11.1991, the DIOS had no business to ask as to why the Director had been appointed. This Court passed an interim order dated 8.5.2003, staying the operation of letter dated 17.2.2003 and 2.5.2003 of District Inspector of Schools. This writ petition No.1480 of 2003 was dismissed as infructuous and the question relating to appointment of Director no more survives.

15. Apprehending disaffiliation of U.P. Board Wing and consequential, ouster/removal from the job fourteen teachers (petitioner No.1 to 14 in writ petition No.2049 of 2003) and few others (petitioners No.15 to 20) filed a writ petition no.2049 (M/S) of 2003 on 25.6.2003 praying for (a) quashing the notice (Annexure26) issued by the Director Sri Rajiv Buxi to the effect that students of Classes VI, VII and VIII of academic session 20022003 will be prepared to the next higher classes only as per syllabus of the council for the Indian School Certificate Examination, New Delhi and if anybody had any reservations, he might withdraw his son/ward (b) to command the oppositeparties No.1, 2 and 3 to ensure that education was imparted in classes VI to XII as recognized by U.P. Board (c) to command oppositeparties No.1 to 4 to ensure payment of salary to the teachers and their employees of U.P. Board Wing under and in accordance with Uttar Pradesh High School and Intermediate College (payment of salaries of teachers and other employees) Act, 1971 (for short the Act of 1971) and to prohibit oppositeparties No.1 and 2 from extending grantinaid (d) to command the oppositeparty No.1 to ensure that the property and other funds were not utilized for purposes other than imparting education to the classes relating to U.P. Board (e) to quash the resolution dated 24.12.2002 of the Management Committee by which a decision was taken to appoint a Director in the College. It was said in para 12 of this writ petition that while petitioner Nos.1 to 5 were confirmed lecturers petitioner Nos.6 to 14 were confirmed Assistant Teachers in trained graduate grade. After referring to the developments of the recent past, they said that there was a great apprehension that their services might be dispensed with. According to them, there was no provision for appointment of the Director and the College was still affiliated to Board of High School and Intermediate Education.

16. In their response, the opp. parties Nos.5 to 8 have contended that with the fresh/addl. Affiliation to ICSE, New Delhi in April 2003, the U.P. Board Wing stood totally disaffiliated from U.P. Board, in terms of Govt. Order dated 30.11.1991 (AnnexureSCA9 to writ petition No.2049 of 2003). They elaborated that College was not in the list of the Colleges receiving grantinaid nor was governed by the Act of 1971, hence owing to depleting strength of the students and financial constraints, the Management had no option, but to seek disaffiliation from U.P. Board and close down the U.P. Board Wing. It was claimed that the Director of Education was duly informed vide letter dated 18.1.2002 (copy of which is Annexure2 to this short counter affidavit) about the resolution dated 22.8.2001 of Management Committee (copy of which is Annexure1 to this short

counteraffidavit) and copy of this letter was also endorsed to the Secretary of U.P. Board, Allahabad. It is stated in paras 7 to 9 of this short counteraffidavit of Sri Rakesh Pratap Singh, that Act of 1921 does not apply to classes 1 to VIII and the same are governed by U.P. Basic Education Act, 1972 (hereinafter referred to as the Act of 1972). It has also been averred in para 31 that in view of various judgments (SCA 18, 19, 20 & 21) of this Court in respective writ petitions, writ petition against the College is not maintainable, for such a private unaided College does not fall within the definition of 'State' under Article 12 of the Constitution of India. Reference to the correspondence by the College with ICSE or vice versa, that took place in 2003, has also been made.

17. It appears that taking that U.P. Board Wing stood derecognized or disaffiliated from April, 2003, the Committee of Management resolved on 28.6.2003 to abolish about 22 posts of the teachers/lecturers and to dispense with the services of some of the teachers. It therefore, issued orders dated 30.7.2003, dispensing with the services of 11 teachers. Aggrieved of it, the said teachers filed writ petition No.4704 (S/S) of 2003, for quashing the resolution dated 28.6.2003. The consequential orders dated 30.7.2003 (Annexures 1 to 11) and for payment of salary etc. The main ground taken in this writ petition is that services have been dispensed with without following the procedure prescribed under 16G of the Act of 1921 and without prior permission of DIOS concerned. The Management has defended its action by saying that after April 24, 2003, the College was no more a recognized College governed by the Act of 1921 and moreover employer has right to abolish the posts.

18. Writ petition No.7179 (M/B) of 2002 was filed as Public Interest Litigation. It is prayed in it that Govt. be commanded to appoint Authorized Controller and to take the College in the list of the schools on grant-in-aid and provide financial assistance to it and Special Nazool Officer be asked not to renew the lease in favour of the Colvin School Society. Likewise in writ petition No.2759 (PIL) of 2003 also styled as Public Interest Litigation, reliefs have been sought for commanding the Govt. to appoint Authorised Controller till a Management Committee is constituted in accordance with the Scheme of Administration and to command the opposite party No.6 to implement order dated 17.2.2003 (Annexure 14) and to remove the Director. It has been stated in both these writ petitions that in absence of any permission, under Regulation 10 of Chapter VII of the Regulations so framed by the Board under the Act of 1921, for closing down the institution, it continues to be a recognized institution. It has also been said that no proper notice was given to the Board as required under Regulation 10 of Chapter VII and in absence of express permission of the Board to close down U.P. Board Wing of the College, it continues to be a recognized institution. They have also tried to say that there is no valid Committee of Management. The petitioners have referred to earlier correspondence in between the Director and the Management regarding proposed appointment of authorized controller. It is said the G.O. dated 30.11.1991 does not apply to the case in hand, as it relates to grant of fresh No Objection Certificate for affiliation with the Boards/Councils

mentioned therein. The Management has tried to oppose both these PILs, by saying that these have been filed at the instance of vested interest, who were opposing disaffiliation from U.P. Board. Reference to certain judicial pronouncements on the subject of PIL, has also been made, so as to say these two petitions are no PILs in the true sense. Writ petition No.2759 of 2003 is opposed, also on the ground that it is barred by principles of resjudicata, as earlier petition No.3738 of 2002, on the same cause of action for almost similar reliefs, has already been dismissed on 8.5.2003.

19. POINTS FOR DETERMINATION

We have heard the parties counsel and have also gone through the material placed on the record. Sri Vivek Raj Singh, Dr. L.P. Misra and Sri D.K. Misra also placed on record their written submissions. The following points arise for determination;

1. Whether affiliation with U.P. Board ceased or stood surrendered w.e.f. April 24, 2003, with addl. or fresh affiliation with ISCE/ISC in terms of Govt. Order dated 30.11.1991?
2. Whether U.P. Board Wing of the College stood closed down w.e.f. academic session 20022003 under Regulations 10 of Chapter VII of the Regulations framed by the Board under the Act of 1921?
3. Whether the Statement dated 14.11.2002 of State Counsel in writ petition No.6415 of 2002 to the effect that he has no objection to disaffiliation from U.P. Board, has any bearing on the question in issue?
4. Whether the two PILs, namely writ petition No.2759 of 2003 and 7179 (M/B) of 2002 are not maintainable as such PILs for the reasons stated by the Management in its pleadings?
5. Whether writ petition No.2759 (PIL) of 2003 is hit by the principles of resjudicata as like petition by the Parent Teacher Association and another (writ petition No.3738 (M/S) of 2002) almost on the same cause of action was dismissed as infructuous on 8.5.2003. If so, its effect?
6. Whether the College has any approved or deemed approved Scheme of Administration as contemplated by the relevant provisions of the Act of 1921. If not, its effect?
7. Whether Senior Basic Section imparting education from Classes VI to VIII is part of the recognized institution and is subject to the control of DIOS Lucknow?
8. Whether the institution or its Management is amenable to writ jurisdiction of this Court?
9. Whether the impugned orders dated 30.7.2003 (Annexures 1 to 11 in writ petition No.4704 (S/S) of 2003) are in violation of Section 16G of the Act of 1921 or are against the principles of natural justice and deserve to be quashed;

10. Whether the resolution dated 28.6.2003 of the Committee of Management for abolition of 22 posts on account of deaffiliation of U.P. Board Wing of the College from the Board, is bad in law and deserves to be quashed as such.

20. POINT No.1:

Undisputedly, the College was a recognized institution within the meaning of Section 2(b)(d) of the Act of 1921, at least before April 24, 2003 when according to the Management it stood derecognized with fresh affiliation of U.P. Board Wing with ICSE, New Delhi. It was on 22.8.2001 that the Management of the College adopted a resolution (copy of which is Annexure SCA1 to writ petition No.4704 of 2003) to seek disaffiliation from U.P. Board on the grounds inter alia that the students were losing interest in U.P. Board Examination, that strength of the students in High School and Intermediate classes was decreasing day by day and that there were financial constraints to continue with U.P. Board classes simultaneously with High School and Intermediate classes relating to ICSE council. It appears that on 18.4.2003 the Secretary cum Manager of the College wrote a letter (SCA10 to writ petition No.4704 of 2003) to Chief Executive Officer of the council at New Delhi for affiliation of the remaining part of the U.P. Wing and the Chief Executive Officer of the council wrote back on 24.4.2003 (SCA11 to writ petition No.4704 of 2003) that the council had no objection to accord affiliation to the remaining part of the U.P. Board Wing. Another letter dated 16.7.2003 (SCA12 to writ petition No.4704 of 2003) written by Chief Executive Officer of the council at New Delhi to the Manager of the College, reiterates that affiliation was accorded w.e.f. 24.4.2003.

21. The Management of the College has tried to say that as affiliation of April 2003, with ICSE, New Delhi was fresh one so in view of Govt. Order dated 30.11.1991 (Annexure 3 to writ petition No.4704 of 2003) the recognition of the College by U.P. Board stood withdrawn, without any express orders of the Board. But the submissions of Dr. L.P. Misra and the learned counsels assisting him is two fold. They say that the Management has taken contradictory stands on this point. They contend that on the one hand, the Management is seeking a relief in its writ petition No.6415 of 2002, for commanding the Secretary of the Board to accord disaffiliation and on the other, it is saying that it stood disaffiliated w.e.f. 24.4.2003, in terms of G.O. dated 30.11.1991. Their second contention is that even if it is assumed for the sake of argument that ICSE accorded affiliation in April 2003, as claimed, the Govt. Order dated 30.11.1991 would not apply to the case in hand. According to Dr. Misra, firstly this G.O. being prospective in nature, would not rescind or modify the conditions, imposed earlier in 1980 while granting No Objection Certificate to the College, for seeking affiliation from ICSE, New Delhi, and secondly, there are no pleadings to the effect that the College ever applied to the Govt. or Director for grant of No Objection Certificate in terms of this Govt. Order.

22. We have considered the respective submissions, in the light of pleadings of the parties on this point. Neither the Act of 1921 nor the Regulations framed

thereunder, provide for automatic derecognition or disaffiliation, from U.P. Board, on affiliation of the College with any other Board or Council. At least none of the learned counsels, could draw our attention to any such statutory provision. It is never the case of Management that the Govt. or the Board accorded any such derecognition or disaffiliation. We have to examine whether recognition of the College by U.P. Board, stood withdrawn or surrendered, in terms of Govt. Order dated 30.11.1991.

23. A perusal of this Govt. Order dated 30.11.1991 would make it clear that it deals with the grant of No Objection Certificate, to recognized Colleges, desirous of having affiliation with the Indian School Certificate Examination, New Delhi/ Central Board of Secondary Education, New Delhi; and the conditions that have to be imposed, while granting such Certificate. It provides that the institution desirous of such No Objection Certificate should apply on a form given in Appendix II, to the Deputy Director concerned and should also deposit a fee of Rs.500/-, in the Govt. treasury. Then it says as to what special conditions have to be imposed and these will include a condition that on affiliation with the Council/ Board at New Delhi, the College would stand derecognized from U.P. Board and grant-in-aid would stop.

24. In absence of any pleadings of the Management/College that it sought fresh No Objection Certificate from the Govt./Board, in terms of this Govt. Order dated 30.11.1991, we fail to understand as to how the Management is banking upon this order, for saying that recognition of the College with U.P. Board, stood withdrawn or surrendered or ceased. We find considerable force, in the submission of Dr. L.P. Misra and others, that this Govt. Order does not help the Management, in proving derecognition or disaffiliation from U.P. Board. This G.O. deals with the grant of No Objection Certificate and with the conditions, which have to be imposed. When no such No Objection Certificate was demanded in terms of this G.O., and when the Govt. or its officers granted no such No Objection Certificate as mentioned in this Govt. Order, then there appears no logic in taking shelter of one of the conditions, providing for automatic recognition or automatic stoppage of grant-in-aid. Moreover, this Govt. Order does not rescind or supersede or modify earlier Govt. Order of 1980 by which No Objection Certificate was given subject to continuance of U.P. Board classes and also of classes VI, VII and VIII.

25. So, our answer is that recognition of the College with U.P. Board did not come to an end, on additional or fresh affiliation with ICSE, New Delhi, in April 2003.

26. POINT No. 2:

It has been averred by the Management in its pleadings, that on the basis of a resolution dated 22.8.2001 (SCA1 to writ petition No.4704 of 2003), the College/ Management informed the Director of Education, vide letter dated 14.1.2002/18.1.2002 (SCA2 to writ petition No.4704 of 2003) with a copy to the

Secretary of the Board, about its intention to close down U.P. Board Classes from academic years 2002-2003, but with a relaxation to allow the students of classes IX and XI of U.P. Board Wing to appear in Board Examination of 2002-2003. It is said that no reply was received from the Director or from the Secretary of Board as to whether the request of the College for closing the classes of U.P. Board had been accepted or not. It has been averred that the College decided to stop admission in classes VI, VII and VIII as admission in those classes would have created a problem. Perhaps, the College/Management wants to say that it had already apprised the Board of its intention to close the classes of U.P. Board from a particular academic session and since nothing was heard from their side in that context, so the College stood deaffiliated/derecognized.

27. This plea of the College/Management is being contested by the other side on the ground that firstly no formal one year notice as contemplated under Regulation 10 of Chapter VII was given to the Board and secondly even if it is assumed that such a notice was given, the College would not stand closed, in absence of express permission of the Board. It has also been said that in absence of any approved scheme of administration, the Committee which resolved to close down those classes was not validly constituted Committee to take such a decision. Regulation 10 (127) of Chapter VII of the Regulations so framed under the Act of 1921 reads as under;

?No institution which is recognized by the Board as High School or Intermediate College shall be closed down without prior permission of the Board and unless a written notice by registered post is given to the Secretary of the Board with a copy to the Director at least one year prior to the proposed date of closure, setting forth the reasons for the closure of the institution. The Board may permit the closure of the institution subject to such conditions and transfer of records of the institution to any other institution or authority as it may deem fit.?

28. A bare perusal of this provision makes it clear that prior permission of the Board is essential for closing down of a recognized institution, even after one year notice. It is never the case of the Management or the College that any such permission was accorded by the Board. The correspondence placed on record by the State or by the other side makes it clear that none of the authorities was in favour of closing down of the institution and the matter was sent to the Government for its consideration. Sri Vivek Raj Singh was not able to show that Board or the Government accorded any permission to close down the institution.

29. Sri Vivek Raj Singh appearing for the Management, is absolutely correct in saying that establishing and maintaining an educational institution is an occupation under Article 19(1) (g) of the Constitution of India, as held by the Apex Court in recent 11 Judges decision in famous T.M.A. Pai Foundation v. State of Karnataka, 2002(3) UPLBEC 2817=AIR 2003 SC 355=JT 2002(9) SC 1 and as subsequently interpreted by a Constitution Bench in Islamic Academy of Foundation v. State of Karnataka, 2003(4) AWC 3119. But that right is not unbridled and is or can be, subject to such restrictions as may be placed under

clause (b) of Article 19. Although Sri Singh says that control over unaided private educational institutions should be minimal as observed by the Apex Court in T.M.A. Pai's case, yet it is never his argument that such recognized institutions can be closed down at will or the Govt., granting recognition, would have no role to play when the question of closing down the institution arises. When the Govt. grants recognition to an educational institution to impart education to children upto a particular standard, especially to the children upto 14 years of age, it really creates an agency to fulfil constitutional obligations of the State. (see: Mohini Jain v. State of Karnataka, AIR 1992 SC 1858). Receiving of education by children upto the age of 14 years, is recognized as a fundamental right of these children, so involvement of the State or its officers, at the stage of stopping the imparting of education can be well appreciated.

30. Regulation 10 of Chapter VII of the Regulations so framed by the Board, under the Act of 1921, provides that a recognized institution, shall not be closed down without prior permission of the Board and without a prior one year notice (from the date of intended closure) indicating the reasons therefore. This Regulation is a type of restriction under Article 19(6) of the Constitution of India, on the right to establish and maintain an educational institution. Although this Regulation can be attacked in absence of elaborate mechanism to examine the genuineness of reasons for the closure or in absence of remedy to the Management against refusal of the Board etc. There may be cases, where a recognized institution may not be receiving grant in aid and in absence of it, may have genuine reasons to close down the College/School.

31. Since vires of Regulation No.10 of Chapter VII of the Regulations, are not under attack, we need not dwell upon it any more. As stated earlier it is none the case of management that the Board granted any permission in writing, for closing down U.P. Board Wing of the College. We think the mere notice dated 14.1.2002/18.2.2002 was not sufficient, unless the permission was also granted by the Board, under Regulation 10 of Chapter VII of the Regulations. So our conclusion on this point is that U.P. Board Wing of the College, did not close down, on the basis of notice dated 14/18.1.2002, in absence of express prior permission of the Board under the said Regulation.

32. POINT No.3

It transpires from order dated 14.11.2002, passed in writ petition No.6415 of 2002 that the learned counsel for the State informed the Court, on the basis of instructions received, that he had no objection to the disaffiliation of the College from the Board. In this writ petition the Management had challenged order dated 18.7.2002 and 7.8.2002 of the DIOS by which he had asked the management not to stop the admission in classes VI, VII and VIII and to continue those classes asusual. Sri Vivek Raj Singh has placed great reliance on this statement of the learned counsel for the State in para9 of his argument, so as to say that the State as well as the Secretary of the Board gave their consent to the disaffiliation of U.P. Board Wing. The learned counsel appearing for the State

informed the Court during the course of his oral submissions that in view of the correspondence that was taking place between the authorities and the Management and between the authorities and the Govt., there was hardly any occasion for Board or the Govt. to give instructions to the counsel to make statement that they had no objection against disaffiliation of the College from the U.P. Board.

33. We are of the view that consent to disaffiliation/derecognition can not be inferred on the basis of such statement of State Counsel. The Court is of the view that derecognition or deaffiliation should have come in black and white from the Board and mere statement of the counsel without any firm basis for making such statement, was not sufficient enough to conclude that the Board accorded consent for disaffiliation of the College from U.P. Board or for closing down that wing. The point is decided accordingly.

34. POINT No.4:

The Management of the College has raised objection against the maintainability of the two PILs, namely writ petitions No.7179 of 2002 and 2759 of 2003, on the ground that the same have been filed by or at the instance of persons, opposing the disaffiliation of U.P. Board Wing or to the closing down of classes VI, VII and VIII. According to them these writ petitions do not satisfy the test of public interest litigation as laid down by the Apex Court in *Malik Brothers v. Narendra Dadhich and others*, (1999) 6 SCC 552, *Ram Saran Autyanuprasi and another v. Union of India and others*, (1989) Supp. (1) SCC 251. Sri Vivek Raj Singh has referred to the relevant paras of the pleadings, where it has been shown as to how the persons, filing these PILs are connected with the teachers of the College affected or likely to be affected by the closure of the institution. On the other hand, it has been submitted by Dr. L.P. Misra and other advocates that it can not be said that the Parent Teacher Association or Parhit Society, have no concern with the closing of the classes of the institution. They say that Parent Teacher Association is a body formed under and in accordance with Parent and Teacher Association Regulation 1986, framed under the Act of 1921 and a cursory perusal of the object of those Regulation would reveal that its one of the objects is to ensure that the institution proves to be fruitful to the Society and to advise the Management and to render all possible assistance in properly conducting the affairs of the institution. According to them, these two bodies have brought these petitions to vindicate the rights of several students, whose future is at stake, due to threatened disaffiliation or closing down of the institution and so these have rightly been filed as public interest litigation. Sri Vivek Raj Singh has devoted sufficient energy during the course of his arguments and also in para 32 of his written submissions to say that the said Parent Teacher Association is not a duly constituted/formed association and does not represent the interest of the parents or teachers and is dominated by frustrated teachers/parents and so action at its instance should not be held to be maintainable as PIL.

35. The purpose of the PIL is to allow a bonafide citizen or organization to come

forward for vindicating the rights of persons, who either by reason of illiteracy or ignorance or economic or social backwardness can not knock the doors of the Court, for redressal of their grievances. The traditional rule of locus standi, is also relaxed or given up, in cases where likely injury or real injury is to a determinate class of persons, such as in environmental matters. Long back in the year 1976, the Apex Court relaxed the traditional rule of "locus standi" and thereby sown the seeds of PIL in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) 3 SCC 832. The purpose was to make the justice available and accessible to those persons also, who by reason of ignorance or illiteracy or social or economic backwardness or the like, were themselves unable to knock the doors of the higher and highest Court for redressal of their grievances. Subsequent decisions of the Apex Court mainly in *Fertilizer Corporation Kamgar Union v. Union of India*, AIR 1981 SC 344, *S.P. Gupta v. Union of India*, 1981 Suppl. SCC 87=AIR 1982 SC 149, *Peoples Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235=1982 SCC (L&S) 275, *Bandhus Mukti Morcha v. Union of India*, (1984) 3 SCC 161+1984 (L&S) 389, *Sheela Base v. Union of India*, (1988) 4 SCC 226, *Janta Dal v. H.S. Chaudhary*, (1992) 4 SCC 305, *Veena Sethi v. State of Bihar*, AIR 1983 SC 339 and in *Balco Employees Union v. Union of India*, 2001 AIR SCW 513, have developed and consolidated that concept. It would be profitable to recall the following observations of Bhagwati, J. (as his Lordship then was) made in *S.P. Gupta's* case (supra). He said:

It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of an constitutional or legal right of any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such persons or determinate class of persons is by reason of poverty, helplessness, or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such persons or determine class of persons, in this Court under Article 32 seeking juridical redress for the legal wrong or injury caused to such persons or determinate class of persons???This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by persons seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public minded individual as a writ petition and act upon it??But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting

bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such persons and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in court. We may also point out that as a matter of prudence and not as rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the organization which can take care of such cases.?

Conscious of the possible misuse of this new tool of PIL, the Apex Court observed as follows, in *Jasbhai Motibhai Desai v. Roshan Kumar*, (1976) 1 SC 671:

?It will be seen that in the context of locus standi to apply for a writ or certiorari, an applicant may ordinarily fall in any of these categories (i) "person aggrieved", (ii) "stranger", (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.?

36. Closing down of a recognized educational institution, imparting education in such lower elasses, is a matter of concern not only to the students getting education therein but to the prospective students as well and also their parents and guardians. We hold the view that parent/teachers Association or a registered Society having interest in the education of children or any spirited citizen, can come forward to draw the attention of the Court for suitable orders or directions in cases like this wherein recognized educational institution is going to be closed down. It may be dangerous to throw away such petitions only on the grounds of no locus standi. So we find it difficult to accept the arguments of Sri Vivek Raj Singh that these two PILs are not maintainable for the said reasons. The point is decided accordingly.

37. POINT No.5:

It has vehemently been pleaded by the College/Management and argued by Sri Vivek Raj Singh that writ petition No.2759 of 2003 is barred by the principles of resjudicata, because earlier writ petition No.3738 (M/S) of 2002 brought by the same Parent/Teacher Association, almost for the same reliefs, was dismissed on

8.5.2003. Sri Vivek Raj Singh has tried to highlight in his oral as well as written submissions, as to how the earlier writ petition No.3738 of 2002 was on the same cause of action and for almost for the same reliefs. He says that in view of the law laid down by the Apex Court in *Devi Lal Modi v. Sales Tax Officer Ratlam*, AIR 1965 SC 1150, *Gulab Chand Chhotey Lal v. State of Gujrat*, AIR 1965 SC 1153, *State of U.P. v. Nawab Husain*, (1977) 2 SCC 806, *Forward Construction Company v. Prabhat Mandal Andheri*, AIR 1986 SC 391, *Dariyav and others v. State of U.P.*, AIR 1961 SC 1457 and of this Court in *Pradeep Goel v. Regional Manager State Bank of India*, LCD 1992 (10) Allahabad 84, the present writ petition No.2759 of 2003, is barred by the principles of resjudicata or constructive resjudicata. In reply to it, Sri D.K. Misra, the learned counsel for the petitioner in that writ petition has contended that none of the judicial pronouncement is applicable to the facts and circumstances of the case because the Court itself had permitted Parent Teacher Association to bring PIL before the appropriate Court. The attention of the Court towards order dated 8.5.2003 passed by this Court in earlier writ petition No.3738 of 2002 has been drawn. We have already mentioned in the earlier part of the judgment that while dismissing that writ petition of Parent Teacher Association on 8.5.2003, this Court provided that if the petitioner wants to file any public interest litigation, he may approach the appropriate forum. The question is whether this part of that order dated 8.5.2003 can be interpreted to mean that the Court gave a liberty to the petitioner to bring public interest litigation, if it so liked. But before we come to this point we would like to refer to the judicial pronouncements cited by Sri Vivek Raj Singh on this point.

38. *Devi Lal Modi's* case is an authority to say that after final decision in earlier writ petition, the subsequent writ petition on the same cause of action is barred by principles of resjudicata. The Constitution Bench decision is *Gulab Chand Chhotey Lal's* case (supra) is again on the same point that earlier decision on merits, will come in the way of subsequent writ petition on the same cause of action. In *Nawab Hussain's* case (supra) the Apex Court applied the principles of constructive resjudicata to PILs as well. *Dariyav's* case (supra) is a little elaborate as it rules:

1. If a writ petition filed by a party under Article 226 is considered on merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution.
2. If the writ petition under Article 226 is dismissed not on merits, but because of laches or because the party had alternative remedy, then the dismissal would not constitute a bar to subsequent petition under Article 32.
3. If the writ petition is dismissed in limine and an order is pronounced in that behalf whether the same would constitute a bar, would depend upon the nature of the order. If no speaking order is passed resjudicata would not be there.

4. If the writ petition is dismissed as withdrawn, it cannot be a bar to subsequent writ petition under Article 32.

39. But all that was said in the context of maintainability of a writ petition under Article 32, after dismissal of a writ petition under Article 226 on the same cause of action.

40. A learned Single Judge of this Court has held in Pradeep Goel's case that even if the writ petition is dismissed as withdrawn without permission to file a fresh petition the second writ petition in respect of the same cause of action will not be maintainable. His lordships also referred to Rule 7 of Chapter 22 of the Rules of the Court.

41. Considering the facts and circumstances of the case in hand, we can say it very safely that earlier writ petition was not dismissed on merits, but on the ground that it had become infructuous. Moreover, while dismissing the writ petition as infructuous the Court also observed that the petitioner could bring PIL before appropriate forum. This part of the order dated 8.5.2003 can easily be construed as if the Court permitted the petitioner to bring a public interest litigation. Where the Court itself permits a litigant to bring another petition without deciding the earlier petition on merits or without passing speaking order on merits, it is difficult to apply the principles of resjudicata or the principles of constructive resjudicata. In fact, the Court itself had given liberty to the petitioner to bring PIL. So, this point is also decided against the College/Management.

42. POINT No.6:

As we have already mentioned in earlier part of this judgment, that the material on the record of these writ petitions, does not disclose that the College had any Scheme of Administration as approved by the Director, so we would not repeat that discussion. We may also observe that the management itself has not referred to any such Scheme, consistent with the principles given in 3rd Schedule.

43. It is averred in para3 of writ petition No.4704 of 2003, paras34, 35 and 38 of writ petition No.2759 of 2003 and paras10 and 11 of writ petition No.7179 of 2002 that model Scheme of Administration sent by Deputy Director of Education, vide his letter dated 10.9.1982 (Annexure A12 to writ petition No.4704 of 2003) became approved in absence of any response from the side of the Management. In its counteraffidavit filed in writ petition No.7179 of 2002, the Management has tried to say that the letter dated 10.9.1982 of the Deputy Director of Education, by which model scheme of administration was sent for approval of the College, was never received. It is also conceded in para12 of the counteraffidavit that amendment suggested in the scheme of administration could not be approved by the Management and consequently the scheme of administration could not be amended as per the suggestion given by the Deputy Director of Education.

44. Let us see, whether there was deemed approval of Scheme of Administration, as sent alongwith letter dated 10.9.1982 of the Deputy Director. For convenience, Sections 16A, 16B, 16C, 16CC and 16CCC (as these exist at present) are reproduced below:

?16A. Scheme of Administration:

(1) Notwithstanding anything in any law document, or decree or order of a court or other instrument, there shall be a Scheme of Administration (hereinafter referred to as the Scheme of Administration) for every institution, whether recognized before or after the commencement of the Intermediate Education (Amendment) Act, 1958. The Scheme of Administration shall amongst other matters provide for the Constitution of a Committee of Management (hereinafter called the Committee of Management) vested with authority to manage and conduct the affairs of the institution. The head of the institution and two teachers thereof, who shall be selected by rotation according to seniority, in the manner to be prescribed by regulations, shall be ex officio members of the Committee of Management with a right to vote.

(2) No member of the Committee of Management shall either attend a meeting of the Committee or exercise his right to vote whenever a charge concerning his personal conduct is under discussion.

(3) The Scheme of Administration shall also described, subject to any regulations, the respective powers, duties and functions of the head of the institution and Committee of Management in relation to the institution.

(4) Where more than one recognized institution is maintained by a body or authority, there shall be a separate Committee of Management for each institution unless otherwise provided in the regulations for any class of institutions.

(5) The Scheme of Administration of every institution shall be subject to the approval of the Director, and no amendment to or change in the Scheme of Administration shall be made at any time without the prior approval of the Director:

Provided that where the Management of an institution is aggrieved by an order of the Director refusing to approve an amendment or change in the Scheme of Administration, the State Government, on the representation of the Management, may, if it is satisfied that the proposed amendment or change in the Scheme of Administration is in the interest of the institution, order the Director to approve of the same, and thereupon, the Director shall act accordingly.

(6) Every recognized institution shall be managed in accordance with the Scheme of Administration framed under and in accordance with subsection (1) to subsection (5) and Sections 16B and 16C.

(7) Whenever there is dispute with respect to the Management of an institution, persons found by the Regional Deputy Director of Education, upon such enquiry as is deemed fit, to be in actual control of its affairs may, for purposes of this Act, be recognized to constitute the Committee of Management of such institution until a Court of competent jurisdiction directs otherwise:

Provided that the Regional Deputy Director of Education shall, before making an order under this subsection, afford reasonable opportunity to the rival claimants to make representations in writing.

Explanation: In determining the question as to who is in actual control of the affairs of the institution, the Regional Deputy Director of Education shall have regard to the control over the funds of the institution and over the administration, the receipt of income from its properties, the Scheme of Administration approved under subsection (5) and other relevant circumstances.

16B (1) In the case of an institution already recognized at the date of the commencement of the Intermediate Education (Amendment) Act, 1958, a draft of the Scheme of Administration shall be prepared and submitted to the Director for his approval in accordance with Section 16C within six months from the said commencement and in all other cases alongwith the application for recognition.

(2) If an institution which is already recognized at the commencement of the Intermediate Education (Amendment) Act, 1958, fails to comply with the provision of subsection (1) within the period provided therefore, the Director shall sent a notice to such institution requiring it to submit the Scheme of Administration within a further period of three months.

Provided that on a representation by the institution prior to the expiry of the extended period, the Director may in his discretion allow a further extension for a period of three months.

(3) If the Scheme of Administration is not submitted within the time allowed, the Director shall take action in accordance with subsection (3) of Section 16D.

16C: (1) Subject to the provisions of this Act the Director shall, within such period to time as may be prescribed, either approve the draft Scheme of Administration submitted under Section 16B, or suggest any alteration or modification therein. Whenever the Director shall so suggest any alteration or modification in the Scheme of Administration, he shall send a copy of the same to the institution to make a representation, within such period of time as may be prescribed.

Provided that if the Director does not suggest any alteration or modification in the draft Scheme of Administration within the period of time prescribed by regulations, the draft Scheme of Administration shall be deemed to have been approved.

(2) The Director shall consider any representation made in accordance with the

provision of subsection (1) and may approve the Scheme of Administration in its original form or subject to the alteration and modification suggested under the said subsection or with any other changes as may appear to him to be just and proper.

Provided that where the Director proposes to make a new alteration or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation to him within such period of time as may be prescribed.

16CC: the Scheme of Administration in relation to any institution, whether recognized before or after the commencement of the Intermediate Education (Amendment) Act, 1980, shall not be inconsistent with the principles laid down in the third Schedule.

16CCC: (1) Where in relation to any institution, the Scheme of Administration has been or deemed to have been approved under Section 16A, or Section 16B or Section 16C, at any time before the commencement of the Intermediate Education (Amendment) Act, 1980, and such Scheme of Administration is inconsistent with the provisions of this Act, the Director shall send, within a period of three years from such commencement, a notice to such institution suggesting any alteration or modification therein and requiring the institution to submit a fresh Scheme of Administration or to amend or alter the existing Scheme.

(2) While making any suggestion in the Scheme of Administration under subsection (1), the Director shall give his reasons therefore and shall also afford an opportunity to the institution to make a representation within such period as may be specified in the notice.

(3) The Director shall consider any representation made in accordance with subsection (2) and may approve the Scheme of Administration in its original form or subject to any alteration or modification suggested under subsection (1) or with any other changes as may appear to him to be just and proper.

Provided that where the Director proposes to make any new alteration or modification in the Scheme of Administration, he shall give an opportunity to the institution to make a representation within such period as may be specified by him.

45. A bare perusal of these sections would make it clear that except proviso to subsection (1) of Section 16C, there is no reference to deemed approval of Scheme of Administration. The proviso to subsection (1) of Section 16C refers to the Scheme submitted by the institution under Section 16B. So this deemed approval as referred to in proviso, is contemplated only in respect of the Scheme submitted by the institution under Section 16B. This provision does not envisage, deemed approval of, Model Scheme of Administration as sent by the Director to the institution. So we are of the view that Model Scheme of Administration as

was sent by the Deputy Director along with his letter dated 10.9.1982 could not have been deemed approved.

46. Moreover, letters dated 23.7.1981, 17.2.1983, 23.2.1985, 17.10.1985 (Annexures 12, 13, 14 and 15 to writ petition No.7179 of 2003), written by the Authorities, together make it clear that there was no approved or deemed approved Scheme of Administration, consistent with the principles enumerated in Third Schedule.

47. So, we conclude that this College had no approved Scheme of Administration or deemed approved Scheme of Administration as required under the said provisions of the Act of 1921. The provisions contained under clauses (vi) (vii) of subsection (3) of Section 16D read with subsection (4) of this section provided a remedy as to how to deal with a case like this. In fact, for reasons best known to the Govt. or the authorities concerned, the action has been deferred or shelved for over a period of more than 4 decades. Point is decided accordingly.

48. POINT No.7:

The next important question that arises for necessary is as to whether senior basic section imparting education from Classes VI to VIII is part of the recognized institution. While the stand of the petitioners in writ petitions No.2049 of 2003, 7179 of 2002, 2759 of 2003 and 4704 of 2003 and of respondents in writ petition No.6415 of 2002 is that this part of the College is also governed by the Act of 1921, the stand of the Management/College is that it is governed by Uttar Pradesh Basic Education Act, 1972. Reference to Section 2 (b) of the Act of 1972 has also been made which says 'basic education' means education upto VIII classes imparting in schools other than High School and Intermediate Colleges. We are of the view that after the decision of the Apex Court in Commissioner Lucknow Division v. Kr. Prem Lata Misra, AIR 1977 SC 334, there is no room for the argument that senior basic section imparting education from classes VI to VIII is a part of recognized institution. It was a case relating to the same College. Nothing has been brought to our notice, so as to say that any material change was made either in the Act of 1921 or in the Act of 1972, after the decision of the Apex Court in the said case. However, there is nothing on record to show that authorities under the Act of 1972, ever exercised any control over this part of the College. Conversely there is ample material to prove that DIOS and other authorities under the Act of 1921, exercised control even over imparting of education in classes VI, VII and VIII. It is never the case of the management that it is not subject to the directions of authorities in so far as the education in these classes is concerned.

49. So, our answer on this point is that though Senior basic section is not part of the recognized institution as held by the Apex Court in Prem Lata Misra's case (supra) yet it was being controlled by DIOS, Lucknow.

50. POINT No.8:

Sri Vivek Raj Singh has contended that writ petitions are not maintainable against the Management or College, for the same do not fall within the definition of 'State' as defined under Article 12 of the Constitution of India. The learned counsel places reliance on four decisions (SCA18, 19, 20 and 21) of this Court. The contention from other side is that since the College is engaged in an important public duty namely imparting of education to children, so in view of the principles laid down in *Ajai Hasia v. Khalid Mujib*, (1981) 1 SCC page 522, *Anandi Mukht v. R. Rudian and others*, (1989) 2 SCC page 691, (1997) 1 SCC page 163, *State of U.P. v. M.B. Besaiya, Pradeep Kumar Vishwas and others v. Indian Institute of Chemical Biology and others*, JT 2002 (4) SC 146 and *Vijai Bihari v. U.P. Postal Primary Cooperative Society and others*, 2003 (21) LCD 69, it comes within the definition of the term 'authority' as used in Article 226 of the Constitution of India and is amenable to writ jurisdiction.

51. There is no doubt that receiving of education at least upto the age of 14 years is now most important right of the children and whosoever engages himself in imparting education to these children, undoubtedly performs a public duty. There can hardly be a debate on the point that a recognized institution imparting education, performs a most pious public duty and by stretch by no imagination, this act can be said to be purely a private act.

52. Annexure13 to writ petition No.4704 of 2003, reveals that Colvin Taluqdars College, Lucknow received financial aid, right from 196970 to 199293. It is an admitted fact that the State Govt. gave financial aid to the institution upto the year 199394. The District Inspector of Schools, Lucknow has also made it clear in his counteraffidavit. We have already mentioned that on repeal of the Canning College and British India Association Act, 1920 by Section 339 of UPZA & LR Act, the State Govt. started sanctioning a certain amount for maintenance of the College. It appears that because of the lapses on the part of the Management in submitting the accounts as per requirement of the conditions of the grant, this financial aid could not be given after 199394. It is also not in dispute that the Govt. leased out about 89 acres of valuable land, vide deed dated 18.7.1964 (Annexure17 to writ petition No.4704 of 2003) for a period of 30 years with a facility of renewal upto a period of 90 years, almost on nominal yearly rent of few hundreds rupees. It can be said that the Govt. leased out a valuable land about 89 acres, just as an aid to the College. All the facts together falsify the contention of the College/Management that it is really unaided educational institution. The State was giving aid, but the College itself stopped getting it by not submitting the accounts etc. and by not meeting the requirements of the grant. It is difficult to say that it was really an institution having no assistance from the Government.

53. The judicial pronouncements (Annexures SCA18, 19, 20 and 21 in writ petition no.2049 of 2003) relied on by Sri Vivek Raj Singh do not lay down that recognized College, does not perform a public duty. What this Court said in those decisions was that writ petitions under Article 226, were not maintainable,

because there was no complaint of violation of statutory functions.

54. We need not enter into the debate, whether a recognized College, falls within the definition of State under Article 12 of the Constitution of India. But it would be useful to recall the following dictum of law, as recently laid down by 7 Judges Bench of the Apex Court in *Pradeep Kumar Biswas & others v. Indian Institute of Chemical Biology & others*, JT 2002 (4) SC 146:

?From this perspective, the logical sequitur is that it really does not matter what guise the State adopts for this purpose whether by a Corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act, 1860. Neither the form of the corporation, nor its ostensible autonomy would take away from its character as "State" and its constitutional accountability under part III vis-à-vis the individual if it was in fact acting as an instrumentality or agency of Government.?

55. There appears ample force in the submission of Dr. L.P. Misra that a recognized institution, imparting education to the children, especially upto the stage of secondary or higher secondary level, will be amenable to writ jurisdiction of this Court under Article 226, if the complaint is that it is acting in violation of law. It has been held in *Praga Tools Corporation v. C.A. Imanual* (1989) 1 SCC 585 and in *V.S.T. Industries Ltd. v. V.S.T. Industries Workers Union and others*, JT 2001 (1) that the terms "Authority" used in Article 226, must receive liberal meaning unlike the term in Article 12. It would be useful to recall the following observation, which their lordship made in *Praga Tools*'s case (*supra*):

?The terms "authority" used in Article 226, in the context, must receive a liberal meaning unlike the terms in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as nonfundamental rights. The words, "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: ?To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract". We share this view. The judicial control over the fastexpanding maze of bodies affecting the rights of the people should

not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of grating that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.?

56. We come to the conclusion that a writ petition against a recognized educational institution will be maintainable if the complaint is that it is running its affairs in breach of law or if the complaint is that it is shirking its responsibility imposed by law. Since in all the four writ petitions No.2049 of 2003, 7179 of 2002, 2759 of 2003 and 4704 of 2003, filed against the College, the main complaint is that it is running its affair in breach of the relevant provisions of the Act of 1921 and is about to close down the U.P. Board Wing, without any permission under Regulation 10 of Chapter VII and has dispensed with the services of certain teachers in breach of Section 16G of the Act of 1921, so these writ petitions are maintainable under Article 226 of the Constitution of India. The point is decided accordingly.

57. POINTS 9 AND 10:

In view of our conclusion on the above points, the resolution dated 28.6.2003 of the Committee of Management for abolition of 22 posts is not sustainable. A perusal of the resolution (Annexure37 to writ petition No.4704 of 2003) would reveal that the Management decided to abolish the post on the basis that the College stood derecognized or U.P. Board Wing stood closed down. According to our conclusion, the recognition under the Act of 1921 still continues and is still operative. Sri Vivek Raj Singh has contended that the right to create or abolish post, vests in the employer and employee can not complain against the abolition of post. In this connection, reliance is being placed on *M. Ramnathan Pillai v. State of Kerla*, (1973) 2 SCC page 650 and *M.L. Kamra v. ChairmancumManaging Director, New India Insurance Company*, (1992) 2 SCC page 36. Nobody, can dispute the proposition of law that an employer has right to create or abolish post but if abolition of post aims at to get rid of employee, then certainly it cannot be endorsed. According to the requirements of Section 16G every person employed in a recognized institution is governed by certain conditions of service as prescribed by the regulations and by any agreement between the Management and the employee and in case an employee is to be dismissed, removed or reduced in rank prior approval of an authority mentioned therein is required. If the proposition advanced by Sri Vivek Raj Singh is accepted, then these salutary provisions contained under Seciton 16G may be circumvented by abolishing the posts.

58. Once the Court finds that College still, continues to be recognized under the Act of 1921, there is no escape from the conclusion that orders dated 30.7.2003 (Annexure1 to 11 in writ petition No.4704 of 2003) dispensing with the services of petitioners of writ petition No.4704 of 2003 without complying with the

provisions contained under Section 16G of the said Act, must be held to be bad in law and deserve to be quashed. Both points are decided accordingly.

59. GENERAL:

In reply to our pointed query, during the course of argument, as to what would happen to an educational institution having genuine difficulties in continuing the task of imparting education and the Board is not agreeable to its closure under Regulation 10 of Chapter VII of the Regulations, none of the learned counsel for the parties was in a position to point out any specific provision in the Act of 1921 or in the regulations framed thereunder or in any sister enactment authorizing or empowering the Government to requisitioning or acquiring the Management of the College or the property of the College etc. Our attention was, however, drawn to the provisions contained in Chapter XI of Andhra Pradesh Education Act, 1982 (Act No.1 of 1982) which contains elaborate provisions for taking over of Management or for requisitioning and acquisition of educational institution. Section 64 provides that where recognition or permission granted to an educational institution is withdrawn by the Government or where an educational institution is closed before the last working day of academic year, the Government may requisition any property moveable or immovable and may make such other orders which appear to be necessary or expedient. Section 67 of the said Andhra Pradesh Act deals with the acquisition of the property of the College etc. we do not propose to compare the provisions contained in our Act of 1921 or in other sister enactments in force in this State, with Andhra Pradesh Act of 1982 as that is for the maker of law to examine and take necessary steps, if so required.

60. ROLE OF THE GOVT. AND ITS OFFICERS:

We will be failing in our duty, if we do not express our deep concern over the callous indifference exhibited by the Government and to some extent by the officers of the educational department, in dealing with the matter relating to this College. We have found above, that this College, though recognized institution within the meaning of Section 2(b)(d) of the Act of 1921, had at no time Approved Scheme of Administration, consistent with the principles laid down in III Schedule, to the Act of 1921, though the mandate of the law was that affairs of such institution would be run only in accordance with Approved Scheme of Administration. We have also noticed above that in spite of the fact that the Director wrote as back as in 1981, followed by letters dated 10.9.1983, 2.2.1988, 17.2.1983 and 23.2.1985 (Annexures 4, 5, 13 and 14 to writ petition No.7179 of 2002), for an action under subsection (4) of Section 16D of the Act of 1921, and in spite of concern shown in D.O. letter dated 10.6.1998 of the Secretary to the Govt. to the Divisional Commissioner (Annexure16 to writ petition No.7179 of 2002), saying that developments demanded action under Section 16D (4), nothing concrete was done in the right direction and almost a cold or lackadaisical approach was adopted. One may put a question as to what could have been the probable reasons for this apathy or indifferentism. We do

not propose to delve into those reasons. Perhaps, high profile of some of the office bearers and the members of the Committee of Management and glorious past of the institution, were some of the reasons for soft peddling on the part of the Govt. and its officers.

61. We do not find much substance in the grievance raised in some of the writ petitions, against the renewal of the lease of the land by the Government or its officers. We are of the view that any interference of this Court in the context of the renewal of lease of the land, is not required because the question of renewal of lease is governed by the terms of the lease and it is always open to the lessor i.e. Government to proceed against the lessee in case of breach of the terms. Moreso, any interference of this Court may hamper the imparting of education to the children relating to ICSE for which the Government had agreed long back in the year 1980.

62. After the statement of Sri Vivek Raj Singh that the post of Director is no more there in the College, relief sought in that context becomes infructuous and need not be granted.

63. In view of the conclusion reached above, all the five writ petitions are finally disposed of as under:

1. The orders dated 30.7.2003 (Annexures 1 to 11), by which the services of the petitioners of writ petition No.4704 of 2003 were dispensed with, are quashed with a direction to the College/Management to ensure payment of salary etc. to these teachers as if the orders dated 30.7.2003 were never in existence.

2. The opposite parties are directed to ensure that so long as the U.P. Board Wing of the College continues to be recognized one, education to the students from classes VI to XII is imparted, as was being done prior to the filing of these writ petitions.

3. The Board of High School and Intermediate Education is hereby directed to take an early decision and to communicate the decision so taken to the College, within a period of two months from today, under Regulation 10 of Chapter VII of the Regulation on the notice/letter dated 14/18.1.2002 of the Management proposing to close down U.P. Board Wing of the College.

4. In the event of permission for closing down the U.P. Board Wing is refused by the Board, the Director of Secondary Education will take action under subsection (3) of Section 16D of the Act, either for withdrawing the recognition or for appointment of Authorised Controller and the Board or the Government, as the case may be, will take suitable action according to law as early as possible, keeping in view the next ensuing academic session.

5. In case the Board refuses to closing down of the institution under Regulation 10 of Chapter VII, the Govt. of U.P. will take necessary steps within a period of two months from the date of decision of the Board, for bringing the teachers and the staff of U.P. Board Wing within the purview of the Act of 1971 and will also

take steps within the same period to take the College in the list of colleges receiving grantinaid and this arrangement shall continue so long as the recognition of U.P. Board Wing continues.

6. The Director of Secondary Education and the Government of U.P. are commanded to ensure in due course that the affairs of the U.P. Board Wing of the College run in accordance with the Approved Scheme of Administration consistent with the principles enumerated in Third Schedule of the Act of 1921.

7. The Government of U.P. is further directed to ensure that classes VI, VII and VIII which were running earlier, run further unless closing down of those classes is permitted by it or by the authority competent to do so.

The reliefs, not granted expressly by the orders or directions above, shall be treated to have been refused. No orders as to costs.