

**(2012) 05 MAD CK 0004**

**In the Madras High Court**

**Case No :** Writ Petition No's. 8489, 14143, 15212 to 15214, 15374 to 15376, 16023, 16025, 16116, 16234, 16246, 16373, 16488 to 16490, 16498, 16583, 16853, 16913, 16920, 16921, 16930, 16931, 16937, 16972 to 16974, 17011, 17046, 17062, 17063, 17098, 17124 to 17126, 1

Lakshmi Matriculation School, (Formerly known as TVS Nursery and Primary School)

**APPELLANT**

**Vs**

State of Tamil Nadu, The Secretary to Government, Education Department, Fort St. George, Chennai, The Chief Educational Officer, Madurai, The Special Officer, The Committee for Private Schools Fee Determination Headed by K.Govindarajan (Retired), Chennai 600006

**RESPONDENT**

**Date of Decision :** 03-05-2012

**Acts Referred:**

Constitution of India, 1950 — Article 19(1), 19(6), 226, 30, 30(1)  
Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009 — Section 10, 11, 16, 2, 3(2)  
Tamil Nadu Schools (Regulation of Collection of Fee) Rules, 2009 — Rule 177, 18, 3, 4(4), 4(5)

**Citation :** (2012) WritLR 489

**Hon'ble Judges :** S. Vimala, J; R. Banumathi, J

**Bench :** Division Bench

**Advocate :** A. L. Somayaji, for Mr. K. Harishnkar in W.P. No. 19761 of 2011, Mr. R. Muthukumaraswamy, for Mr. T. K. Bhaskar in W.P. Nos. 19635 to 19637 of 2011, Mr. R. Krishnamurthy, for Mr. S. Thanka Sivan in W.P. No. 21528 of 2011, Mr. R. Krishnamurthy, for Mr. R. Bharath Kumar in W.P. Nos. 17452 and 21644 of 2011, Mr. S. Silambanan, for M/s. Profexs Associates in W.P. Nos. 16488 to 16490, 16972 to 16974, 22419 to 22421, 23210, 23423, 24782 to 24784, 28216 and 28217 of 2011 and 255, 3756 and 7002 of 2012, Mr. S. Silambanan, for Mr. M.J. Jaseem Mohamed in W.P. No. 23213 and 23238 to 23240 of 2011 and 5689 of 2012, Mr. N.R. Chandran, for M/s. Profexs Associates in W.P. Nos. 22223, 22224, 22235 and 22263 of 2011, Mr. N.R. Chandran, for Mr. R. Natarajan in W.P. Nos. 17533, 22050, 22051 and 26218 of 2011, Mr. N. R. Chandran, for Mr. R. Kannan in W.P. No. 17754 of 2011, Mr. N.R. Chandran, for Mr. N. Sivakumar in W.P. Nos. 18453 of 2011, Mr. Vijaya Narayanan, for Dr. P. Vasudevan in W.P. No. 16234 of 2011, Mr. Muthukumaraswamy, for Mr. R. Venkatavaradan in W.P. Nos. 19476 to 19478 of 2011, Mr. A.R.L. Sundaresan, for Mr. L. Murali Krishnan in W.P.

Nos. 16023, 16025 of 2011, Mrs. Chitra Sampath Mr. T.S. Baskaran in W.P. No. 19607, 26644 and 26645 of 2011, Mr. V. Raghavachari in W.P. Nos. 15212 to 15214, 16116, 21177, 21183, 21288, 23498 and 23789 of 2011, Mr. Fr.A. Xavier Arulraj in W.P. Nos. 18037, 18092, 18093, 18419, 18420, 18718, 18744, 19126, 19127, 19144, 19145, 19165, 19166, 19171, 19172, 19183, 19192, 19193, 19491, 19492, 19521, 19522, 19537, 19545, 19557, 19558, 19596, 20304, 20322, 20326, 20338 to 20340, 20351, 20371, 20372, 20387, 20410, 20416, 20425, 20819, 20843, 20845, 21030, 21054, 21099, 21127, 21131, 21136, 21266, 21268, 21430, 22769, 22993, 23364, 23963, 24048, 24170, 24497 to 24501, 24857, 24858, 24859, 25024, 25841, 25874, 25916 and 28507 of 2011 and 243, 2606, 3619, 6919 and 6920 of 2012, Mr. B. Rabu Manohar Mr. B. Kannan and Mr. P. Harikrishnan in W.P. Nos. 16373, 18853 to 18859, 19377, 19379, 21646, 21679, 22054 and 23876 of 2011 and 3547, 3548, 4129 and 6856 of 2012, Mr. T.K. Bhaskar Mr. K. Harishankar Mr. Srinath Sridevan in W.P. Nos. 8489 of 2011, Mr. K. Harishankar in W.P. Nos. 19738 and 25989 of 2011, Mr. Srinath Sridevan in W.P. No. 16853 of 2011 Mr. R. Bharath Kumar, Mr. S. Venkatesh Mr. M. Senthil Kumar in W.P. No. 21097 and 21630 of 2011, Mr. A. Ramesh in W.P. No. 14143 of 2011, Mr. S. Thanka Sivan in W.P. No. 15374 to 15376 of 2011, Mr. L. Murali Krishnan in W.P. Nos. 16913, 19683, 19684, 20869, 20870, 21561 and 24285 of 2011 and 8214 and 8385 to 8387 of 2012, Mr. K. Rajasekaran in W.P. No. 16246 of 2011, M/s. Profexs Associates in W.P. Nos. 16921 24855, 24856, of 2011 and 694 and 7002 of 2012, Mr. T.N. Sugesh in W.P. No. 16498 of 2011, Mr. G. Sankaran in W.P. No. 16583, 21305, 23281 to 23283, 26049, 26050, 26454, 28084 and 29003 of 2011 and 1450 of 2012, Mr. Cherian Mathews in W.P. No. 16920 of 2011, Mr. Isaac Mohanlal in W.P. Nos. 16930, 16931, 17011, 17046, 17403, 18193, 22697 and 28306 of 2011, Mr. Satish Parasaran in W.P. No. 16937 and 18260 of 2011, Mr. Sai Bharath and Ilan in W.P. No. 17062 and 17063 of 2011, Mr. S. Thanjai P.N. Chezhian in W.P. No. 17098 of 2011, Mr. T.E. Badrinathan in W.P. No. 17124 to 17126, 18004, 22717 and 23879 of 2011, Mr. P. Venugopal in W.P. No. 17196 of 2011, Mr. T. Gandhi in W.P. No. 17219 of 2011, Mr. A S. Thambuswamy of 2011, Mr. C.P. Sivamohan, in W.P. No. 17724 of 2011, Mr. N. Umapathi in W.P. No. 17879, 17907, 18014, 18347, 18540, 18541, 19060, 19667, 23321, 24759, 24771 and 26431 of 2011, M/s. Royan Law Associates in W.P. No. 18031, 21096 and 21451 of 2011 Mr. N. Aravindkumar in W.P. No. 18116 of 2011, M/s. T.S. Gopalan and in W.P. No. 18191 of 2011 Co., Mr. S. Kamadevan in W.P. No. 18461 of 2011, Mr. N. Anand Venkatesh in W.P. No. 18464 of 2011, M/s. Aiyar and Dolia in W.P. No. 18847 of 2011, Mr. R. Suresh Kumar in W.P. Nos. 19308, 20596, 20597, 21598, 26893, 28228 to 28230, 28304, 28305 of 2011, 462 to 465, 4321, 5037, 5050 to 5052 of 2012, Mr. M. Naraayanaswamy in W.P. Nos. 19404 to 19411, 21111 to 21115, 22124 and 23795 of 2011, Mr. N. Manokaran in W.P. Nos. 19548, 19549, 20550, 20551, 21025 to 21028, 21328, 22140, 22141, 22395, 23007, 23733, 23734, 25799, 28555 of 2011 and 5781 of 2012, Mr. S. Vijayakumar in W.P. No. 19604 of 2011, Mr. K. Kuppusamy in W.P. Nos. 19647 and 19648 of 2011, Mr. R. Shankaranarayanan in W.P. No. 19694 and 19699 of 2011, Mr. R. Karthikeyan in W.P. No. 20098 to 20100, 20282 to 20285, 20605, 20606, 20858, 20859, 22842, 22843, 26167 to 26169, 26381, 26382, 26593, 26594 and 26619 of 2011, M/s. L. Surya Associates in W.P. No. 20311 of 2011, M/s. Paul and Paul in W.P. No. 21049, 21330 and 22052 of 2011, Mr. V. Srinivasa Babu in W.P. Nos. 21361 and 21362 of 2011, Mr. P. Satish in W.P. No. 21383 and 21384 of 2011, Mr. N.D. Dinesh in W.P. No. 21634 of 2011, Mr. N.V.N. Margandeyan in W.P. No. 22093 of 2011, Mr. M. Naraayanaswamy in W.P. Nos. 22124 and 23795 of 2011, Mr. V. Sanjeevi in W.P. No. 23318 of 2011, Mr. A.D. Jagadish Chandira in W.P. Nos.

23597 to 23599, 23634, 23636 and 23651 of 2011, Mr. K.Kalyanasundaram in W.P. No. 23771 of 2011, Mr. Srinivasa Mohan and Mr. V.G. Suresh Kumar in W.P. No. 24142, 24161, 24348, 24443, 24446, 24794, 24977, 25283, 27293, 27601, 27925 and 30218 of 2011 and 257, 1978, 2806, 7154, 7159, 7160, 7287, 7439, 7484 and 7499 of 2012, Mr. S.K. Balashanmugam in W.P. No. 24168, 24169, 24774, 24775, 25102 to 25104 of 2011, Mr. C K. M.appaji in W.P. No. 24303 of 2011, Mr. R. Murugabharathi in W.P. No. 24456 to 24459 of 2011, Ms. G. Thilakavathy in W.P. No. 25707 of 2011, Mr. S. Sathyanarayanan in W.P. No. 26270 of 2011, Mr. S. Saravanan in W.P. No. 26297, 26298, of 2011 and 4628, 4629 of 2012, Mr. M. Govindaraj 28297 of 2011 and 862 of 2012, Mr. B.T. Seshadri in W.P. No. 27214 of 2011, Mr. R. Krishnamurthy, for Mr. V. Ayyadurai in W.P. No. 27573 and 27574 of 2011, Mr. K. Lavanin W.P. No. 28287 of 2011, M/s. S.B.S. Ramanand Associates in W.P. No. 28553, 28554 of 2011 and 4607 to 4610 of 2012, Mr. P. Nagaraju in W.P. No. 29825 to 29827 of 2011, Mr. V.V. Giridhar in W.P. No. 388 of 2012, Mr. N.R. Chandran, for M/s. Sunil Sudhakar Shankar in W.P. No. 2967 of 2012, M/s. Kandhavadivel Doraisami and Mr. Kandhavadivel Duraisami in W.P. No. 5288, 6007, 6415, 6416 of, Mr. V.P. Sengottuvel in W.P. No. 5562, 6644 and 6650 of 2012, Mr. C.K. Chandrasekar for Mr. T. Sundaravadanam in W.P. No. 6086 of 2012, Mr. R. Neelakandan in W.P. No. 6317, 6318 of 2012, Mr. R. Ramachandran in W.P. Nos. 6861 to 6865, 6955, to 6958, 6989, 7111 and 7112 of 2012 and Mr. A. Jenasen in W.P. No. 8573 of 2012, for the Appellant; A. Navaneethakrishnan, Advocate General, assisted by Mr. S. Venkatesh, Govt. Pleader Mr. E. Sampathkumar, Spl. Govt. Pleader (Edn.) Mr. P. Sanjaigandhi, Addl. Govt. Pleader (Edn.) in all W.Ps, for the Respondent

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## Judgement

R. Banumathi, J.—The writ petitioners, who are unaided private schools, have filed these writ petitions challenging the final order/ fee

structure prescribed by School Fee Determination Committee on the ground of arbitrariness and that it is not in conformity with Tamilnadu Schools

(Regulation of Collection of Fee) Act 2009 (Tamil Nadu Act 22 of 2009). All the writ petitioners are self financing schools and not getting any

financial aid from the Government or other Government sources. Some of the writ petitioners are recognised under Tamil Nadu Private Schools

Regulation Act; few others are recognised under Code of Regulations for Matriculation Schools or Code of Regulations for Anglo Indian Schools.

In so far as Schools recognised under CBSE Regulations or ICSE regulations, the applicability of Tamilnadu Schools (Regulation of Collection of

Fee) Act, 2009 is under challenge and those writ petitions challenging the applicability of the Act were ordered to be segregated. Since common

points for determination arise in all these writ petitions, all of them were heard together and shall stand disposed of by this common judgment.

2. Background facts:- Till 2009, all private unaided schools like the writ petitioner

schools were fixing their own fee structure and collecting the same from the students either as annual fee or term fee or monthly fee. Tamil Nadu Government enacted a law - Tamilnadu Schools (Regulation of Collection of Fee) Act, 2009 (hereinafter, referred to as "the Act") on 07.08.2009 to provide for the regulation of collection of fee by the Schools in the State of Tamil Nadu and matters connected therewith and incidental. Section 2 of the Act contains definitions.

3. As per Section 3 of the said Act, there was a prohibition on Government school or aided school from collecting fee in excess of the fee fixed by the Government for admission of pupils to any Standard or course of study in the school. In terms of Sub-Section (2) of Section 3, no fee in excess of the fee determined by the Committee under the Act shall be collected for admission of pupils to any Standard or course of study in a private school. Section 6 of the Act stipulates the factors to be taken into account to determine the fee leviable by a private school. Section 7 deals with the powers and functions of the Committee and the procedure to be followed by the Committee.

4. Section 16 is the enabling provision to make rules for carrying out all or any of the purposes of the Act. In exercise of the powers conferred u/s

16 of the Act, Tamilnadu Schools (Regulation of Collection of Fee) Rules 2009, Government framed the Rules, which came into force on

7.12.2009. The vires of the Act and the Rules were challenged in a batch of writ petitions. In the judgment dated 9.4.2010 in the case of

Tamilnadu Nursery Matriculation and Higher Secondary Schools Association (Regd.) rep.by its General Secretary Vs. The State of Tamilnadu

rep.by the Principal secretary, Department of School Education, Fort St.George, Chennai -9 and 4 others (2010(4) CTC 353), First Bench of this

Court upheld its validity except Section 11 of the Act and Rules 4(4) and 4(5) of the Rules, which gave power to the educational authorities for

entering the School for such inspection and seizure. As against the said judgment, SLP was filed before the Supreme Court in SLP No. 13428 of

2010 and the same was dismissed by the Hon"ble Supreme Court by order dated 11.05.2010.

5. Even before the challenge to the validity of the Act, the Government by G.O. (Ms) No. 320, School Education Department, dated 7.12.2009,

constituted the Committee under the Chairmanship of Justice K.Govindarajan, a retired Judge of this Court and the Committee prepared the

questionnaire and sent the same to 10934 private schools through Chief Educational Officer. After getting response from the individual schools, on

7.5.2010, orders were issued by the Fee Determination Committee fixing the fee to be collected for the years 2010-2011 to 2012-13. On receipt

of such fee determination orders, about 6400 schools have submitted their objections u/s 6(3) of the Act objecting to the determination of fee fixed

by the Committee. The Committee also issued a Press Release on 11.08.2010 about the receipt of representations and stating that revised fee

would be fixed after re-inspection of the schools and in so far as the Government Order 2010-2011, the fee already fixed will be in force.

6. The Orders passed by the Committee and the Press Release were challenged in a batch of writ petitions. In the miscellaneous petitions, the writ

petitioners thereon prayed for stay of the operation of the fee fixation committee and the press release. By Order dated 14.9.2010 in M.P. Nos. 2

of 2010 in W.P. No. 18854 of 2010, single judge of this Court granted injunction restraining the State from enforcing the order of the Fee Fixation

Committee for the academic year 2010-11. As against the said interim order, State as well as the parents have preferred appeals. By Order dated

5.10.2010, First Bench set aside the order of the single judge dated 14.9.2010. In order to give quietus to the entire controversy, the First Bench

disposed of the appeals in P.B.Prince Gajendra Babu Vs. Federation of Association of Private Schools in T.N. (2010(5) CTC 721). First Bench

interalia issued directions, directing the Committee to consider the objections of the 6,400 Institutions by affording opportunity of personal hearing

to the Institutions to enable them to submit materials for consideration of the Committee and thereafter pass individual orders by considering all the

materials as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. In the meanwhile

Court directed the Institutions not to demand any fee more than what has been indicated in the order.

7. The said order was taken on appeal to the Supreme Court by way of SLP and the SLP was dismissed by the Supreme Court on 16.12.2010

deleting the period of four months fixed by the High Court. In the mean time, a review petition was also filed before High Court to review the said

order dated 5.10.2010 and the said review petition also came to be dismissed on 2.12.2010.

8. In the meanwhile, since the former Chairman of the Committee Justice K.Govindarajan resigned, Justice K.Raviraja Pandian was appointed as

the Chairman of School Fee Determination Committee. As per the above said order, fresh questionnaires were sent to the schools and upon

submission of filled in questionnaires by the Schools, personal hearing was given to each one of the

schools. The grievances of the respective schools were heard by a Committee of three members and taking into account the various factors stated

in Section 6(1) of the Act, final orders fixing the fee structure were passed in respect of each individual schools.

9. By the impugned order, the Committee fixed fee structure and determined it as a fee to be collected for the next three academic years i.e.,

2010-11 to 2012-13 or until further orders of the Committee, whichever is earlier. On the ground of arbitrariness and that the fee fixed are in

conformity with Tamilnadu Schools (Regulation of Collection of Fee) Act 2009, challenging the orders determining fee to be collected, the private

schools have filed the writ petitions.

10. In these batch matters, about 300 writ petitions arise from the orders passed by the former Committee headed by Justice K.Raviraja Pandian.

Two writ petitions arise out of the order passed by the Committee headed by Justice K.Govindarajan. Twelve writ petitions arise out of order

passed by the present Committee. Four Other writ petitions arise out of the order rejecting the objections filed by the schools for the second time.

11. Challenge in the Writ Petitions:-

Main challenge in the writ petitions is that the Committee had failed to provide reasonable opportunity to the writ petitioners while hearing their

objections/representations by the Committee and that there was violation of principles of natural justice.

As per T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, private Educational Institutions have right and freedom to fee

structure and therefore, entitled to fix their fee structure including surplus for expansion and development of the Educational Institutions.

As per the provisions of the Act and decision in 2010 (5) CTC 721, duty, power

and responsibility of the Committee is to see whether the fees collected by the schools can be approved and only in cases where the fees proposed to be collected is exorbitant and is in nature of profiteering or charging capitation fee, then only the Committee can go into reasonableness of the proposal made. Basis of calculation was prepared by Chartered Accountants and absolutely, there is no match between the expenditure and the infrastructure facilities available and the fees to be collected. The statement of accounts produced by the schools were not considered by the Committee. Committee has delegated its power to the Auditors and Auditors have fixed the fee structure and there was total non application of mind and the impugned order suffers from arbitrariness. Committee did not consider the Auditors' report submitted by the writ petitioner Institutions and the expenditure on many items were either restricted or disallowed, thereby making the Institutions to suffer loss.

#### 12. Counter averments:-

Tracing the earlier litigations and traversing the allegations raised in the writ petitions, respondents have filed separate counter contending that sufficient opportunity was afforded to all the individual schools. It is further averred that the Committee had complied with all the mandatory provisions and taking into account all the relevant factors before passing the final orders and that Committee had also considered infrastructure amenities provided by the writ petitioners and remarks of the educational authorities and therefore the question of arbitrariness, unreasonableness and discrimination does not arise. According to respondents, the Committee has re-determined the fee taking into account the various factors as stipulated in Section 6(1) of the Act. The School Fee Fixation Committee is a neutral statutory body and they have no bias with any private institution and therefore the issue of discrimination would not arise for consideration.

13. Learned Senior Counsel Mr.R.Krishnamoorthy [in W.P. Nos. 17452, 21528, 21644, 27573 and 27574 of 2011] has contended that as per

the decisions of the Supreme Court, what is sought to be prevented is only commercialization or profiteering and diversion of funds for other purposes. By adopting its own parameter, the Fee Determination Committee has imposed a rigid fee structure upon the Private Educational

Institutions. It was further submitted that the duty, power and responsibility of the Committee is to see whether the fees claimed or the fees

collected by the schools can be approved and only when the Committee is satisfied with the fees proposed to be collected is exorbitant and is in

the nature of profiteering, then only the Committee can fix the fees and while so, absolutely, there is no match between the fees fixed by the

Committee and the expenditure. Learned Senior Counsel has also drawn our attention to some of the Writ Petitions where there are some factual

errors.

14. Placing reliance upon Tamil Nadu Nursery Matriculation case, 2010 (4) CTC 353, learned Senior Counsel Mr.A.L.Somayaji [in W.P. No.

19761 of 2011] has contended that the limited function assigned to the Committee is to verify whether the fee structure amounts to profiteering or

charging exorbitant fee and the question of determination of fee by the Committee will arise only, if the Committee records the jurisdictional finding

that the fee collected is exorbitant and amounts to profiteering. Placing reliance upon Arun Kumar and Others Vs. Union of India (UOI) and

Others, , it was submitted that existence of the jurisdiction is thus sine quo non for exercise of power and without recording such finding that the fee

collected is exorbitant, Committee erred in assuming the jurisdiction for determining the fee.

15. Taking us through T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of

Maharashtra and Others, and Modern School Vs. Union of India (UOI) and Others, learned Senior Counsel Mr.R.Muthukumaraswamy [in W.P.

Nos. 17533, 19476 to 19478, 19635 to 19637 and 26218 of 2011] submitted that every unaided educational institution is to device its own fee

structure subject to the limitation that there can be no profiteering or charging of capitation fee and the Committee has fixed only the rigid fee,

which is forbidden as per the principles laid down by the Supreme Court. Taking us through the guidelines, learned Senior Counsel submitted that

the guidelines fixed are arbitrary and fixation of fee on the basis of the guidelines is per se illegal. It was further submitted that power was given to

the Committee to determine the fees and the power was delegated to the Auditors and as per the provisions of Statute, when the powers are to be



exercised in a particular manner and the same has to be exercised in that manner and such delegation vitiates the fee fixed by the Committee.

16. Learned Senior Counsel Mr. N.R. Chandran (in W.P. Nos. 17754, 18453, 18454, 22050, 22051, 22223, 22224, 22235, 22263 of 2011

and 2967 of 2012) has contended that any order passed by the quasi judicial authority, which involves civil consequences, must be consistent with

the principles of natural justice. It was further submitted that hearing afforded by the Committee was only an empty formality and sufficient

opportunity was not afforded to the educational institutions. Taking us through the typed set of papers, it was submitted that there is total non-

application of mind and fixing lower fee is unacceptable and the entire exercise is pre-determined to deprive the schools to meet the expenditure

and also to have reasonable surplus.

17. Learned Senior Counsel Mr. Vijay Narayan [in W.P. No. 16234 of 2011] has contended that absolutely no reasonings are given as to why

the accounts submitted by the educational institutions were not taken into account and by fixing the fees for three years, the educational institutions

are not in a position to make statutory payments like VI Pay Commission salary, Employees Provident Fund, Payment of ESI and other statutory

payments. We have also heard Mr. A.R.L. Sundaresan, learned Senior Counsel appearing on behalf of Mr. L. Muralikrishnan for Petitioners in

W.P. Nos. 16023 and 16025 of 2011.

18. Learned Senior Counsel Mr. Silambanan [in W.P. Nos. 16488 to 16490, 16972 to 16974, 22050, 22051, 22419 to 22421, 23210, 23213,

23238 to 23240, 23423, 24782 to 24784, 28216, 28217 of 2011, 255 and 3756 of 2012] has submitted that the object under the Act is to see

that the schools do not go on spree of profiteering and there cannot be a complete straight jacket formula in fixing the fee and that the fee fixed by

the Committee must be commensurate with what the school is providing. Learned Senior Counsel would further submit that normally as long as the

fee levied does not amount to profiteering or charging capitation fee, the Committee has to only approve the fee structure. It was further submitted

that once the fee is fixed that has to be followed for three years and the school cannot be called to collect the fees which does not reflect the actual

expenditure.

19. Learned counsel Mr.Satish Parasaran [in W.P. Nos. 16937 and 18260 of 2011] has contended that as per the decision in Modern School

case, private education institutions are entitled to have reasonable surplus # 10 to 15% and as per the decision of Supreme Court in Action

Committee, Un-Aided Pvt. Schools and Others Vs. Director of Education, Delhi and Others, so long as there is no profiteering and surplus

amount remains in the educational stream, the educational institutions cannot be said to have fixed an exorbitant fee and absolutely, there is no

reason as to why the Committee should reduce the fee proposed by the schools.

20. Learned counsel Mr.Srinivasa Mohan [in W.P. Nos. 24142, 24161, 24348, 24443, 24446, 24794, 24977, 25283, 27293, 27601, 27925,

30218 of 2011, 257, 1978 and 2806 of 2012] has submitted that without recording the finding that the proposed fee amounts to profiteering or

charging capitation fee, the Committee did not have jurisdiction to determine the fee and the error outside the jurisdiction cannot be rectified.

Learned counsel has drawn our attention to some of the Writ Petitions to substantiate his point that there were factual errors.

21. Learned counsel Ms.Chitra Sampath [in W.P. Nos. 19607, 26644 and 26645 of 2011] submitted that the lease rent paid by the school has

not been taken into account. It was further submitted that the expenditure per student given is also not taken into account by the Committee.

22. Learned counsel Mr. Rabu Manohar (in W.P. Nos. 16373, 18853 to 18859,19377,19379, 21646, 21679, 22054 and 23876 of 2011 and

3547, 3548,4129 and 6856 of 2012) contended that the object of the Committee is to see that the schools do not levy exorbitant fee. It was

further submitted that as long as the normal fee is levied by the school, the committee is only to approve the fee structure. Taking us through the

typed set of papers, learned counsel would contend that similarly situated schools in the same location Tiruppur, Committee fixed higher fee

structure, whereas for the writ petitioner school (W.P. No. 21646 of 2011), the Committee fixed very low fee structure. The learned counsel

would further contend that the Committee has not kept in view various infrastructure and building facilities available in the writ petitioner schools.

23. Learned counsel Mr. V. Raghavachari [in W.P. Nos. 15212 to 15214, 16116, 21177, 21183, 21288, 23498 and 23789 of 2011] has

submitted that the impugned order was passed by the Chairman and two Members and the constitution of the Committee is not as per the statutory requirement of Section 5(1) of the Act and the Committee members cannot unilaterally reduce the constitution of the Committee in violation to the statutory provisions.

24. On behalf of M/s. T.S. Gopalan & Co. [in W.P. No. 18191 of 2011], it was contended that the Writ Petitioner school is run by a Trust and

the teaching and non-teaching staff have to pay salary as per the Minimum Wages Act and if the minimum wages are not paid, the Writ Petitioner

school will be subjected to penal consequences and the same was not kept in view by the Committee.

25. Learned counsel Mr.A.S.Thambusami [in W.P. Nos. 17680 and 22513 of 2011] has contended that the school being run by the Co-

operative Sugar Mill mainly for the children of the staff of Co-operative Sugar Mill and due to fixation of low fee by the Committee, the school is

not in a position to meet the expenditure and prayed for remanding the matter.

26. Learned counsel Mr.Kandavadivel Doraisamy [in W.P. Nos. 5288 and 6007 of 2012] has submitted that the Writ Petitioner school was

recognised as ""A"" category and that the said school for a long number of years has excelled in performance by getting 100% result and State ranks

for number of years which could be accomplished by employing number of teaching staff. It was further submitted that as against the strength of

101 teaching staff, the Committee has taken only 51 teaching staff and the strength of non-teaching staff was not taken into account by the

Committee and by fixation of less teachers and staff strength, the school is facing lot of difficulties.

27. We have heard the arguments of Mr. N. Manoharan [in W.P. Nos. 19548 and 19549 of 2011]; Mr.R.Sureshkumar [in W.P. Nos. 19308,

20596, 20597, 21598, 21630, 21634, 26893, 28288 to 28230, 28304, 28305 of 2011, 462 to 465, 4321, 5037, 5050 and 5052 of 2012];

M/s.S.B.S.Raman and Associates [in W.P. Nos. 28553, 28554 of 2011, 4607 and 4610 of 2012]; Mr. Harishankar [in W.P. Nos. 19737,

19738 and 25989 of 2011]; Mr. Srinath Sridevan [in W.P. No. 16853 of 2011];

Mr.T.E.Badrinathan [in W.P. Nos. 17124 to 17126, 18004,

22717 and 23879 of 2011]; Mr.S.Sathyanarayanan [in W.P. No. 26270 of 2011];

Mr.V.P.Senguttuvel [in W.P. No. 5562 of 2012];

Mr.P.Nagaraju [in W.P. Nos. 29825, 29826, 29827 of 2011]; Mr.Ravikumar Paul [in W.P. Nos. 21049, 21330, 22052, 22093, 22124,

22140, 22141 and 22668 of 2011]; Mr.Issac Mohanlal [in W.P. Nos. 16930, 16931, 17046, 17403, 18193, 22697, 28306 and 17011 of

2011].

28. In so far as the Writ Petitions filed by minority educational institutions, Mr.A.Xavier Arulraj made forcible submissions contending that the

minorities have a right of administration as enshrined in Article 30(1) of the Constitution of India and the impugned order of the Fee determination

Committee is violative of the right of administration enshrined in Article 30(1) of the Constitution and the Order amounts to restriction on the right

of minorities to administer their educational institutions. He would also contend that the fee structure was fixed without proper appreciation of

available infrastructure and facilities available, salaries paid to the teachers and non-teaching staff and increments and statutory payments to be

made. The learned counsel would also submit that future plans for expansion and the corporate financial management of the minority institutions

and the cultural network of the minority institutions were not taken into account.

29. We have heard the arguments of Mr.A.Navaneethakrishnan, learned Advocate General appearing for the State along with Mr.S.Venkatesh,

Government Pleader and Mr.Sampathkumar, Special Government Pleader (Education). Learned Advocate General submitted that the committee

had taken in to account factors stipulated in Section 6(1) of the Act and Rule 3 of Rules to determine the fee structure. It was further submitted that

the Committee had carefully gone into the information furnished by writ petitioner schools and passed orders taking into consideration the various

factors. Taking us through various columns in the work sheet, the learned Advocate General had submitted that the work sheet clearly

demonstrates the factors taken into consideration by the Committee and the question of arbitrariness and unreasonable does not arise. The learned

Advocate General urged that the Committee was conscious that by fixation of fee, entire financial burden is shifted to the parents and the

Committee adopted a balanced approach in determining the fee without casting heavy financial burden upon the parents and at the same time

keeping in view the interest of the schools also.

30. We have carefully examined the contentions and carefully gone through the judgments of the Hon"ble Supreme Court. The following common

points arise for consideration in these writ petitions:-

1. Whether the contention that no proper opportunity was given to the schools by School Fee Determination Committee is correct and whether the

order suffers from violation of principles of natural justice?

1Whether there is non-application of mind in fixing the fee and whether the fee fixed by the Committee is vitiated by arbitrariness?

2. Whether the writ petitioners/schools are right in contending that the Committee committed a jurisdictional error in determining the fee without

recording a finding that the proposed fee amounts to profiteering or charging exorbitant fees?

3. Whether the petitioners are right in contending that the Committee has abdicated its responsibility by delegating its work to the auditors?

31. Constitution of Committee:-

Section 5 refers to the Constitution of Committee. As per Section 5(1) of the Act, the functions of the Committee is for the purpose of

determination of the fee for admission to any Standard or course of study in private schools. As per Section 5(2), the Committee shall consist of a

retired High Court Judge nominated by the Government and other Ex. Officio members viz., Director of School Education, Director of

Matriculation Schools, Director of Elementary Education, Joint Chief Engineer (Buildings), Public Works Department and Additional Secretary to

Government, school Education Department (Ex. Officio Member Secretary).

32. Re.Contention. Constitution of the Committee:

Taking note of the fact that all the five Members of the Committee are full-time office bearers of the Department, in its meeting dated 09.11.2010,

the Committee unilaterally resolved to fix the quorum of the Committee for the purpose of hearing the objections as ""three"" i.e. the Chairperson

with Member Secretary and one Member. The impugned orders were passed by the quorum consisting of Chairman, Member Secretary and

Member.

33. Mr.V.Raghavachari, learned counsel has contended that when the statutory

requirements of the Committee consist of "five" members, the

Committee members cannot unilaterally reduce the constitution of the Committee and cannot resolve to reduce the quorum. In support of his

contention, learned counsel placed reliance upon a decision of Division Bench of this Court in P. Balamurugan Vs. District Level Vigilance

(Community Verification) Committee, Salem and The Revenue Divisional Officer, Salem District, In the said case, decision concerning with

issuance of community certificate was passed by the Sub Collector and two Members in which the Collector was absent during enquiry. The Court

has quashed the order on the ground that the Committee was not comprised of all Members as per the mandatory requirement.

34. The above contention is unsustainable in view of saving clause Sub-section (5) of Section 5 in the Act. As per Section 5(5) of the Act "no act

or proceeding of the committee shall be invalid by reason only of the existence of any vacancy in or any defect in the constitution of the

Committee".

35. The fact that excepting three Members of the Committee, the other members have not signed the order will not vitiate the order as there is no

contention that the other Members were not present at the time of decision making process. The Director of Matriculation School and other

Members, being full-time officers of the Department, the Committee thought fit to have the quorum of "three" and the orders cannot be challenged

on the score that the quorum consisted of Chairman plus two Members. In this context, we may usefully refer to the decision of the Supreme Court

in G.N. Nayak Vs. Goa University and Others, .

36. Legal provisions of Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009:-

At this stage it would be apt to reproduce the relevant statutory provisions. Section 2 of the Act deals with definitions; "private school" is defined in

Section 2(j) of the Act as under:-

Section 2 (j) "private school" means any pre-primary school, primary school, middle school, high school, or higher secondary school, established

and administered or maintained by any person or body of persons and recognized or approved by the competent authority under any law or code

or regulation for the time being in force, but does not include:

(i)an aided school;

(ii)a school established and administered or maintained by the Central Government or the StateGovernment or any local authority.

(iii)a school giving providing or imparting religious institution alone but not any other institutions.

37. As per Section 6(1) of the Act, the Committee shall determine the fee leviable by a private school taking into account the factors indicated

thereon. Rule 3 of the Rules provides that the Committee while determining the fee leviable by a private school, in addition to the factors specified

in sub-section (1) of section 6 of the Act, also take into account the factors indicated in Rule 3. Section 7 deals with the powers and functions of

the Committee and the procedure to be followed by the Committee. As per Section 7(4) of the Act, the Committee shall have the powers to

regulate its own procedure in all matters and it shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 regarding

summoning and attendance of witness and related matters. Therefore, the Committee would be within their powers to get the factors verified in

respect of the claim made by the institution, to approve their fee structure, as against the fee determined by the Committee. The fee so prescribed

would be in operation for a period of three years and at the end of such period, it would be open to the institution to make an application for

revision of fees.

38. Guidelines laid down by the Hon''ble Supreme Court:-

(i) T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

The Hon''ble Supreme Court considered the question of minorities'' right to establish and administer the Educational Institutions of their choice and

whether the State''s power which regulate facet of administration would interfere with the minorities right to establish and administer the Educational

Institutions. On 03.04.2002, Hon''ble Supreme Court framed nine questions for consideration. On 10.04.2002, in modification of the earlier order

dated 03.04.2002, nine questions were reframed as ten questions (2002) 8 SCC 712.

As per the law laid down by the Supreme Court in T.M.A.Pai Foundation case, maximum autonomy has to be given to the institutions, which exist

by virtue of the funds generated by themselves in the matter of administration

and quantity of fee to be charged. In the said judgment, the Supreme Court observed that in the establishment of an educational institution, the object should not be to make a profit in as much as education is essentially charitable in nature. Observing that the object should not be to make a profit or charging capitation fee and that the collection of fee could be regulated, in paragraph Nos. 55, 56 and 57, the Supreme Court has held as under:

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

55..... the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

56... One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the



scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

57 We, however, wish to emphasize one point, and that inasmuch as the occupation of education is, in a sense, regarded as charitable, the

Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the

institution. Since the object of setting up an educational institution is by definition #charitable#, it is clear that an educational institution cannot

charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the

object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue

surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

(ii) Islamic Academy of Education and Another Vs. State of Karnataka and Others, The Constitution Bench interpreted the judgment in T.M.A. Pai Foundation case and also considered the question of regulation of fee collected.

Observing that there can be no fixing of rigid fee structure by the Government and that each institute must have freedom to fix its own fee structure,

in Paragraph No. 7 of the said judgment, the Supreme Court held as under:

7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the

Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the

institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the

betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the

fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise.

In the said judgment, the Supreme Court issued following directions to give effect to the judgment in T.M.A. Pai Foundation's case:

we direct that in order to give effect to the judgment in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, the respective

State Governments/concerned authority shall set up, in each State, a committee headed by a retired High Court Judge who shall be nominated by

the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A

representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE"), depending on

the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as

the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent

person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institute must place before this

Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and

books of accounts must also be produced before the Committee for their scrutiny. The Committee shall then decide whether the fees proposed by

that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to

propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.

(iii) Modern School Vs. Union of India (UOI) and Others,

Challenging the abnormal fee hike in various schools in Delhi, by way of Public Interest Litigation, the Federation of Parents' Association moved the Delhi High Court. The grievance was about the large scale commercialization of education and the failure of the Government in performing statutory functions under Delhi School Education Act. One of the complaint was that the unaided recognized schools were transferring funds of schools to the parent society/trust and/or other schools run by the same society/trust. There was also a complaint about huge amounts being collected under the caption ""building fund"" which remain unutilized and were being transferred. The Delhi High Court appointed Committee chaired by Justice Santosh Duggal and the Committee submitted its report which was accepted by the Government and the Director of Education (DOE) issued certain directions to management committees of all recognized unaided schools. Modern School and other schools appealed against the order of the Delhi High Court constituting the ""Duggal Committee". During the pendency of the appeal, Duggal Committee submitted its report and directions were issued by the Director of Education.

All these issues were considered by the Supreme Court in Modern School Vs. Union of India (UOI) and Others, . The Supreme Court considered the concept of reasonable surplus, profit, income and yield and as to what constitutes reasonable surplus. In paragraph Nos. 14, 15 and 16, the Supreme Court held as under:

14. At the outset, before analysing the provisions of the 1973 Act, we may state that it is now well settled by a catena of decisions of this Court

that in the matter of determination of the fee structure unaided educational institutions exercise a great autonomy as they, like any other citizen

carrying on an occupation, are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions, it

has been held, have to plan their investment and expenditure so as to generate profit. What is, however, prohibited is commercialisation of

education. Hence, we have to strike a balance between autonomy of such institutions and measures to be taken to prevent commercialisation of

education. However, in none of the earlier cases, this Court has defined the concept of reasonable surplus, profit, income and yield, which are the

terms used in the various provisions of the 1973 Act.

15..... T.M.A. Pai Foundation case for the first time brought into existence the concept of education as an "occupation", a term used in Article

19(1)(g) of the Constitution. It was held by majority that Articles 19(1)(g) and 26 confer rights on all citizens and religious denominations

respectively to establish and maintain educational institutions. In addition, Article 30(1) gives the right to religious and linguistic minorities to

establish and administer educational institution of their choice. However, the right to establish an institution under Article 19(1)(g) is subject to

reasonable restriction in terms of clause (6) thereof. Similarly, the right conferred on minorities, religious or linguistic, to establish and administer

educational institution of their own choice under Article 30(1) is held to be subject to reasonable regulations which inter alia may be framed having

regard to public interest and national interest. In the said judgment, it was observed (vide para 56) that economic forces have a role to play in the

matter of fee fixation. The institutions should be permitted to make reasonable profits after providing for investment and expenditure. However,

capitation fee and profiteering were held to be forbidden. Subject to the above two prohibitory parameters, this Court in T.M.A. Pai Foundation

case held that fees to be charged by the unaided educational institutions cannot be regulated. Therefore, the issue before us is as to what

constitutes reasonable surplus in the context of the provisions of the 1973 Act. This issue was not there before this Court in T.M.A. Pai

Foundation case.

16..... We are concerned with the first question, namely, whether the educational institutions are entitled to fix their own fee structure. It was held that there could be no rigid fee structure. Each institute must have freedom to fix its own fee structure, after taking into account the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must be able to generate surplus which must be used for betterment and growth of that educational institution. The fee structure must be fixed keeping in mind the infrastructure and facilities available, investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of institution subject to two restrictions, namely, non-profiteering and non-charging of capitation fees. It was held that surplus/profit can be generated but they shall be used for the benefit of that educational institution. It was held that profits/surplus cannot be diverted for any other use or purposes and cannot be used for personal gains or for other business or enterprise. The Court noticed that there were various statutes/regulations which governed the fixation of fee and, therefore, this Court directed the respective State Governments to set up a committee headed by a retired High Court Judge to be nominated by the Chief Justice of that State to approve the fee structure or to propose some other fee which could be charged by the institute.

(iv) Action Committee, Un-Aided Pvt. Schools and Others Vs. Director of Education, Delhi and Others,

Application for review the order dated 27.04.2004 came to be filed. In Modern School case, the Supreme Court held as under:

Clause 8 of the Order issued by DoE dated 15.12.1999 is in consonance with Rule 177. Although the Court cannot impose restrictions by

travelling beyond the scope, object and purport of the Act and the Rules, the majority view in Modern School Vs. Union of India (UOI) and

Others, found that Clause 8 was not beyond Rule 177 or in conflict therewith as alleged." In the review petitions, it was contended that Clause 8 of

the order issued by Director of Education dated 15.12.1999 is causing administrative difficulties and that directions needs to be clarified.

Accepting the arguments advanced on behalf of the Action Committee/ Management, the Supreme Court clarified that transfer of amount from the

fund of recognised unaided school to school under the management of the same society or trust is permissible. In Paragraph 21, the Supreme

Court held as under:-

21..... The 1973 Act and the Rules framed thereunder cannot come in the way of the Management to establish more schools. So long as there is

a reasonable fee structure in existence and so long as there is transfer of funds from one institution to the other under the same management, there

cannot be any objection from the Department of Education." In other aspects, the review sought was rejected by the Supreme Court.

(v) P.A. Inamdar and Others Vs. State of Maharashtra and Others,

Holding that every institute is free to devise its own fee structure subject to the limitations that there can be no profiteering or charging of capitation

fee, in P.A. Inamdar and Others Vs. State of Maharashtra and Others, , the Supreme Court again reiterated the powers of educational institutions

to devise its own fee structure. In Paragraph Nos. 139 and 141 of the said judgment, the Supreme Court held as under:

139. To set up a reasonable fee structure is also a component of "the right to establish and administer an institution" within the meaning of Article

30(1) of the Constitution, as per the law declared in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . Every institution is

free to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or

indirectly, or in any form (paras 56 to 58 and 161 [answer to Question 5(c)] of Pai Foundation are relevant in this regard).

141. Our answer to Question 3 is that every institution is free to devise its own fee structure but the same can be regulated in the interest of

preventing profiteering. No capitation fee can be charged.

39. In a catena of judgments, the Supreme Court has reiterated the position that educational institutions were free to fix its own fee structure, but

the same can be regulated to prevent profiteering or charging of capitation fee. The principle that there shall not be profiteering or charging the

capitation fee was upheld. Leverage was allowed to educational institutions to generate reasonable surplus to meet the cost of expansion and

augmentation of facilities, which would not amount to profiteering.

40. From a combined reading of the judgments of the Supreme Court, the clear

legal position, which emerges, is that the schools cannot indulge in commercialization of education, which would mean that the fee structure has to be kept within the bound so as to avoid profiteering. At the same time "reasonable surplus" is permissible as fund in the form of such surplus may be required for development of various activities in the schools for the benefit of the students themselves. The guiding principle in the process is "to strike a balance between autonomy of such institution and measures to be taken in avoiding commercialization of education". The autonomy of the schools can be ensured by giving first right to such schools to increase the fee. At the same time, quantum of fee to be charged by unaided schools is subject to regulation by the State and as per the provisions in the Act. In the light of above well settled principles and provisions of Act No. 22 of 2009 and rules framed thereunder, the contentions raised are to be considered.

41. Impugned Orders passed by the Committee:- Considering the scope of sections 6(1) and 7(1) of the Act, in Tamil Nadu Nursery

Matriculation case, (2010(4) CTC 353, the First Bench of this Court summarised the procedure, which shall be followed by the Committee. In

paragraph Nos. 20 and 21, First Bench held as under:

20. On this background, when we look to the committee constituted u/s 5(1) of this Act, it shows that the initial function of the committee is to

approve the fees structure formulated by the concerned institution. It is only when the committee finds the fee structure to be objectionable and

cannot be approved, then it will determine some other fee, and the private schools will be asked to charge the same. Sections 6(1) and 7(1) of the

Act lays down the procedure which will be followed by the committee:

(a)The Committee has to call upon the private institutions to place before it the proposed fee structure of the institution with all relevant documents

and books of accounts for scrutiny within the period to be indicated by the Committee in the given notice. (The Committee has already circulated

the questionnaire to the institutions which contains details) about the fee component.

(b) After the receipt of the proposal from the concerned institution, the Committee has to verify as to whether the fee proposed by the Private

School is justified and it does not amount to profiteering or charging of

exorbitant fee.

(c) In case the Committee is of the view that the fee structure proposed by the institution appears to be correct, taking note of the various facilities

provided and that there was no profiteering or collection of exorbitant fee under the guise of capitation fee, it has to approve the fee structure.

(d) In case the Committee is of the view that the fee structure forwarded by the institution is exorbitant and that there is an element of profiteering,

the Committee has to determine some other fee.

(e) While fixing some other fee, the Committee has to follow certain procedures taking into consideration the factors as found mentioned u/s 6(1)

as well as Rule 3 of the Rules.

(f) The determination of the fee as made by the Committee should be intimated to the concerned institution and there upon the institution has got a

right to submit their objections within fifteen days.

(g) The objections so submitted by the institution shall be examined by the Committee. The Committee has to consider it objectively. The

Committee was not expected to reject the objection summarily.

21. The observation of the Supreme Court was against the Government fixing the rigid fee in respect of private institutions. The impugned Act, in

no way fixes the rigid fee. It only calls upon the management to forward their fee structure with details as to how they arrive at such a fee structure.

The main idea is to see as to whether under the guise of collection of fees they are indirectly collecting the capitation fee or indulging in profiteering.

That is why the Act initially uses the term Approval of the fee structure and only in such cases where the committee is of the view that the fee

structure proposed is exorbitant and is in the nature of capitation fee or profiteering, it intervenes in the matter and for the purpose of fixing the

correct fee, the private institution is given liberty to specify their fee structure, taking into account the expenditure necessary for running the

institution as well as its future needs. Thus, it proceeds to determine the fee structure thereafter. In that process, it considers the objections given by

the management to the fees proposed by the Committee. The consideration of objections by the Committee cannot be treated as an empty

formality. The Committee has to consider the objections made by the institution in an objective manner and if necessary, by inspecting the



institution and calling upon the management to produce the records in their possession in respect of various facets and to arrive at a decision as to

whether the fee determined by the Committee was the correct one or it requires modification. It cannot be ignored that the committee is a high

powered committee headed by a retired High Court Judge.

42. As pointed out earlier, in P.B.Prince Gajendra Babu Vs. Federation of Association of Private Schools in T.N. (2010(5) CTC 721, the first

Bench inter alia issued direction directing the Committee to afford opportunity of personal hearing to the Institutions to enable them to submit

materials for consideration of the Committee and thereafter pass individual orders by considering the materials. Therefore, fresh questionnaires

were sent to the schools and the schools submitted filled in questionnaires.

43. Committee considered details furnished in the questionnaires and also the objections at the time of personal hearing. Committee formulated

certain guidelines and Committee had taken the assistance of auditors to examine the statement of accounts produced by the schools. Taking the

existing fee in the school and also intimated fee by the Committee, which ever was high, was taken and the same was increased by certain

percentage i.e., increase was given from 5% to 10% depending on the location and average expenditure was calculated. Worksheet was prepared

by the auditors; based on the details in the work sheet, Committee fixed the fee in respect of each individual school and the same was

communicated to the Schools.

44. Re-contention Nomination of Auditors:- In its resolution dated 21.12.2010, the Committee decided to have the assistance of Auditors

- M/s.Sivram and Raj to "perform the task of fixation of fee". Fees of the Auditors was fixed at the rate of Rs. 300/- per school. In pursuance to

the resolution of the Committee, Government passed G.O. (2D) No. 49 dated 26.8.2010 appointing M/s.Sivram & Raj, Auditors to assist the

Committee and Auditors prepared the report, which is annexed to the impugned orders.

45. On behalf of Writ Petitioners it was contended that as per Section 6 of the Act, power of fixation or re-fixation of school fees in private

schools vests only with the Committee and the essential power, which is adjudicatory in nature, cannot be delegated to any other extra-statutory

person or entity. Contention of Writ Petitioners is that the School Fee Determination Committee has delegated the said power of re-fixation of fees

to the auditors, which can be exercised only by the Committee and is ultra vires the provisions of the Act and hence liable to be set aside.

46. There is no merit in the above contention. By perusal of the records, it is seen that to facilitate the task of fee fixation of 6400 schools the

Committee has resolved to take assistance of the Auditors. Analysis of the figures given in the questionnaire and details given by the Schools during

personal hearing is a massive work. The Chairman and members of the Committee may not have the expertise of examining the accounts of each

of the school. The purpose was only to get assistance from the experts. The Auditors were to perform only the ministerial act of going through the

accounts and preparing their report and essential powers of fixation of fee itself were not delegated. We do not find any force in the contention that

the essential powers were delegated to the Auditors.

47. Fee determined by the Committee:- Section 6(1) of the Act provides that the Committee shall determine the fee leviable by the private school

taking into account the following factors:-

(a) the location of the private school;

(b) the available infrastructure;

(c) the expenditure on administration and maintenance;

(d) the reasonable surplus required for the growth and development of the private school;

(e) any other factors as may be prescribed. The committee shall, on determining the fee leviable by a private school, communicate its decision to the

school concerned.

48. Rule 3 of the Rules provides that the Committee while determining the fee leviable by a private school, in addition to the factors specified in

sub-section (1) of section 6 of the Act, also take into account the following factors:

3. Factors for determination of fee:- The Committee, constituted u/s 5 of the Act, shall, while determining the fee leviable by a private school, in

addition to the factors specified in sub-section (1) of section 6 of the Act, also take in account, the following factors, namely:

(a) Locality of the school, namely, Rural area, Town panchayat, Municipality, District Head Quarters, Corporation.

(b) Strength of the students.

(c) Classes of study, and

(d) Status of the school, as indicated below:

(1) Schools having minimum infrastructure facilities as prescribed by the Government from time to time.

(2) Schools having infrastructure facilities more than that prescribed;

(i) Schools having more than the minimum requirement of lab, more number of library books, classroom facilities and other sanitary and drinking water facilities.

(ii) Schools having more than adequate classroom facilities, lab facilities, library area, number of books, very good sanitation facilities, highly protected drinking water facilities and other sanitary facilities together with high percentage of results.

(iii) Schools fully equipped with modern facilities like Air Conditioner together with 100% results.

49. Guidelines:- It is stated that for Determination of fee based on Section 6(1) of the Act and Rule 3, the Committee formulated the guidelines as

under:

Salary:

As per list given in questionnaire or in the objection letter or during the hearing whichever is higher. If there is no list in objection letter, list given at

the time of hearing may be considered. Correspondent salary should not be taken if it is not in the list of teachers particulars. If lump sum amount is

mentioned in both objection letter and at the time of hearing, original list should be considered (i.e., list in questionnaire)

Teaching staff salary to be restricted to 60% of the proposed fee income (as determined by the Hon''ble Supreme Court in Modern School''s

case) Proposed fees:

As per objection letter or as per personal hearing whichever is less may be taken. If proposed fees is not given in the objection letter, proposed fee

given at the time of hearing maybe considered.

Proposed fees is also arrived by Committee by adding certain percentage based

on location to the existing fees or intimated fees whichever is

higher. Proposed fees given by the school (or) proposed fees arrived at by the Committee whichever is less adopted as proposed fees.

Number of Students: Student's strength as per questionnaire/ objection letter/ personal hearing whichever is higher. However actual strength only

to be taken into consideration. Expenses:

As per the original questionnaire or objection letter or personal hearing or latest audit report whichever is higher reasonable may be considered.

For other sundry expenses such as Consumables, Printing and Stationery, Meetings and functions, Sports, Travelling and Conveyance,

Advertisements, any fee payable to the private school to the Government or any other authority rate is fixed as follows:

Village and Town Panchayat Rs. 650/- per student

Municipality, District Headquarters And Rs. 750/- per student

corporation

Building: If expenses claimed is unreasonable maybe restricted to Rs. 10 per Sq.ft. on built up area Building area: as per the questionnaire or any

addition is made, the addition can be taken for consideration. Depreciation on Building, Furniture and Fixtures and Equipments: Rate adopted :

10% as per Income Tax Act. If details are not available for depreciation on building and there is no claim, depreciation may be allowed @ 10% on

estimated cost as under:

For RCC Rs. 500/- per Sq.ft.

For other constructions Rs. 200/- per Sq.ft.

Rent:

As per the agreement if agreement is available

As per the questionnaire If agreement is not available

As per the latest audited Balance Sheet and Profit and Loss Account if the above details are not available. Otherwise as per abstract of the

expenditure (or) as per appeal (or) as per personal hearing. Surplus for development as per location as under: Village : 5% Town Panchayat :

6% Municipality :

Village 5%

Town Panchayat 6%

Municipality 7%

District Headquarters 8%

Corporation 9%

Increase in fees as per infrastructure Grading

D 5%

C 6%

B 7%

A 9%

Existing Fees:

Application fee is not considered for UKG to VIII Std. Admission Fee is not considered for UKG to VIII. If admission fee is higher then not

considered for LKG also. If development fee is Rs. 1000/- or more, then it should not be considered for LKG to VIII Std. Re-admission fee is not

considered for LKG to VIII Std. Re-determination of fees: If proposed fees arrived at is less than the intimated fees, as per 6(1) of the Act,

intimated fees has to be retained.

If expenses considered are more than the proposed fee arrived at, the deficit is ignored since the expenses considered are only notional and not

supported by proper evidences and fees has to be determined accordingly.

50. Work Sheet:- For fixing fees, Committee has taken assistance of Chartered Accountants, who prepared Work Sheet. Serial No. I of Work

Sheet is School Details:-

(1) Name of the School;

(2) Location of the School;

(3) Strength of the School and

(4) No. of Classes in the School. For expenses under the requirement of teachers for KG Classes are one and the same, KG classes are taken as

a single unit. For Standards I to V, the same teachers are teaching the students in rotation and therefore Standards I to V are taken as another unit

with teacher-student ratio at 1:30. Standards VI to VIII are taken as another unit with teacher-student ratio at 1:35. Students of Standards IX and

X will have to attend laboratory work and to have access to the Library and hence student-teacher ratio is taken as 1:40. Likewise, Classes XI

and XII are taken as another unit with teacher-student ratio at 1:40.

51. In Serial No. II of the Work Sheet, the factors u/s 6(1) of the Act and Rule 3 are reflected.. In Serial No. II of the Worksheet, details of

infrastructural facilities are given. Minimum infrastructural facilities are prescribed by the Government for Elementary School, Middle School and

Higher Secondary School. Depending on the infrastructural facilities available in the Private Schools, Schools are categorised

Schools

Grade Increase Modern facilities available

A 10% More than adequate

infrastructural facilities

B 5-9% Available more than the

requirement

C 5% Minimum Infrastructural

facilities

D N

o increase

52. In Serial No. III of the Work Sheet, #Expenditure on Administration# i.e., (i) salary to teaching non-teaching staffs, (ii) property taxes, (iii)

water charges, (iv) E.B. charges, (v) Postage, Telephone & Internet charges, (vi) Land/Building Lease Rent, (vii) Books & Periodicals and (viii)

Miscellaneous Expenses, have been taken into consideration. In Serial No. IV, Expenditure on Maintenance/Depreciation i.e., (i) Equipment

Maintenance, (ii) Furniture & Fixtures, (iii) Building Maintenance, and (iv) Depreciation on Building, Computer and Furniture & Equipment were

taken into consideration. In respect of the other expenditure not so covered - on sundry expenses, in Serial No. V, a sum of Rs. 750/- per student,

Rs. 650/- per student has been added with expenditure on administration, maintenance and expenditure on depreciation. Surplus for growth and

development depending upon the locality of the school has been added up at Serial No. VI of the Work Sheet. From the total expenditure was

divided by total number of students and average expenditure has been arrived at per student.

53. While determining the #Income#, the Committee has taken into consideration the proposed fee given by the Schools, the existing fee and

intimated fee, whichever is higher was increased by percentage increased as per the location i.e., 5 to 10% increase was given depending on the

location. Then the average has been arrived at unit-wise. The overall income per student has been arrived at based on the strength. If the average

income is over and above the average expenses arrived at, the excess was converted into percentage, (vide Serial No. IV of the Work Sheet). If

the difference is high, then the excess is neutralised by deducting the excess, which is available at Serial No. XII of the Work Sheet. If there was

deficit, the same was left as it is. The details contained in the Work Sheet were prepared by the Auditor and subsequently stated to be verified by

the Committee.

54 Smart Class Note Books:- Certain expenses are just for smart classes, Unit Note Books, etc., which are not stated as factors in the Act and

Rules and have been excluded from the determination of the Fees, which has been categorically stated in the penultimate paragraph of the Order.

55. Case of respondents is that factors, which are stated in the Act, were taken into consideration for determination of the Fees scrupulously and

other expenses such as sundry expenses has also been taken into consideration.

56. Per contra, the contention of the Writ Petitioner Schools is that the impugned orders are not in accordance with Section 6(1) of the Act and

Rule 3 and also the principles laid down by the Supreme Court. Our attention was drawn to number of writ petitions pointing out the discrepancies

and also factual errors and the expenses on administration submitted by the Schools were not taken into consideration as per Committee's own

guidelines.

57. School Fee determination Committee # Extent of Judicial Review:- Let us first consider the extent of judicial review of the orders passed by

the Committee. The Committee, being quasi judicial authority and was exercising a quasi judicial function, was to follow the provisions of the Act

and also the principles laid down by the Supreme Court.

58. As against the order of the Committee, no appeal is provided for. In INDIAN

AIRLINES VS. PRABHA D KANAN (2006) 11 SCC 67 =

(2006) 12 Scale 58, the Supreme Court held as under: #45. A judicial review of such an order would be maintainable. In a case of judicial review,

where no appeal is provided for, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not confine its

jurisdiction only to the known tests laid down therefor viz. illegality, irrationality, procedural impropriety. It has to delve deeper into the matter. It

would require a deeper scrutiny.

59. The Committee, being quasi judicial authority, must pose itself correct question so as to arrive at a correct finding of fact. Judicial Review is

permissible where quasi judicial authority did not take into consideration relevant factors. (vide Mathura Prasad Vs. Union of India (UOI) and

Others, .

60. Considering the scope of judicial review of the orders passed by the quasi judicial authority, in S.N. Chandrashekar and Another Vs. State of

Karnataka and Others, , the Supreme Court held as under:-

35. In Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , this Court referring to Cholan Roadways Limited Vs. G.

Thirugnanasambandam,

#14. Even a judicial review on facts in certain situations may be available. In Cholan Roadways Limited Vs. G. Thirugnanasambandam, this Court

observed: (SCC p. 253, 34-35)

34. "" It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong

question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent

insofar as it did not apply the principle of res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into

consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the

passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in

relation to a domestic enquiry, which is ""preponderance of probability"" and applied the standard of proof required for a criminal trial. A case for



judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See *E. v. Secy. of State for the Home Deptt.* (2004) 2 WLR 1351 (CA))

Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled ""Judicial Review, Appeal and Factual Error

published in 2004 PL, p. 788.

(See also *Management of Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh*,

61. Powers and functions of the Committee - Consequences of contravention of the provisions of the Act and the order of the Committee:-

Section 7 deals with the powers and functions of the Committee and the procedure to be followed by the Committee. Section 7 reads as under:

Section 7 : Powers and functions of the committee

(1) The powers and functions of the committee shall be,-

(a) to determine the fee to be collected by private schools;

(b) to hear complaints with regard to collection of fee In excess of the fee determined by it or fixed by the Government, as the case may be. If the

committee, after obtaining the evidence and explanation from the management of the private school or aided school concerned or from the

Government school, comes to the conclusion that the private school or the Government school or aided school has collected fee in excess of the

fee determined by the committee or fixed by the Government, as the case may be, it shall recommend to the appropriate competent authority for

the cancellation of the recognition or approval, as the case may be, of the private school or aided school or for any other course of action as it

deems fit in respect of the private school or Government school or aided school.

(2) The committee shall have power to,-

(i) require each private school to place before the committee the proposed fee structure of such school with all relevant documents and books of

accounts for scrutiny within such date as may be specified by the committee;

(ii) verify whether the fee proposed by the private school is justified and it does not amount to profiteering or charging of exorbitant fee;

(iii) approve the fee structure or determine some other fee which can be charged by the private school.

(3) The Committee shall have power to,--

(i) verify whether the fee collected by the School affiliated to the Central Board of Secondary Education commensurate with the facilities provided

by the school;

(ii) to hear complaints with regard to collection of excess fee by a school affiliated to the Central Board of Secondary Education; and

(iii) to recommend to the Central Board of Secondary Education for disaffiliation of the school, if it comes to a conclusion that the school has collected excess fee.

62. Section 9 of the Act deals with penal consequences. As per Section 9(1), whoever contravenes the provisions of the Act, or rules made

thereunder, shall, on conviction, be punished with imprisonment for a term which shall not be less than three years but which may extend to seven

years and with fine which may extend to five thousand rupees. Proviso confers discretion upon the Court to impose a sentence of imprisonment for

a term of less than three years for any adequate and special reasons to be mentioned in the judgment. Section 10 of the Act deals with offences by

the Companies. Thus, the Act contains drastic provisions for any violation or contravention of the provisions of the Act and also the order passed

by the Committee.

63. In some cases, after the School Fee was determined by the Committee, on complaints made by the parents, orders came to be passed

directing the Educational authorities to take appropriate action against the Schools in accordance with the Act. Fee determined by the Committee

is charges excluding the fee for imparting smart class, etc., books, note books, uniform and transport facilities, if any on complaints made by the

parents against the Schools in W.P. Nos. 28853 and 28854 of 2011 regarding the fee collected for smart classes, the Committee passed the order

dated 11.11.2011 directing the authorities to take appropriate action against the Schools, which is the subject matter of challenge in W.P. Nos.

28853 and 28854 of 2011.

64. Thus, the provisions of the Act contain drastic provisions conferring power upon the Committee in case of proved contravention of the

provisions of the Act. The power is conferred on the Committee to recommend to the competent authority for cancellation of the recognition or

approval of the private school or any other course of action as it deems fit in

respect of the said school. In view of the drastic measures contained in the Act, Section 6(1) and 7 of the Act should be construed in plain language. When the Committee is vested with wide discretion in recommending to the proper authority for cancellation of the recognition of approval, the Committee must call its attention to matters which the Committee is bound to consider.

65. Re.Contention Calculations in the work sheet do not reflect correct facts:- We are conscious that while exercising jurisdiction under Article

226 of the Constitution of India, Court cannot go into the questions of fact. We are also conscious that the Court cannot sit over the order of the quasi judicial authorities. But we are constrained to point out certain glaring instances as to how the accounts prepared by the auditors do not reflect the correct facts.

66. Our attention was drawn to number of writ petitions as to how the accounts prepared by the auditors do not reflect the correct facts and that

they are not in accordance with the guidelines framed by the Committee. To avoid repetition of facts and contentions, we refrain from referring to

each one of the individual writ petitions, where we noted that the accounts prepared by the auditors do not reflect the actual expenditure of the

schools and thereby leaving huge deficit for the schools.

67. Our attention was drawn to some of the writ petitions, where there are factual mistakes i.e., instead of taking into consideration the fee

proposed by the particular school, some other proposed fee was taken into consideration and the impugned orders came to be passed. Number of

instances were pointed out where minimum wages payable to the staff was not taken into account; lease rent payable by the school was not taken

into account; actual strength of teaching and non-teaching staff were not taken into account; School run by Co-operative Societies (W.P. No.

17680 of 2011) - The writ petitioner school is run by Kallakurichi Co-operative Sugar Mills Society, which is mainly intended for the children of

staff working in Kallakurichi Co-operative Sugar Mills and Children of Cane Growers, who have registered themselves with the Mills. Here again,

the Committee fixed low fee structure resulting in huge loss to the school. Grievance of writ petitioner is that the sugar mill itself is running at a loss

and while so the Cooperative sugar Mill would not be in a position to cope up the

deficit cost in the school. Instances were also brought to our notice, where the built up area of the buildings and the space available were not taken into account.

68. The auditors arrived at average expenditure per student in Column No. VII and in Column No. X they calculated proposed fee per student.

Then both the amounts are compared in column No. XI. It was noticed that in number of writ petitions that if there was surplus the Auditors

proceeded to deduct the same from the proposed fee per student. Per contra, if there was deficit, auditors have totally ignored. If the said deficit is

multiplied by the number of students, it runs to several lakhs, thereby causing huge deficit to the schools.

69. W.P. No. 16853 of 2011:-

The petitioner is a minority school and the Committee has fixed a fee of ""ZERO"" on the basis of the observation that the petitioner school is an

unrecognized institution and the observation of the Committee reads as under:As the recognition granted to the school has not been renewed after

31.5.2004, as on date, the school is deemed to be unrecognized school. Therefore, in view of the statutory provision, no fee is fixed. The order

dated 7.5.2010 stands cancelled and the school shall not collect any fees from the students.

70. According to the petitioner, the School had recognition until 2004 and thereafter its recognition was not renewed. Original fee Determination

Committee headed by Justice K.Govindarajan has fixed fee by its order dated 7.5.2010 and the subsequently Committee fixed the fee at ""ZERO

mainly on the ground that the school did not have the recognition. According to respondents, in respect of schools which did not have recognition,

having regard to Section 2(j) of the Act, the Committee has not fixed the fee. The learned counsel for petitioner would further submit that had the

petitioner been given an opportunity to explain the position regarding its status, the petitioner would have produced the relevant documents

showing pendency of correspondence with Government. Considering the submission, the impugned order in W.P. No. 16853 of 2011 is also set

aside and the matter is remitted back to the Committee for consideration of the matter afresh by affording sufficient opportunity to the petitioner to

produce the relevant documents.

71. W.P. Nos. 28853 and 28854 of 2011:-

In these Writ Petitions, on complaints made by the parents regarding the fees collected for smart class, the Committee recommended to the

educational authorities to take action against the school. It is pertinent to note that the fee fixed by the Committee is excluding the fee for smart

class, note books, etc., If the school is actually conducting smart class, the school is entitled to collect reasonable fee for the smart class. On

complaint received from the parents, the Committee ought to have afforded opportunity to the School. On mere complaint from the parents,

recommendation to the educational authorities is in violation of principles of natural justice. Therefore, the impugned orders in these two writ

petitions are also set aside and remitted back to the Committee for consideration of the matter afresh for giving opportunity to the writ petitioners.

72. Re-contention Non-affording of sufficient opportunity:-

While upholding the validity of the Act, in Tamil Nadu Nursery, Matriculation and HSS Association case (2010 (4) CTC 353, in Paragraph (21),

the First Bench of this Court held that the provisions of the Act calls upon the Management to forward their fee structure with details as to how

they arrived at such a fee structure and the main idea is to see as to whether under the guise of collection of fees they are indirectly collecting the

capitation fee or indulging in profiteering. In P.B. Prince Gajendra Babu case (2010 (5) CTC 721, while remitting the matter to the Committee, the

First Bench of this Court directed the Committee to consider the objections of 6400 Schools by affording opportunity of personal hearing to the

Institutions to enable them to submit materials for consideration of the Committee and thereafter pass individual orders by considering all the

materials as expeditiously as possible preferably within a period of four months from the date of receipt of copy of the order. As per the order of

the High Court, Madras dated 05.10.2010 in W.A. No. 2035 of 2010, the Committee took up the matter for consideration by giving personal

hearing on various dates and also allowing the School to file additional materials, if any.

73. Grievance of the Writ Petitioners is that inspite of direction to afford opportunity of personal hearing to the Writ Petitioners, no proper

opportunity was given to the Writ Petitioner Schools and the alleged opportunity

afforded was only an empty formality.

74. On behalf of Writ Petitioners, it was submitted that after the direction of the Division Bench in P.B.Prince Gajendra's case, the Committee

issued notice to the Writ Petitioner Schools to appear on a single day many number of Schools were called and the representative of each of the

school was heard only for less than two minutes and that the hearing afforded was just an empty formality.

75. Grievance of the writ petitioners is that no sufficient opportunity was given to them at the time of personal hearing and that number of schools

were called for on one single day and the Schools were asked to file their objections and also additional materials and no personal hearing was

given to the petitioner Schools and subsequently they received the order copy and therefore no adequate opportunity was given to the petitioner

schools to put forth their submissions. Further grievance is that Schools were not informed that the existing fee structure to be mentioned in the

questionnaire will apply for three years and that leaving out all three fee structures submitted by the Schools, the Committee has proceeded to

evolve its own proposed fee structure. Further submission is that when such guidelines are formulated by the Committee, opportunity should have

been given to the petitioner schools. Contending that principles of natural justice is inherent by the nature of duty performed by the Committee,

learned Senior Counsel Mr.N.R.Chandran placed reliance upon 2009 (2) CTC 185 (Uma Nath Pandey and others v. State of U.P. and another].

76. In the counter, it is categorically asserted that Writ Petitioners were given sufficient opportunity. It is also averred that questionnaire was sent to

the schools, who sent their response and the filled up questionnaire was considered. Learned Advocate General would submit that during personal

hearing, representative of the schools appeared and reasonable time was given to each one of the school and only upon consideration of their

objections and materials placed, the Committee has passed the order.

77. In this regard, the learned Advocate General has also drawn our attention to the communications sent by other schools expressing their

satisfaction regarding the personal hearing and as to how they were briefed in the assembly hall before meeting the Committee. It may not be

necessary for us to refer to those letters sent by various schools expressing their

satisfaction and gratitude for patient hearing by the Committee.

78. As we have pointed out earlier, contravention of the provisions of the Act/orders of the Committee has serious consequences. In such

circumstances, in our opinion, sufficient opportunity has to be afforded to each one school. Observing that adherence to principles of natural justice

as recognised by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, in

Uma Nath Pandey and Others Vs. State of U.P. and Another, , the Supreme Court held as under:-

10. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the

individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order

affecting those rights. These rules are intended to prevent such authority from doing injustice.

79. When we consider the guidelines formulated by the Committee for determination of Fees i.e., (i) teaching staff salary is to be restricted to 60%

of the proposed fee income; (ii) proposed fee given by the school or proposed fee arrived by the Committee, which ever, is less is adopted as

proposed fee; (iii) Expenditure on maintenance and depreciation; (iv) sundry expenses are allowed for students i.e., rates were fixed ranging from

Rs. 600/- to Rs. 750/- per student depending on the location and the other guidelines on depreciation of buildings, furniture and fixtures and

equipments, etc., When the Committee formulated such guidelines for determination of fees, at the time when the Schools submitted their

objections and materials, in our considered view, sufficient opportunity should have been given to the representatives of the Schools. When the

Committee was to pass an order determining the fee having civil and criminal consequences, sufficient opportunity should have been given to the

petitioner schools.

80. The concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always

expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What

particular rule of natural justice should be implied and what its context should be

in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. To what extent principles of natural justice to be complied with would depend upon fact situation obtaining in each case.

81. At the time of personal hearing, the Schools have produced their accounts as well as the materials. In the impugned orders, no reasons are given as to why they were not taken into account and whether the proposed fee by the School amounts to profiteering or charging capitation fee.

When the Committee has formulated guidelines for re-determination of fees and chosen to fix other fees than the one proposed by the Schools, adequate opportunity should have been given to the Schools. More so, in the light of guidelines framed by the Committee.

82. On this simple ground, we would have remitted the matter for affording sufficient opportunity to the writ petitioners and to determine the matter afresh. Since elaborate arguments were advanced on the rigidity of the guidelines formulated, we are constrained to examine the guidelines whether they are in accordance with the provisions of the Act and the principles laid down by the Supreme Court.

83. In respect of minority institutions, elaborate arguments were advanced that rigid parameters were adopted by the Committee infringing the right of administration enshrined in Article 30(1) of the Constitution of India and restricting the rights of the minority institutions. It has therefore become necessary for this Court to see as to whether the guidelines formulated and the direction of the Committee would curtail or restrict the right of administration of the minority institutions.

84. Guidelines For fixation of School Fee in respect of Non-Minority Educational Institutions:

Regulation of Accounts:- The schools have produced audited accounts. Grievance of writ petitioner schools is that inspite of such audit report produced, vital expenses, which form part of the audit report, were not taken into account. Further grievance is that repairs and maintenance expenses allowed by the Committee is not with reference to audit report furnished by the schools. The annual depreciation and actual repairs and maintenance was not taken into account and the working sheet will go to show that fee determination has been made by the Committee with



reference to its own policies and not with reference to actual expenditure of the schools. On behalf of the writ petitioner schools it was submitted

that the Committee ought to have taken into account the audit reports submitted by the schools.

85. As per Section 8 of the Act, the Government may regulate the maintenance of accounts by the private schools in such manner as may be

prescribed. It was stated that till date, a particular accounting system has not been prescribed by the Government. This circumstance can be

distinguished from the Modern School Vs. Union of India (UOI) and Others, . Dealing with the Delhi School Education Act, which stipulated

elaborate accounting system, it came to be approved by the Honourable Supreme Court in accordance with the non-profit accounting system. In

the absence of any particular stipulation by the Government, the educational authorities/ private schools have been following their own accounting

system, each different from one another. Since there is no uniform accounting system prescribed by the Government as contemplated under the

Act, it has become necessary for us to issue certain guidelines elaborating upon the factors to be taken into consideration as per Section 6(1) of the

Act and Rule 3 and the financial administration of the private schools for determining the fee.

86. Learned Advocate General has also made elaborate submissions and also filed written submissions on the aspects of financial administration of

private schools. In its written submissions, Government adverted to various aspects and the school fee components, which shall be considered by

the Committee in determining the school fee.

87. Pay and allowances of teaching and non-teaching staff and Employees Welfare Schemes:-

Grievance of the writ petitioners is that the statutory obligation of the Schools to pay salary as per VI Pay Commission and make the statutory

payments like Employees Provident Fund and E.S.I. Payment were not taken into consideration. Further grievance is that the Committee has not

taken into consideration the annual increments and incentives to be paid to the teaching staff.

88. It is the further case of petitioners that the salary fixed by the Committee is static for three years. The salary so fixed does not seem to have

taken into account the salary payable under VI Pay Commission. By the time the orders came to be passed by the Committee, VI Pay

Commission was implemented in the State of Tamil Nadu. The Writ Petitioner Schools were yet to implement the VI Pay Commission and

proportionate increments are also payable. When that being so, the guideline restricting the salary of teaching staff to 60% of the proposed fee

income may not be correct.

#### 89. Teacher-student ratio:-

Yet another grievance is that in the State of Tamil Nadu, the teacher-student ratio is fixed for the primary school level at 1:30, in the middle school

level at 1:35; and for the higher classes at 1:40. For determining the fee Committee has adopted that ratio. Grievance of the writ petitioners that

Government cannot impose restrictions on unaided private schools regarding teacher-student ratio. If teacher-student ratio is varied, the burden of

excess salary to the teachers would be shifted to the students casting heavy burden upon the parents. When Committee adopted teacher-student

ratio prevailing in the State of Tamil Nadu, private schools cannot have any valid grievance. The objection raised by the writ petitioner schools in

respect of teacher-student ratio cannot be considered.

#### 90. Fixed Salary to Teaching Staff:-

In its written submissions, Government stated that by considering the market situation, availability of unemployed teachers, salary would be

considered at Rs. 6,000/- for nursery and primary school secondary grade teachers; Rs. 9,000/- for Matriculation/Middle School Secondary

Grade teachers; Rs. 14,000/- for B.Ed. teachers and Rs. 15,000/- for Post Grade teachers. The Government is not justified in saying that in view

of availability of unemployed teachers, the salary payable to the teaching staff has to be restricted.

91 Education is an important tool for all round development of an individual. Educational Institution is established to impart knowledge to the

students to facilitate his development. In the beginning, even though educational institutions were established without profit motive, over the years,

taking advantage of the demand, more number of private educational institutions were established, of course with profit motive. The rush for

admission in private schools is occasioned by the standards maintained in such

schools. It is in the interest of the public that such good quality schools are established. The schools should have autonomy in the right of appointment and selection of the teachers to maintain standards of education. For providing better quality education, private educational institutions have autonomy in selecting quality teachers. If quality teachers are not appointed, the standards will be lowered from excellence to a level of mediocrity.

92. To maintain the quality of education, private educational institutions also have the autonomy to select and retain experienced teachers to impart quality education. While so, the Government is not justified in saying in view of the availability of unemployed teachers salary of teaching staff could

be fixed at Rs. 6,000/- for nursery and primary school secondary grade teachers; Rs. 9,000/- for middle school Secondary grade teachers; Rs.

14,000/- for B.Ed. Teachers and Rs. 15,000/- for Post Graduate teachers. By so restricting the salary of teaching staff, the private educational

institutions cannot be compelled to compromise on quality of education imparted to young children. In such circumstances, the learned Advocate

General has submitted that salary should be paid to teachers as per rules and the schools may be directed to open ECS account for each teacher,

which in our considered view, merits acceptance. In so far as non-teaching staff, Minimum Wages Act is applicable and minimum wages are

payable and if the minimum wages are not paid, the School authorities would be subjected to penal consequences.

93. In its written submission, the Government stated that the Pay, Allowances and Employees Welfare Schemes shall be considered and stated

how it will be considered. Learned Advocate General contended that (i) Schools may be directed to open ECS account for each teacher for

paying salary and other allowances; (ii) insofar as EPF Contribution, ESI, Pension, Gratuity, the same shall be considered on the bills produced to

the credit of the concerned account of Government. Insofar as, Christmas gift to Staff and Incentive for good results/festivals, learned Advocate-

General submitted that this gets included in the allowances given at Rs. 600/750 per annum per student. The said amount of Rs. 600/750 per

annum per student is allowed for sundry expenses. Therefore, it cannot be said that Christmas gift, incentive for good results/festivals could also be

included under sundry expenses. Whatever is the expenditure towards Christmas gift, incentive for good results, the same shall be considered.

94. Non-Teaching Staff:- Grievance of the writ petitioners is that there was rigidity regarding number of non-teaching staff to be employed. The

committee has chosen to fix the ratio for non-teaching staff as well as ayas.

95. In this regard, the learned Advocate General in his submissions as well as written submissions has submitted that as per G.O. No. 245 dated

21.02.1970, there can be one Clerk, one Attender and one Waterman for the schools having strength of students of 250; if it is more than 1000 it

can be taken as two each; if it is more than 1500 students strength, it can be taken as three each. That apart, they can have part time sweepers,

scavengers and watchmen. Considering the realistic situation and other relevant circumstances the average monthly salary of Attender and

Watermen may be fixed at Rs. 3000/- per month and that of Junior Assistant may be taken as Rs. 4000/- ; and for part time Sweepers,

scavengers and watchmen for each of them the monthly average salary may be fixed as Rs. 2000/- each.

96. The number of non-teaching staff to be employed is fixed is in accordance with the Government Order. The Writ Petitioners cannot have any

valid objection regarding strength of non-teaching staff, which is to be correlated with that of the total students. In the written submissions, the

learned Advocate General has submitted that as per the Statutory norms, strength and pay for non-teaching staff shall be as under: S.NO. School

having following student strength Rs. 4000 (clerk) Rs. 3000 (Attender/ Watermen) Rs. 2000 Sweepers/Scavengers/ Watchmen (Part-Time)

S.NO. School having Rs. 4000 Rs. 3000 Rs. 2000 weepers/

following student (clerk) (Attender/ Scavengers/ Watchmen

strength Watermen) (Part-Time)

1 100 1 1 1

2 200 1 1 2

3 300 1 2 2

4 400 1 2 3

5 500 2 2 3

6 600 2 2 4

7 700 2 2 5

8 800 2 3 5

9 900 2 4 5

10 1000 2 4 5

11 1100 2 4 5

12 1200 3 4 5

The salary paid to non-teaching staff shall be considered subject to proof as per the statutory norms of appointments and payment of salary

through ECS. In so far as statutory payments like EPF, ESI, uniforms and other payments, the observation in Para No. 94 shall hold good.

97. The main contention of the petitioners is that the obligations of the School to pay the statutory dues like contribution towards EPF and ESI and

salary as per VI Pay Commission and periodical increments were not kept in view by the Committee. Objections were also raised as to the

guidelines formulated by the Committee - "teaching staff salary pay restricted to 60% of the proposed fee income and also by fixing the teacher-

student ratio.

98. Salary and Allowances to Teaching and Non-teaching Staff: i. Salary & Allowances (Basic + DPA + DA + HRA + CCA + MED. AL) Earned

Leave + Yearly increment and Arrears based on shift in slabs.

ii. E.P.F. Contribution )

iii. E.S.I )

iv. Pension )

v. Gratuity )

vi. Christmas Gift to Staff & Pen/ )

vii. Incentive for Good Results/ ) Festivals )

viii. Retirement Purse )

ix. Ex gratia )

x. Worker's Uniform ) xi. Staff Uniform )

xii. Staff Welfare )

xiii. Staff Insurance ) Since salary should be paid to teachers as per Rules schools may be advised to open ECS A/c for each teacher and the actual

salary credited may be taken as salary Component.

Subject to a maximum pay as recommended in 6th Pay Commission.

Considered based on bills produced to the credit of concerned account of Government instead of the school itself.

To be considered subject to proof.

To be considered subject to proof.

Will be considered subject to proof.

99. Administration and Maintenance:- Grievance of the writ Petitioners is that even though the petitioner schools have produced the proof

regarding payment of property tax, electricity charges, water consumption charges and other expenses, the same was not taken into consideration

by the Committee. Yet another grievance was that because of prevailing power-cut, the Schools are forced to operate generator set for which the

schools will have to bear expenses for operation and its maintenance. In this regard, the learned Advocate General has submitted that the following

expenses will be considered towards administration and maintenance:

100. Administration:

a. Taxes

b. WaterProperty Tax, Water tax etc # will be considered.

c. Electricity Charges

Payment of electricity bill & fuel for Generator-will be considered excepting expenses of cost and installment of generator.

d. Printing & StationeryPrinting of cash book, ledgers, fee receipts, school magazine, prospectus, application forms, reportcards, circulars and

purchase of office stationery items will be considered.

e. Postage & TelephoneInternet/SMS service- will be considered.

f. ExaminationPrinting of Question papers, answer scripts, hand work material for students, projects will be considered.

g. Books & PeriodicalsWill be considered to a reasonable extent.

h. Laboratory Expenses

i. Administrative charges

j. Audit&Legal Fees

k. Hospitality With a reasonable level so as not to burden the fee structure.

l. Teaching aid Teaching aids to the necessary level may be considered along with expenses on Smart Class and software. That expenses of Smart

Class may be bifurcated into 1. Investment on installation of software; and

2. Utility Services including contents of the CDs & DVDs and the expenses on the demonstrators. The second part alone may be put on the head

of student as fees; first being the duty of the Proprietor of the school to install machine just like he makes construction of the building to get

opening permission.

m. Travelling and Conveyance Will be considered along with fee fixation @ Rs. 2/- per kilo meter rate for Van and bus etc., for utility of the

students.

n. Professional Fee It is a personal obligation while continuing in any avocation of life.

o. Advertisement This may not go to the utility of the student; the advertisement regarding the calling for teachers may alone be admitted as it

amounts to administrative charges.

p. School recognition charges

q. Bank/Interest charges It is a paramount duty of the proprietor for getting opening permission; it has nothing to do with student utility. In our

considered opinion the same shall be taken as guidelines for calculating expenditure on administration. As rightly contended by the learned

Advocate General, those expenses that will go the utility of the student shall be taken into account by the Committee.

101. Other Miscellaneous Expenses and Maintenance:- Here again, the learned Advocate General has submitted that the expenditure on the

following heads of maintenance shall be considered by the Committee:

a. Campus Maintenance : Salary of sufficient number of Gardeners, whose services

may be useful for such maintenance shall be considered.

a. Campus Maintenance Gardeners, whose Salary of sufficient number of may be useful for

services such maintenance

shall be considered

- b. Building Maintenance Subject to proof will be considered
- c. Laboratory Maintenance This will be considered
- d. Equipment Maintenance This will be considered
- e. Vehicle Maintenance Will be included in the charges for per running Kilo meter, fixable as additional fee prescribed on such head (as now it is being done)
- f. Sanitation Services of Scavengers will be considered. Purchase of Phenyl, Acid, Brooms, Bleaching powder, brushes, mops etc. will be considered
- g. Security Services This will be considered by employing part time watchmen with reasonable pay

102. Depreciation on Building, furniture, fixtures and equipments:-

Government in its written submission has stated that it is the duty of the owner of the building viz., the proprietor of the School to maintain it properly and therefore the depreciation will not be considered. It was further submitted that it is an actual concession given to tax payer only and not to allow it to the schools, since giving 10% depreciation to the buildings and furnitures will not go to the utility of the students.

103. Even though it was contended that depreciation of building, furniture and fixtures will not be considered, by perusal of the guidelines adopted by the Committee, it is seen that the Committee has formulated the guideline allowing depreciation on Building, furniture, fixtures and equipments as under

104. Land and Lease Rent:- Our attention was drawn to several instances, where the Committee has not considered the lease rent payable. In this regard, in the written submissions, Government contended that it is the paramount duty of the proprietor of the School to get opening permission by providing land either on his own or on rental basis and therefore the said expenditure cannot be passed on to the student.

105. On behalf of Government, even though it was submitted that the rent cannot be considered, as per the guidelines formulated by the



Committee, rent is one of the factors which the Committee thought it fit to be taken into consideration for determining the fee. The said guideline in

respect of rent reads as under:

Rent: As per the agreement "" if agreements are available. As per the questionnaire ""if agreement is not available. As per latest audited B/S and

P&L "" if above both details are not available. Otherwise as per abstract of the expenditure (or) as per appeal (or) as per personal hearing.

The above guideline is very reasonable.

106. Surplus for development:- In the guidelines formulated, the Committee has fixed the surplus for development as per location as under:

1.Village 5%

2.Town Panchayat 6%

3.Municipality 7%

4.Dist HQ 8%

5.Corporation 9%

107. In Modern School Vs. Union of India (UOI) and Others, the Honourable Supreme Court upheld the collection of development fees by

schools for supplementing resources for the purchase, upgradation and replacement of furnitures, fixtures and equipment. It permitted the

Managements of unaided schools to charge development fees not exceeding 15% of the total annual tuition fees. In the Modern School case, the

Supreme Court considered the concept of reasonable surplus. The accounts of the schools as non-profit organisation development fee at the rate

not exceeding 10-15% was held to be appropriate. In the said judgment, at paragraph No. 25, the Supreme Court held as under:

25. In our view, on account of increased cost due to inflation, the management is entitled to create a Development Fund Account. For creating

such development fund, the management is required to collect development fees. In the present case, pursuant to the recommendation of the

Duggal Committee, development fees could be levied at a rate not exceeding 10% to 15% of total annual tuition fee. Direction No. 7 further states

that development fees not exceeding 10% to 15% of total annual tuition fee shall be charged for supplementing the resources for purchase,

upgradation and replacement of furniture, fixtures and equipments. It further

stated that development fees shall be treated as capital receipt and shall be collected only if the school maintains a depreciation reserve fund. In our view, Direction No. 7 is appropriate. If one goes through the Report of the Duggal Committee, one finds absence of non-creation of specified earmarked fund. On going through the Report of the Duggal Committee, one finds further that depreciation has been charged without creating a corresponding fund. Therefore, Direction No. 7 seeks to introduce a proper accounting practice to be followed by non-business organisations/not-for-profit organisations. With this correct practice being introduced, development fees for supplementing the resources for purchase, upgradation and replacements of furniture and fixtures and equipments is justified. Taking into account the cost of inflation between 15-12-1999 and 31-12-2003 we are of the view that the management of recognised unaided schools should be permitted to charge development fee not exceeding 15% of the total annual tuition fee.

108. As per the Judgment of the Supreme Court in Modern School case, in case of unaided private educational institutions, reasonable surplus of 10 to 15% was held to be permissible. While so, the surplus for development fixed by the Committee for the Schools i.e., 5% for villages, 6% for town panchayats, 7% for Municipalities; 8% for District Headquarters, 9% for Corporations is not commensurate with the percentage of surplus as indicated in Modern School case.

109. In its written submission, Government submitted that the Committee may consider school development fund for a blanket fixed development charges of 15%. All the unaided private schools (other than minority educational institutions) in village and town panchayats, the surplus for development could be fixed as:

110. Increase in Fees as per Infrastructure Grading:-

Depending on the infrastructure available, Grades were assigned to the schools as under:-

Village and Town Panchayats 10%

Municipalities and 12=%

District Headquarters

Corporations 15%

Here again, as per grading, the increase in fees could be increased to 7% to 10% depending on the availability of infrastructure and location.

111. Sundry Expenses:- For sundry expenses, Committee allowed Rs. 600/- per student up to middle school and Rs. 750/- per student up to

Higher Secondary School per student per annum. As per the decisions in T.M.A.Pai Foundation case and Inamdar case, in our considered view,

taking the above amount of Rs. 600/- / Rs. 750/- per student as base amount for sundry expenses, increase in sundry expenses could be given

depending on the location and availability of other extra curricular activities in the School.

112. Fee for specific purposes and Extra-Curricular Activities:-

Liberty of Management of the educational institutions includes the liberty to define for itself various facets of education and other extra curricular

activities including sports and various methodology of teaching. In our considered view, the following guidelines shall be followed: Fee for specific

purposes:

(a) Games: Purchase of Sports items & Sports

Day

(b) Functions and Celebrations: Independence day, Republic day, Day, Festival

Day etc.,

III. Teaching through Technology(Smart Class): Separate fee is being fixed according

the norms of utility, as per the utility to be fixed.

IV. Medical: Medical check up and medicine for

students will be considered for appointment of

sufficient number of part time Doctors and

subject to

proof

V. Seminars: Those Seminars relevant to educations.

VI. Music : Dance/Brass Band/Orchestra/Sports/Yoga/etc.,

These will be considered according to strength of

students and subject to proof. (Full time).

VII. Books/periodicals Table copies for teachers and News papers for student It is pre-requisite for getting opening permission. However, annual fixed amount may be provided.

VIII.Group Activities NCC/NSS/SCOUTS/ Whatever expenses apart from the Government

JRC/RSP NCC/NSS/SCOUTS/ grant on this head may be considered.

113. Learned Advocate General has submitted that keeping in view the interest of the students and their parents Committee adopted a balanced approach and prayed to confirm the same. Learned Advocate General has further submitted that any increase in the fee structure would be a financial burden for parents.

114. This Court is also conscious of the burden of the parents, but at the same time, this Court cannot be oblivious of the fact that in view of the increasing awareness and global level competition, the parents want to impart quality education to their wards, irrespective of their financial position. They also want their wards to excel in various fields and participate in extra-curricular activities and to achieve all-round development.

The desire of parents to give such quality education by getting admission in private schools is also to be kept in view. We hope that keeping in view the desire of parents to give such quality education to their wards, the Committee shall take a balancing approach.

115. At this juncture, we may also usefully refer to the recent Judgment of the Supreme Court dated 12.4.2012 upholding the constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009. The unsuccessful challenge to the Act came from unaided private schools management, who are required to set apart 25% seats for poor children. The provisions of the Act shall apply to a school established, owned or controlled by the appropriate Government or a local authority; an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; a school belonging to specified category; and an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority. # Of

course, the provisions of RTE Act, 2009 are not applicable in respect of unaided Minority Schools.

116. With the judgment of the Supreme Court, now children of the age 6-14 years from weaker sections can have access to good quality

education. Under Right to Education Act, private schools are to admit 25% of the students from socially and economically backward families and

thus private unaided schools are now made "socially responsible". As per Right to Education Act, schools will get subsidy from the Government

for giving free education (65% of the subsidy will come from the Centre and 35% from States). Since the Government will be reimbursing the

tuition fees for underprivileged children admitted to unaided private educational institutions, it would prove to be a financial burden for the

Government. We hope that the Committee shall also keep in view the financial burden of the Central and State Governments in implementing Right

to Education Act.

#### Minority Educational Institutions

117. All the writ petitioners excepting the petitioners in W.P. Nos. 18092, 18419 and 18420 of 2011 are established and administered by the

various Catholic Dioceses and the different religious Congregations of the Catholic Church. The three writ petitioner Schools in W.P. Nos. 18092,

18419 and 18420 of 2011 are established and administered by the Church of South India, Madras Diocese. W.P. No. 26270 of 2011 is run by

Muslim minority educational institution. The writ petitioners # Schools run by various Catholic Dioceses and Congregations of the Catholic Church

and Church of South India are running around 500 schools in Tamil Nadu and are the biggest private educational agency in Tamil Nadu. Most of

the schools were established before Independence and some of the schools are more than 100 years old. Most of the Schools run in the rural

areas are Tamil Medium Schools and very few schools are English Medium Schools. All the said Educational Institutions are governed under

Article 30(1) of Constitution of India. Because of their minority character, the said educational institutions enjoy a constitutional guarantee and

special protection to establish and maintain educational institutions of their choice.

119. Considering the right of religious and linguistic minorities, referring to the

earlier judgments, in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481, the Supreme Court has held as under:

#116. While considering the right of the religious and linguistic minorities to administer their educational institutions, it was observed by Ray, C.J.,

at SCR p. 194, as follows: (SCC pp. 745-46 of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*,

The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the

founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. Second is the

right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the

institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to

admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for

the benefit of its own institution.

117. While considering this right to administer, it was held that the same was not an absolute right and that the right was not free from regulation.

While referring to the observations of Das, C.J., in *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of

India, it was reiterated in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, that the right to administer

was not a right to maladminister. Elaborating the minority's right to administer at SCR p. 196, it was observed as follows: (SCC p. 748, para 30)

The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the

very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the

appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate

smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism

in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its

minority character.

118. Ray, C.J., concluded by observing at SCR p. 200, as follows: (SCC p. 752, paras 46-47)

46. The ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

47. In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration.

119. The right to establish and administer an institution, the phrase as employed in Article 30(1) of the Constitution, comprises the following rights:

(a) to admit students; (b) to set up a reasonable fee structure; (c) to constitute a governing body; (d) to appoint staff (teaching and non-teaching); and (e) to take action if there is dereliction of duty on the part of any of the employees. (vide Para No. 118 in P.A. Inamdar and Others Vs. State of Maharashtra and Others, .

120. Some of the reasonable regulations are (a) to maintain the educational character and standard of such institution, e.g., to lay down qualifications or conditions of service to secure appointment of good teachers, to ensure interests of students, to maintain a fair standard of teaching;

(b) to ensure orderly, efficient and sound administration and to prevent mal-administration, and to secure its proper functioning as an educational institution, to ensure that its funds are spent for the betterment of education and not for extraneous purposes; (c) to enforce the general laws of the land, applicable to all persons, e.g., taxation, sanitation, social welfare, economic regulations, public order, morality and (d) to ensure efficiency and discipline of the institution.

121. Since the right to "administer" confers upon the minority institutions the right to manage the institution, and the right conferred by Cl.(1) is

absolute; no "restriction" can be imposed by the State on the right of the minority community to manage the institution. Such regulations are,

however, permissible only insofar as they do not restrict the right of administration of the minority community but facilitate and ensure better and

more effective exercise of that right for the benefit of the institution. They must allow the institution to retain its minority character.

122. Elaborating upon the the meaning and content of the expression ""minorities"", in Article 30 of the Constitution of India and also the extent of

protection and the nature of regulations, in paragraph No. 161 of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the

Supreme Court formulated eleven questions. We may usefully refer to Question No. 5(c) and the principles relied thereon, which reads as under:

Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing

bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their

service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the

regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board

have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative

control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational

procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the

merit of an individual for being appointed as a teacher or a principal of any educational institution.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

(underlining added)



123. Right to administer confers upon the minority institutions right to manage the institutions. Minority Institutions cannot resist the regulations,

which are conducive to maintain the standard. However no regulation would be valid, if it has the effect of displacing the minority administration or

restricting the right of the minorities to administer their educational institutions.

124. In order to be consonant with Article 30(1), a regulation imposed by the State upon a minority institution must be (a) reasonable and must be

(b) regulative of the educational character of the institution and conducive to making the institution an effective vehicle of education for the minority

community or other persons who resort to it. The State cannot impose any restriction on the right of the minorities to administer educational

institutions so long as such institutions are unaided by the State, except to the limited extent that regulation can be made for ensuring excellence in

education.

125. Though Article 30 itself does not lay down any limitations upon the right of minority to administer its educational institutions, the right is not

absolute, but is subject to reasonable regulations. The regulation must satisfy a dual test -the test of reasonableness, and the test that it is regulative

of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community

or other persons who resort to it.# (vide The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . The

regulation cannot go to the extent of inhibiting the right guaranteed by Article 30(1) of the Constitution of I Tamilnadu Schools (Regulation of

Collection of Fee) Act 2009 (Tamil Nadu Act 22 of 2009)ndia.

126. In The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others, the Supreme Court summarised the general principles relating

to establishment and administration of educational institutions by minorities themselves. The Supreme Court held that the right to establish and

administer educational institutions is not absolute and that there can be regulatory measures for ensuring educational standards and maintaining

academic excellence. It was further held that subject to the eligibility conditions/ qualifications prescribed by the State being met, the unaided

minority educational institutions will have the freedom to appoint teachers/ lecturers by adopting any rational procedure of selection.

127. Learned Advocate General contended that the constitution of the Committee for regulating the fees would not amount to infringement of the rights of minorities. In support of his contention, the learned Advocate General relied upon paragraph No. 141 of P.A. Inamdar and Others Vs.

State of Maharashtra and Others, which reads as under:

141. Our answer to Question 3 is that every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged"".

128. Learned counsel appearing for minority educational institutions Mr.A.Xavier Arulraj pointed out the difference between a reasonable regulation under Article 19(6) and reasonable restriction under Article 19(1)(g). The learned counsel would submit that the regulation can be made

to ensure maintaining excellence and educational standards thereof, apart from using it for the purpose of prevention of collecting exorbitant fees.

He would further submit that these regulations must be under a way to facilitate and ensure better and more effective exercise of right for the benefit of the institution or otherwise it would affect the autonomy of the institution.

129. At the outset, learned counsel for the minority institutions made it clear that the applicability of Tamilnadu Schools (Regulation of Collection of

Fee) Act 2009 (Act 22 of 2009) is not under challenge. He would only contend that the jurisdiction of the Committee is only to regulate the fee

and they cannot interfere in the administration of the minority institutions by (i) restricting the income and expenditure; (ii) restricting the right of

minority institutions to appoint their staff by restricting the numbers without authority; (iii) restricting the expenditure on certain heads i.e., religious

and cultural activities of the minority institutions and the Committee cannot act by preventing minority institutions to have their own cultural social

identity. The learned counsel submitted that the minority institutions are entitled to have their own fee structure as a part of right to administer their

educational institutions. It was submitted that inspite of regulating the fee charged by the minority schools, the Committee is arbitrarily restricting the

income and expenditure by a rigid formula and thereby restricting the right of minority institutions in running educational expenses. In so far as legal

position regarding protection afforded to minority educational institutions, the

learned counsel placed reliance upon decisions of the Apex Court in:-

- (i) Re The Kerala Education Bill, AIR 1958 SC 956 Paras 9, 16, 18 and 33;
- (ii) W.Proost and others vs. State of Bihar, AIR 1969 SC 465 11;
- (iii) State of Kerala Vs. Very Rev. Mother Provincial, (1970) 2 SCC 417 11 and 15;
- (iv) The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another,
- (v) The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another,
- (vi) TMA Pai Foundation Vs. State of Karnataka, (2002) 8 SCC 481 at Paras 116, 122, 139 and 143 Q.5(C)
- (vii) P.A. Inamdar and Others Vs. State of Maharashtra and Others,
- (viii) Action Committee, Un-Aided Pvt. Schools and Others Vs. Director of Education, Delhi and Others,

130. Restricting the number of teaching and non-teaching staff- Infringement of rights of Minority Institutions: - Learned counsel for writ petitioners

contended that minority educational institutions have the right to appoint their staff and while so, without any justification, the Committee restricted

the numbers of both teaching and non-teaching staff. It was further submitted that such restriction would amount to restricting the right of

administration of the minority educational institutions. Contention of Writ Petitioners is that by restricting the number of teaching and non-teaching

staff, the right of writ petitioner schools is left with much deficit and thereby right of the minorities is crippled in running the educational institutions.

In this regard, learned counsel for the writ petitioners has drawn our attention of this Court:-

(i) In W.P. No. 18420 of 2011, the Committee has considered salary only for the 105 teaching staff and 51 administrative staff and allowed only

total salary per year at Rs. 1,90,34,855/- and Rs. 47,58,714/- respectively.

(ii) In W.P. No. 18037 of 2011 (Rosary Matriculation Higher Secondary School), non-teaching staff (31) was restricted to 13;

(iii) In W.P. No. 18419 of 2011 (CSI Jessie Moses Matriculation Higher Secondary School), Teaching staff (70) and Non-teaching staff (40) was

restricted to 65 and 34 respectively;

(iv) In W.P. No. 2306 of 2012 (Seventh Day Adventist Matriculation Higher

Secondary School), Secondary Grade teachers (24), B.T.Teachers

(27), P.G.Teachers (26) and Non-teaching staff (32) was restricted to Secondary Grade (38), B.T. (16), P.G. (10) and Non-teaching staff (30)

respectively; and

(v) In W.P. No. 18744 of 2011 (Carmel Garden Matriculation Higher Secondary School), Non-teaching staff (28) was restricted to 16.

131.By restricting the total number of teaching and non-teaching staff, the Committee has considered only lesser salary and not actual salary paid

and thereby the minority educational institutions are left with huge deficit, which amount to restricting the right of minority institutions.

132. Because of their constitutionally protected liberty of administration, the Minority Educational Institutions are entitled to decide number of staff,

their pay scale, attendant benefits and welfare schemes, innovative methods for effectiveness of education and excellence. As rightly contended by

the learned counsel for Minority Educational Institutions, the Committee cannot restrict any of the said activity or its expenditure in the name of

regulation. Restrictions of staff and fixation of salary and sundry expenses also infringe into the constitutionally protected right of administration of

Minority Educational Institutions. There shall not be restriction regarding the salary payable to teaching and non-teaching staff, which, of course, is

subject to the Government Scale of Pay and Government Orders.

133. Being minority educational institutions, they have the autonomy to have the best teacher for better quality education to be imparted. Ill-

equipped teachers and sub-standard staffs would bring down the quality in excellence. Like in unaided non-minority educational institutions, there

cannot be any rigidity in respect of salary payable to the teachers. Any such stipulation would interfere with the overall administrative control by the

Management and would infringe its rights to establish and administer the educational institutions.

134. The employment of expression ""right to establish and administer"" and ""educational institutions of their choices"" in Article 30(1) gives the right

to minority institutions which is of very wide amplitude. Therefore, a minority educational institution has a right to employ teaching and non-teaching

staff as per their requirement. Any restriction on the strength of teaching and non-teaching staff would amount to restricting right of administration of

minority community, which is protected under Article 30(1) of the Constitution of India.

135. As per the guidelines, the Committee restricted teaching staff salary to the upper limit of 60% of the proposed fee income. Action Committee,

Un-Aided Pvt. Schools and Others Vs. Director of Education, Delhi and Others, nowhere states that the salary component of the teaching staff is

to be restricted to 60% of the fee income. In Paragraph No. 16 of the Modern School case, the Supreme Court held as follows:

The fee-structure must be fixed keeping in mind the infrastructure and facilities available, investments made, salary paid to teachers and staff,

future plans for expansion and/or betterment of institution subject to two restrictions, namely non-profiteering and non-charging of Capitation fee"".

136. Stipulating a regulation by the Committee and imposing artificial restriction of 60% of proposed income as the upper limit of salary for the

teaching staff is yet another restriction on the right of minority educational institutions. Some of the educational institutions are matriculation schools,

which are governed under Code of Regulation for Matriculation Schools. Code of Regulation for Matriculation in Tamil Nadu under Rule 18(ii)

stipulates as follows:-

The staff in the Matriculation school will be paid at the rate of Government pay and they are eligible for selection grade after 10 years of service as

in other recognised school"".

137. Thus, as per the said Code, staff in the Matriculation Schools will be paid the Government scale of pay. The Committee cannot interfere with

the actual salary paid to the staff under the statute by imposing upper restriction of 60% of the proposed income as upper limit of salary for the

teaching staff. Of course, any such regulation is subject to the Government Scale of Pay and Government Orders.

138. By going through materials in the above writ petitions, we find that in respect of the above minority educational institutions, the Committee

unjustly restricted the strength of teaching staff as well as non-teaching staff. In so far as minority educational institutions, in our considered view,

the Committee ought to have accepted the strength of teaching and non-teaching staff as submitted by those educational institutions supported with

materials like attendance etc., Restriction of number of teaching and non-

teaching staff strength has resulted in deficit for those institutions virtually crippling the administration of the minority institutions. Any such restriction regarding strength of teaching and non-teaching staff in Minority Schools is subject only to Government Orders.

139. Expenditure on certain heads relating to the minority cultural activity:- The minority institutions have their own cultural and social identity. The character of the institutions is sought to be tampered with by restricting the expenditure on certain heads relating to minority cultural activities like Christmas bonus to the staff and such other minority cultural activities. In this regard, learned counsel for petitioner has drawn our attention to the orders made in respect of Schools i.e., CSI Bains Matriculation Higher Secondary School (W.P. Nos. 18092 of 2011); CSI Jessie Moses Matriculation Higher Secondary School (W.P. No. 18419 of 2011); and C.S.I.Ewart Matriculation Higher Secondary School (W.P. No. 18420 of 2011), wherein the claim of Christmas bonus to staff was disallowed. Such disallowing of expenses would negate the right of minority institutions to retain their character as minority institutions.

140. Other contentions:-

In respect of minority schools, the learned counsel raised the following contentions:-Sundry expenses must be in tune with the facilities and curricular and extra-curricular activities of the School and not based on the location. Reasonable expenditure should be allowed for maintenance of land.

141. The committee did not keep in view the transaction between petitioner School and the educational agency and therefore the lease or the rentals advance drawn and repayments made have been left out resulting in heavy deficit.

142. Financial Transactions and the Corporate management of Minority Educational Institutions run by Catholic Dioceses and various congregations:-

These schools are administered by various Catholic Dioceses and different religious Congregations of the Catholic Church. Those minority educational institutions run by various Catholic Dioceses and their different Congregations. These educational institutions are under the network of

management. Additional written submission is filed elaborating upon the Corporate School Development Fund. The minority educational institutions

in Tamil Nadu is said to have a track record of 300 educational services and are stated to be having cultural net work and are also having

"Corporate School Development Fund". They are having "Corporate School Development Fund" for deployment of funds to needy schools,

which are run for poor and needy children and also Hill Tribes.

143. Any restriction to the financial transaction of the minority schools would amount to dismember the cultural network of the minority institutions

and need to have sufficient reasonable surplus not only for its own development but also for the development of the cultural network.

144. Learned counsel placing reliance on an unreported judgment of Division Bench of this Court dated 17.12.1975 in W.P. Nos. 4478 of 1974

etc., batch, contended that in the name of fee regulation, the Committee is destabilizing the foundation of resources and financial assets owned by

the Committee, practised for more than a century, without any profiteering. In the said judgment, the Division bench of this Court held as under: To

ask for prior permission of the competent authority for utilisation of funds for bonafide purposes connected with the school involve a blanket power

to the competent authority, which seriously affects the right to administer minority institutions..... The right to administer a minority institution

includes the right to administer its funds which means that the minority institution must have the liberty to invest the moneys in whichever way it

thinks fit, and its freedom to invest or deposit in whichever way it would think safe or proper cannot be infringed upon.

145. Resources invested by the Educational Institutions run by Catholic are held in common by Corporate Educational Agencies. Therefore, the

School Development Fund can be permitted to be held in common under the form of ""Corporate School Development Fund"" by the respective

Educational Agencies for advantageous deployment of resources for needy schools and for expansion of the Educational Agencies. This

centralization of School Development Fund into ""Corporate School Development Fund"" is meant for enhancing the educational stream and used

for that purpose alone. Thus, the schools run by Catholic Dioceses and their various Congregations stand on different footing from other

educational institutions.

146. Percentage of income to be allowed for school development is 15% of the total expenditure, but in none of the minority schools, Committee

had given 15% for growth development. Based on the location of schools, Committee has allowed surplus for development only from 5% to 9%.

The learned counsel Mr.Xavier Arulraj submitted that there are very good minority schools in rural areas (Like Montfort School in Yercaud) and

while so, allowing surplus at 5% to 9% based on location of Schools is a misnomer. We find much force in the contention of learned counsel for

petitioners. All the minority educational institutions need to have a reasonable surplus for its own development and also being member of

Corporate Management.

147. As per the ratio of Modern School case, the minority educational institutions need to have reasonable surplus for its own development and

also for development of cultural network of minority institutions. While for its own development the Minority Institutions are entitled to have 15%

surplus, it should also be a member of cultural net work and enhance the educational stream. By being member of cultural net work for Corporate

School Development Fund for deployment of resources for other needy school, it would be appropriate to allow another 10% surplus for Minority

Educational Institutions run by Catholic Institutions.

148. For private unaided non-minority schools, in Para Nos. 109 and 110, we have fixed reasonable surplus at the slab of 10-15% depending

upon the location. In so far as minority educational institutions run by Catholic Dioceses and their various Congregations, keeping in view

"Corporate Development Fund" maintained, it would be appropriate to allow 15% plus 10%, totalling 25% as surplus for the minority educational

institutions irrespective of the location of the school. Likewise, reasonable increase in fee structure at the rate of 7= % to 10% should be allowed to

the minority educational institutions also depending on the availability of infrastructure upon the location.

149. Other Minority Educational Institutions ""Other Minority Educational Institutions other than run by Catholic Dioceses and their various

Congregations also need to have reasonable surplus for its own development. Irrespective of location, those Minority Educational Institutions shall



be entitled

to 15% surplus irrespective of their location of the school. They shall also be entitled to reasonable increase in fee structure at the rate of 7% to 10% depending on the location.

150. Method of calculation adopted by the Committee virtually cripples the minority institutions:

(i) Before the fee structure was fixed, there were three stages. The auditors seemed to have arrived at an average expenditure per student in

Column No. 8. In Column No. 10, auditors calculated proposed fee per student. They compared both the amounts in Column No. 11. If there is a

surplus they proceeded to deduct the same from the proposed fee per student. If there was deficit they have totally ignored. The so called notional

deficit per student, if multiplied by the number of students, runs to few crores or several lakhs virtually crippling the minority institutions.

(ii) For example, in W.P. No. 18420 of 2011, the total amount of alleged notional deficit calculated, works out to Rs. 1,08,05,515/- (Rs. 3565 x

3010 = Rs. 1,08,05,515). The total amount allowed for sundry expenses is Rs. 22 lakhs. The amount allowed for growth and development is Rs.

35 lakhs. Put together, the amount allowed to sundry expenses and development, works out to a total of Rs. 57 lakhs. The amount they ignored

(Rs. 1,08,05,515/- ) is more than the amount fixed both for sundry expenses and development fund (Rs. 57 lakhs). Therefore, the very calculation

has effect of virtually crippling the institution. Likewise, in W.P. No. 18037 of 2011, the total amount of notional surplus calculated works out to

Rs. 88,53,712/- (Rs. 3437 x 2576 = Rs. 88,53,712/- ). The total amount allowed for sundry expenses is Rs. 19,32,000/- . The amount allowed

for growth and development is Rs. 22,15,758/- . Put together, the amount allowed to sundry expenses and development works out to a total of

Rs. 41,47,758/- . The amount they deducted as surplus (Rs. 88,53,712/- ) is more than the amount fixed for sundry expenses and development

fund (Rs. 41,47,758/- ). Therefore, in the entire transaction, Committee has neither provided for sundry expenses nor growth and development

fund.

### III- Conclusion

151. For the foregoing reasons, the impugned orders in all the writ petitions are

set aside and the matters are remitted back to the School Fee

Determination Committee for consideration of the matters afresh. Fee structure approval form shall be given to Writ Petitioner Schools calling upon

them to produce the details and documents required to be furnished. All the Writ Petitioner Schools shall propose the fee structure afresh with

fresh or additional materials/Audit statements showing the expenditure and income. The Committee shall give personal hearing to each of the Writ

Petitioner Schools and also afford reasonable opportunity to all the Writ Petitioner Schools and pass final orders as expeditiously as possible,

preferably by the end of December 2012. [Unaided Non-Minority Educational Institutions]

152. In respect of unaided Non-Minority Educational Institutions, the School Fee Determination Committee shall keep in view the guidelines in

Para Nos. 88 to 117 and 152 of this order. For the reasons stated in Para Nos. 109 and 110, all the unaided Non-Minority Educational

Institutions shall be entitled to surplus for development i.e., Village and Town Panchayats at 10%; Municipalities and District Headquarters at

12% and Corporations at 15%.

153. For the reasons stated in Para No. 111, for Infrastructure Grading, there shall be an increase in fee - 7% to 10% depending on the

availability of the infrastructure in the Schools.

[Minority Educational Institutions]

154. The directions [except the observations regarding the RTE Act, 2009 in Para Nos. 116 and 117] in respect of unaided Non-Minority

Educational Institutions shall also hold good for the unaided Minority Educational Institutions. That apart, in respect of unaided Minority

Educational Institutions, Committee shall keep in view the guidelines in Para Nos. 118 to 151 and 152 and also the following

guidelines:

(i) Audited Statement submitted by the Minority Educational Institutions may be accepted by the Committee;

(ii) In case the Committee does not approve the auditors' statement submitted by the minority educational institutions, the Committee shall record

its reasons for not accepting the report. Thereafter, the Committee shall afford reasonable opportunity to the minority institutions and thereafter

shall pass the final order.

(iii) There shall not be restriction regarding the salary payable to teaching and non-teaching staff, which, of course, is subject to the Government

Scale of Pay and Government Orders. The Committee shall not interfere with the expenditure of the minority educational institutions on its cultural

and religious activities to retain its character as minority institutions.

(iv) For the reasons stated in Para Nos. 143 to 149, as the minority institutions run by Catholic Dioceses and their various Congregations, they

being a part of the body corporate and ""Corporate School Development Fund"", irrespective of its location, all the minority educational institutions

run by Catholic Dioceses and their various Congregations shall be entitled to 25% surplus.

(v) Other Minority Educational Institutions shall be entitled to surplus for development i.e. Village and Town panchayats at 10%; Municipalities and

District Headquarters at 12=% and Corporations at 15%.

(vi) The Minority Educational Institutions (including the Institutions run by Catholic Dioceses and their various Congregations) shall also be entitled

to 7=% to 10% increase in fee structure on the infrastructure grading.

#### IV - Interim arrangement

155. The academic year 2012-2013 already started. In view of the fee structure earlier fixed, many of the schools are said to be facing financial

difficulties. Pending final orders of School Fee Determination Committee, Writ Petitioner Schools both Minority and Non-Minority Schools shall

be entitled to collect 15% over and above the fee fixed earlier by the Committee. The interim arrangement is applicable only to the Writ Petitioner

Schools and not to other Schools. Collection of enhanced fee is subject to the final orders to be passed by the Committee.

There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.B.I.,J.) (S.V.,J.)

03.05.2012

03.05.2012

156. Learned Advocate General has submitted that number of other private schools have so far not chosen to challenge the fee fixed by the School

Fee Determination Committee headed by Justice K.Raviraja Pandian. The learned Advocate General urged us to specifically clarify that the interim arrangement in this order shall not be made applicable to the other schools, who have not so far challenged the order of the School Fee Determination Committee headed by Justice K.Raviraja Pandian. Lest, all other unaided private schools would try to take advantage of the interim arrangement in this order and thereby burdening the parents. We find much force in the above contention of the learned Advocate General. We reiterate our observations in Para No. 156. We make it clear that the other Schools, who have not so far chosen to challenge the order of the School Fee Determination Committee headed by Justice K.Raviraja Pandian, shall not claim the benefit of the interim arrangement made in this order. The cut-off date for availing the benefit of the interim arrangement made in this order is 2.5.2012. That is only those schools who filed writ petitions challenging the order of the School Fee Determination Committee headed by Justice K.Raviraja Pandian till 2.5.2012 shall alone be entitled to claim the benefit of the interim arrangement. That too, only after final orders are passed in those writ petitions on considering the facts and merits of each case. The Government shall ensure strict monitoring in this regard.