

(2014) 10 KL CK 0160

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 27162 of 2014 (U)

Simi A.C.

APPELLANT

Vs

The Secretary

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 19(1)(g), 19(6), 19(g), 21, 21A
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 23
Penal Code, 1860 (IPC) — Section 317, 324, 342
Right of Children to Free and Compulsory Education Act, 2009 — Section 12(1)(c), 17, 18, 18(3), 19

Citation : (2014) 10 KL CK 0160

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : P. Anoop, (Mulavana), Advocate for the Appellant; T.T. Muhamood, Spl. Govt. Pleader, M.P. Ashok Kumar, Bindu Sreedhar, R.S. Manjula, Thomas Abraham, Merciamma Mathew, Aswin P. John, T.S. Prasannakumar and S. Manu, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—A catalyst of an incident occurred on 25.09.2014 in the School of the eighth respondent, attracting the interest of the media about the incident, and that of the officials about the very existence of the school. The incident is described as a catalyst, for it only plays, in my view, a minor role, if at all, in deciding the existential justification of the school in statutory terms. Though the writ petition begins with a flourish of exhortation on the issue of corporal punishment, the said issue is being taken care of under a separate redressal mechanism, which is said to have been set in motion by the very petitioner. Accordingly, the alleged incident of meeting out corporal punishment to a pupil in the school is only incidentally touched upon without much elaboration.

2. Moving from abstract to the concrete, I briefly set out the facts, as have been pleaded by the petitioner, thus: The petitioner is the mother of a six-year-old

UKG pupil studying at that material point of time in the School of the eighth respondent. On 25.09.2014, the said pupil was allegedly subjected to corporal punishment by the headmistress, the seventh respondent. Expatiating further, it is to be stated that the pupil was allegedly locked up in a dog kennel as a measure of punishment for talking to other pupils in the class room. The issue caught the attention of the media on 29.09.2014, when the petitioner also lodged a complaint with Peroorkkada Police Station, which in turn registered Crime No. 1196/2014 (Exhibit P2) against the class teacher, as well as the seventh respondent, the headmistress, for the alleged offences under Sections 317 and 342 of Indian Penal Code (IPC), read with Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. There seems to be another incident of beating of a child in the same school resulting in registering of crime under Section 324 IPC in Crime No. 437/2006 on the file of the same police station, as could be seen from Exhibit P3.

4. On 29.09.2014, directed by the third respondent, the fourth and sixth respondents inspected the school. Having found that the school lacked proper facilities, the said authorities recommended for the closure of the school by shifting the pupils to nearby aided/Government schools. Acting on the said inspection report, the third respondent issued Exhibit P1 proceedings closing down the eighth respondent school with immediate effect. He has also observed that the nearby aided and Government schools should admit the pupils from the said school without insisting on transfer certificates. The parents were also permitted to submit birth certificates of their wards to the respective schools within one month. Incidentally, in this order the third respondent refers to Section 17 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the Act" for brevity and convenience), and observes that the conduct of the seventh and eighth respondents is violative of the said provision. As could be seen later, the learned counsel for the seventh and eighth respondents made this reference of the third respondent to Section 17 of the Act his sheet anchor to contend that the direction for closure of the school is beyond the purview of Section 17 of the Act.

5. The seventh respondent seems to have submitted a representation on 09.10.2014 to the third respondent seeking revocation of Exhibit P1 closure order. The said authority, however, issued Exhibit P4 proceedings on 14.10.2014 rejecting the request of the seventh respondent.

6. The very next day, the seventh respondent is believed to have filed an "appeal" before the Hon"ble Minister for Education assailing Exhibit P4; on the same day, i.e., on 15.10.2014, the first respondent issued Exhibit P5 order staying the operation of Exhibit P4. Aggrieved thereby, the petitioner filed the present writ petition.

7. In the backdrop of the above facts, the learned counsel for the petitioner has submitted that the eighth respondent school has acquired sufficient notoriety in

inflicting inhuman punishments on young pupils. Defending Exhibits P1 and P4 issued by the third respondent, the learned counsel would contend that the said authority has taken most appropriate action in closing down the school which has no manner of right to function. Insofar as the impugned Exhibit P5 is concerned, he has contended that it is very vague and it does not even disclose when the seventh respondent filed the so-called appeal.

8. The learned counsel for the petitioner has made elaborate reference to the statutory scheme of the Act, with specific reference to Sections 17, 18 and 19 thereof, apart from making a reference to the Schedule annexed to the Act. He has drawn the attention of this Court to the building requirement as has been set out in the Schedule. Referring to Exhibit R7(c) filed by the seventh respondent, the learned counsel for the petitioner submits that the alleged certificate of authority issued by the Travancore Institute of Science and Technology (TIST) does not have any legal sanction. He has also drawn my attention to Exhibit P7, which is said to be a fee receipt issued by the eighth respondent school. According to the learned counsel, the monthly fee of Rs. 500/- and the admission fee of Rs. 7000/- do not, by any means, establish that it is the only affordable school in the vicinity. Eventually, the learned counsel would contend that the action of the first respondent in suspending the operation of Exhibits P1 and P4, through Exhibit P5, more pertinently *ex parte*, thereby allowing the eighth respondent school to function, cannot be countenanced, inasmuch as it amounts to giving official imprimatur to gross illegality, to wit, to permit a school to function without any recognition. Accordingly the learned counsel has urged this court to allow the writ petition.

9. *Per contra*, the learned counsel for the seventh and eighth respondents has firstly submitted that the petitioner does not have the necessary *locus standi* to file the writ petition. According to him, the petitioner already withdrew her children from the school and ceased to have anything to do with the eighth respondent school. The learned counsel has also drawn my attention to the relief sought by the petitioner in the writ petition. Drawing a distinction between a writ of mandamus and that of certiorari, the learned counsel would contend that in the absence of any prayer for certiorari, the very writ is not maintainable.

10. The learned counsel for the seventh and eighth respondents has further submitted that the school in question has been functioning with distinction for the past twenty five years. Unable to bear the competition offered by it, certain vested interests hatched up an elaborate conspiracy to close the school down. In other words, the whole affair of the alleged corporal punishment by locking up the petitioner's son in a kennel is a stage-managed show. Except the daughter of the petitioner, contends the learned counsel, no one else has witnessed the alleged incident. According to him, the very kennel is situated close to the main gate, thus being visible to all the passers-by. Such being the situation, it is well-nigh impossible for the seventh respondent or for any other person, to lock-up a pupil therein without anybody else noticing.

11. The learned counsel has strenuously contended that to prove the bona fides of the seventh and eighth respondents, they voluntarily approached this Court and filed W.P.(C)No.27546/2014 seeking an inquiry by CBI into the whole incident. According to the learned counsel, had the seventh and eighth respondents been guilty of any illegality, they would not have dared to take the said step. On the contrary, only to expose the conspiracy behind the alleged incident, contends the counsel, the seventh and eighth respondents have approached this Court.

12. In further elaboration of his conspiracy theory, the learned counsel has submitted that earlier a nonexistent organisation filed W.P.(C)No.26554/2014 (Exhibit R7(a)) before this Court, but that was thrown out as being frivolous. According to him, with verbatim pleadings the petitioner filed the present writ petition.

13. The learned counsel for the seventh and eighth respondents has submitted that Section 2(c) of the Act defines the child, and that the petitioner's son, studying only UKG, cannot be termed as a child, as he is below six years. He has further contended that the third respondent invoked Section 17 of the Act, which only deals with corporal punishment, but not with the closure of the school. Deductively the learned counsel contends that closure of the school, which is contemplated under some other provision, by exercise of powers under Section 17 of the Act, is clearly illegal and unsustainable.

14. The learned counsel has also drawn my attention to Exhibit R7(b) and submitted that at the earliest point of time the sixth respondent submitted Exhibit R7(b) survey report recommending the recognition of the school. He has also submitted that the fourth and sixth respondents visited the school without any prior notice to the eighth respondent. The learned counsel has further made copious reference to the Rules framed under the Act by the Central Government and the State Government to drive home the point that neither the substantive law nor the subordinate law empowers the authorities concerned to close down the school, more particularly without following the due process, such as putting the affected persons on notice and affording them an opportunity of being heard. According to the learned counsel, the action of the third respondent is grossly violative of the principles of natural Justice.

15. Stoutly defending Exhibit P5, the learned counsel would contend that it is only an interim measure in the interest of the pupils and that the petitioner has every opportunity to expound her opposition to the existence of the eighth respondent school. Tracing the vires of the first respondent, the learned counsel contends that Rule 15(3) of the Right of Children to Free and Compulsory Education Kerala Rules, 2010 ("the State Rules") empowers the said authority to exercise his appellate powers to interdict any order passed by an educational authority purportedly exercising the powers under the Act. The learned counsel has also contended that Section 32 of the Act is required to be read in conjunction with Section 31 as well as Rule 24 of the State Rules.

16. The learned counsel for the seventh and eighth respondents has drawn my attention to Exhibits R7(c), R7 (d), and R7(e) to substantiate his contention that the eighth respondent school has the necessary approval and accreditation to certain autonomous or Government organisations. According to the learned counsel, unless a school receives aid from the Government, it does not require any recognition and its pupils could as well appear for the public examination as private candidates, as can be seen from Exhibit R7(f).

17. Summing up his submissions, the learned counsel has submitted that the policy of the Government is to open schools but not to close them down. Exhibit P5 being only an interim direction no writ lies. Even otherwise, judicial review, contends the learned counsel, especially by way of mandamus is only meant to command an official to do or not to do a particular act. In the light of the relief sought by the petitioner, no mandamus could be issued. According to the learned counsel, before rushing to the Court, the petitioner ought to have approached the first respondent seeking vacation or modification of Exhibit P5. In sum and substance, the writ petition is either not maintainable or in the alternative premature; accordingly he urges this Court to dismiss the writ petition.

18. The learned counsel for the additional tenth respondent has submitted that the said respondent is a Parent-Teacher Association. But, a look at I.A. No.14558/ 2014, through which the said respondent came on record, clearly reveals that the additional tenth respondent is only an individual, who incidentally may have been the President of the said PTA. Accordingly, I take the plea of the said respondent as that of an individual parent of one of the pupils. Substantially adopting the arguments of the learned counsel for the seventh and eighth respondents, the learned counsel for the additional tenth respondent has submitted that the people in the area around the school come from lower stratum of the society and that they could not afford hefty school fees. The authorities, according to him, ought to have found a pragmatic solution to the issue and, if at all the closure of the school is inevitable, it could have been done from the next academic year. The learned counsel has submitted that the Government has permitted the school authorities to submit their applications up to 31.12.2014. Accordingly, closing down the school prior to that date is grossly illegal.

19. The learned counsel for the additional ninth respondent, who is said to be a teacher, has submitted that the school has eight teachers and two ayahs, and that they have been deprived of their livelihood as a result of the abrupt closure of the school, which according to the learned counsel, is in violation of the right to life guaranteed to the employees of the school under Article 21 of the Constitution of India. He has also submitted that, even Central Board of Secondary School once grants affiliation, for whatever reason if it wants to withdraw it, it can only do that by providing one year time to the school in question.

20. The learned counsel has further contended that there cannot be any

distinction between a school with recognition and one without recognition in the matter of their closure. According to him, even in the case of a recognised school the closure takes place only after withdrawal of recognition. As such, since both schools are without recognition by the time of their closure, all the protection provided to the recognised school should also equally apply to the school without recognition.

21. The learned Government Pleader, on his part, has submitted that the first respondent has issued Exhibit P5 only having concern for the future of the pupils, whose education should not suffer in the middle of the academic year for whatever fault of the eighth respondent school. According to him, to ameliorate the plight of the pupils the first respondent exercised his appellate powers.

22. In his reply submissions, the learned counsel for the petitioner has fairly submitted that the prayers set out in the writ petition may not be up to the mark; nevertheless, he has submitted that a writ cannot be thrown out on the ground of inadequate pleadings as to the prayer or inartistic expression thereof.

23. Heard the learned counsel for the petitioner, the learned Government for the respondents 1 to 6, and the learned counsel for the respondents 7 to 11, apart from perusing the record.

ISSUE:

24. In the light of the above rival pleadings and contentions, the cardinal issue to be decided is whether a school can be allowed to function without recognition even after the enforcement of Act 35 of 2009, or in the alternative whether, in the event of the closure being inevitable, breathing time has to be given as has been contemplated under the Act and the Rules made thereunder.

LOCUS STANDI:

25. In public law remedy, the controversy surrounding the issue of locus standi refuses to lie down. At the outset, it is to be observed that a constitutional remedy under Article 226 is less adversarial than the statutory remedies essentially falling under Section 9 of the Code of Civil Procedure (CPC). Most of the times, save issues pro bono publico, though individual rights are agitated, they invariably have a public law element ingrained in them. In the present instance, regarding the issue of running a school without the necessary statutory recognition, there are two sets of people who may have an element of interest: (1) those whose wards are studying or studied in the school, and (2) those who do not have anything to do with the school. The challenge of the first set of people can easily be repelled on the ground that they admitted their wards into school with their eyes wide open and that they could as well withdraw their wards from the school, as it is the option always available for them. In fact, in the present instance, it is the precise contention of the learned counsel for respondents 7 and 8 that the petitioner already withdrew her children from the school, thus rendering herself a stranger to it. A challenge by the second set of

people can be repelled on the ground that they have not suffered any loss in this regard or that they are busybodies.

26. In fact, a similar dichotomy of reasoning was disapproved by the Supreme Court in *J. Mohapatra and Co. and Another Vs. State of Orissa and Another*, wherein the rejection of the writ petition by the High Court on the ground of locus standi was found fault with in the following words:

"7. We are unable to follow the reasoning behind the first ground upon which the High Court rested its decision. It appears to us paradoxical that when a person has submitted books for selection, it is to be said that he has waived the objection which he had to the constitution of the Sub-Committee and that when a person had not submitted any books for selection it is to be said that he is not a "person aggrieved". To say so would be a contradiction in terms. If the reasoning of the High Court were correct, the sequitur would be that nobody would be able to challenge any selection of books, for a person who challenges the selection must either be one who has submitted a book or books for selection or one who has not submitted any book for selection. In our opinion, the High Court was not right in the view it took. Merely by submitting books for selection of which some might have been selected, a person cannot be said to have waived the objection which he may have to the constitution of the committee which selects the books. Similarly, merely because a person does not submit any book for selection, it cannot be said that he is not a person aggrieved. Today, the law with respect to locus standi has considerably advanced both in this country and in England and in the case of public interest litigation it is not necessary that a petitioner should himself have a personal interest in the matter. It is unnecessary to refer to the decisions of this Court on the point or to dilate further upon it..."

27. At the earliest point of time, in *Attorney General v. Independent Broadcasting Authority*, popularly known as *Mc Whirter case*, ((1973) 1 All ER 689), Lord Denning has posed unto himself a similar question and answered it to the effect that the duty sought to be enforced against the broadcasting authority was towards the general public and not to any particular individual or class or group of persons. Later, in *Regina v. Greater London Council Ex parte Blackburn and Another* ((1976) 1 WLR 550), Lord Denning, relying on *Mc Whirter case*, held thus:

"5. Locus standi.-

It was suggested that Mr. Blackburn has no sufficient interest to bring these proceedings against the G.L.C. It is a point which was taken against him by the Commissioner of Police...On this point, I would ask: Who then can bring proceedings when a public authority is guilty of a misuse of power? Mr. Blackburn is a citizen of London. His wife is a ratepayer. He has children who may be harmed by the exhibition of pornographic films. If he has no sufficient interest, no other citizen has. I think he comes within the principle which I stated in *McWhirter's case* [1973] Q.B. 629, 649, which I would recast today so as to read:

"I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate."

28. In *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, , the Hon^{ble} Supreme Court has held thus:

"14. In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits."

(emphasis added)

29. To the same effect is the observation of the Supreme Court in *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*, :

"8. [T]o begin with, it can be said without fear of contradiction that anyone having a right that is a legally protected interest complains of its infringement and seeks relief through court must have an unhindered, uninterrupted access to law courts. The expression "court" here is used in its widest amplitude comprehending every forum where relief can be obtained in accordance with law. Access to justice must not be hampered even at the hands of judiciary. Power to grant injunction vests in the court unless the legislature confers specifically such power on some other forum. Now access to court in search of justice according to law is the right of a person who complains of infringement of his legally protected interest and a fortiori therefore, no other court can by its action impede access to justice. This principle is deducible from the Constitution which seeks to set up a society governed by rule of law."

30. I cannot, at any rate, term the petitioner a wayfarer or officious intervenor. In the light of the well-established legal position on the issue of standing, I hold that the petitioner does have the necessary locus standi.

MOULDING THE RELIEF:

31. The second objection raised by the learned counsel for the seventh and eighth respondents is that the writ is unsustainable in the absence of any prayer for writ of certiorari. The prayer in the writ petition is extracted herein below:

"i. Issue a writ of mandamus or any other appropriate writ order of direction, directing the 1st respondent to set aside Exhibit P5 order.

ii. Issue a writ of mandamus or any other appropriate writ order or direction, directing the 1st and 3rd respondents to ensure that children in the State are not subjected to corporal punishment in private, aided or government schools and they receive education in an environment of freedom and dignity, free from fear.

iii. Declare that the 1st and 3rd respondent must ensure that corporal punishment to students is excluded from schools in the State.

iv. Issue a writ of mandamus or any other appropriate writ order of direction, directing the respondents 3 to 6 to ensure that the students of the schools of the 8th respondent to be admitted to nearby government, government- aided schools immediately.

v. Issue a writ of mandamus or any other appropriate writ order or direction, directing respondents 3 to 6 not to reopen the schools of the 8th respondent which is closed down by Exhibit P1 order.

vi. Grant such other reliefs as this Hon''ble Court deem fit and proper in the circumstances of each case.

32. Under Article 226 of the Constitution, this Court exercises equity jurisdiction to do complete justice, *ex debito justiae*. In disputably, a writ of certiorari lies in respect of only judicial or quasi-judicial acts. At the earliest point of time, in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , a Constitution Bench of the Hon''ble Supreme Court has observed:

"48... Anyway, Article 32 of the Constitution gives us very wide discretion in the matter of framing our writs to suit the exigencies of particular cases, and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for."

33. Whether this wide discretion has been confined to the proceedings under Article 32 of the Constitution alone fell for consideration in scores of subsequent cases before the Supreme Court. In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , it is held as follows:

"4. [T]his article is couched in comprehensive phraseology and it *ex facie* confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the

peculiar and complicated requirements of this country..."

(emphasis added)

34. In fact, quoting Dwarkanath with approval, a Division Bench of the Hon"ble Supreme Court has recently held in Bangalore Development Authority Vs. Vijaya Leasing Ltd. and Others, , as follows:

"17. Therefore, while exercising the extraordinary jurisdiction under Article 226 of the Constitution, the learned Single Judge came across the above incongruities in the proceedings of the Hon"ble Minister which resulted in the issuance of denotification dated 5-10-1999. We fail to note as to how the ultimate order of the learned Single Judge in setting aside such a patent illegality can be held to be beyond the powers vested in the constitutional court. The conclusion of this Court in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, that judicial daring is not daunted when glaring injustice demands even affirmative action and that authorities exercising their powers should not exceed the statutory jurisdiction and correctly administer the law laid down by the statute under which they act are all principles which are to be scrupulously followed and when a transgression of their limits is brought to the notice of the Court in the course of exercise of its powers under Article 226 of the Constitution, it cannot be held that interference in such an extraordinary situation to set right an illegality was unwarranted."

(emphasis added)

35. It suffices if we end our discussion on this aspect with the observation of the Hon"ble Supreme Court in State of Punjab Vs. Salil Sabhlok and Others, , wherein their Lordships have quoted with approval T.C. Basappa Vs. T. Nagappa and Another, to the following effect:

"89. However, in a unique situation like the present, where a writ of quo warranto may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy, in the public interest. This Court has, therefore, fashioned a writ of declaration to deal with such cases. Way back, in T.C. Basappa v. T.Nagappa it was said:

"6. The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of "habeas corpus, mandamus, quo warranto, prohibition and certiorari" as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges."

36. The learned revising authors of V.G. Ramachandran's two-volume treatise Law of Writs, (EBC, 6th Edn.), after examining the case law holding the field on

this issue opine thus (pp. 1576-1581):

"The approach of the court in granting relief must be liberal and no hyper technical view should be taken. The court has a very wide discretion in granting relief and as held by the Supreme Court in Charanjit Lal v. Union of India. A petition under Article 226 should not be thrown away merely on the ground that the proper relief is not prayed for by petitioner. Even if the petitioner has asked for wider relief which cannot be granted by the court, it can grant such relief to which the petitioner is entitled.

However, looking to the decisions of the Supreme Court starting from Charanjit Lal, it clearly appears that the Supreme Court has taken a liberal view by holding that a petition under Article 32 or under Article 226 of the Constitution should not be rejected merely on the ground of formal defects in praying for proper reliefs.

It is, however, well settled that no petition will be dismissed by the court only on the ground that the prayer clause is defective. If the court is satisfied that the petitioner is entitled to a particular relief, it may grant such relief irrespective of defective prayer clause before dismissing the petition on the ground that no proper relief was sought by him."

37. The prayer portion of the pleadings cannot be said to be forensically inspiring. Inartistic as it is, the writ cannot be thrown out on the deficiency of the relief sought in the writ petition; such action, in my considered view, metaphorically amount to throwing the baby with the bath water. In the light of the above discussion, the objection regarding the so-called defect in the prayer cannot be sustained.

PRINCIPLES OF NATURAL JUSTICE:

38. The learned counsel for the respondents 7 to 10 have raised very serious objections about the third respondent not observing the principles of natural justice while passing Exts.P1 and P4 orders. It is trite that the principles of natural Justice cannot be examined in vacuum without reference to the fact situation in the case, and when the facts of the case are admitted, an enquiry would be an empty formality. (vide Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, . Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit

below the belt that is the conscience of the matter. (vide The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, .

39. In M.C. Mehta Vs. Union of India (UOI) and Others, , M. Jagannatha Rao, J., speaking for a Division Bench of the Supreme Court, in his Lordship's characteristic erudition, has surveyed the theory of "useless formality" in its entire gamut and has held thus:

"21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.

22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice, do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed... Thus, in relation to cases other than those relating to admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala and others Vs. S.K. Sharma, , Rajendra Singh Vs. State of Madhya Pradesh and others, , that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it can be waived."

(emphasis added)

40. In Manohar Lal Sharma Vs. M.C.I. and Others, , the Apex Court has, in the context of powers of Medical Council of India and Medical Colleges, held that to inspect the availability of proper facilities or infrastructure, it is not required to issue prior notice to the educational institution. It is further held that any such unannounced inspection does not offend the principles of natural justice.

41. The exhortation of the Hon"ble Supreme Court in National Council for Teacher Education and Another Vs. Venus Public Education Society and Others, , commends both reiteration and repetition. Taking note of the indiscriminate admissions into educational institutions, at a higher level though, the Court has bemoaned thus:

"3. It is to be clearly stated that an institution that is engaged or interested in getting involved in imparting a course for training has to obey the command of law in letter and spirit. There cannot be any deviation. But, unfortunately, some of the institutions flagrantly violate the norms with adamant audacity and seek indulgence of the court either in the name of mercy or sympathy for the students or financial constraint of the institution or they have been inappropriately treated by the statutory regulatory bodies. None of these grounds justify deviation. The case at hand graphically depicts deviations but the High Court, putting the blame on the statutory authority has granted relief to the respondent institution which is impermissible.

4. The factual exposition of the present litigation demonstrably reflects the combat between the truth and falsehood, battle between justice and injustice, the contestation between the accord and discord, the collision between fairness and manipulation, the scuffle betwixt the sacrosanctity of the majesty of law and its abuses and the clash between the mandated principles and invocation of sympathy. Such a controversy emerges because the majesty, sanctity and purity of law have been corroded and truth, however relative it may be in the mundane world, has its own command and the same has been deliberately guillotined forgetting the fundamental fact that none can afford to build a castle in Spain in the realm of truth. It is worthy to note that justice in its connotative expanse engulfs the liberalism of an ocean, the magnanimity of the sun, the sternness of a mountain, the simplicity of a saint, the austerity of a Spartan and the humility of a river. The concept of justice has to remain embedded in spite of adversities. It should remain unshaken, unterrified, unperturbed and loyal to the rule of law. In the case at hand, as a maladroitness effort has been made to give an indecent burial to the command of law and pave the path of injustice, the same has to be dealt with sternly sans sympathy."

(emphasis added)

42. In *Shri Morvi Sarvajani Kelavni Mandal Sanchalit MSKM B.Ed. College Vs. National Council for Teachers Education and Others*, , the Supreme Court has quoted with approval its earlier observations in *Managing Committee of Bhagwan Budh Primary Teachers Training College and Another Vs. State of Bihar and Others*, , wherein it is held:

"2. It is not possible to grant any such permission as prayed for because the granting of such permission would be clearly violating the provisions of the Education Act..."

43. To the same effect is the observation in *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, , which reads thus:

"6. The practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by this Court.... In *A.P. Christians Medical Educational Society v. Govt. of A.P.*⁸ a similar request made on behalf of

the institution and the students for permitting them to appear at the examination even though affiliation had not been granted, was rejected by this Court. The court observed that any direction of the nature sought for permitting the students to appear at the examination without the institution being affiliated or recognised would be in clear transgression of the provision of the Act and the regulations. The court cannot be a party to direct the students to disobey the statute as that would be destructive of the rule of law. The Full Bench noted these decisions and observations and yet it granted relief to the students on humanitarian grounds. Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the Full Bench are destructive of the rule of law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in law."

(as emphasised in Shri Morvi supra)

44. Given the statutory scheme concerning the inspection of schools, coupled with the above authoritative judicial pronouncements, in my considered view of lack of notice prior to inspection, which in fact has an element of surprise check, does not offend the principles of natural justice.

INFRINGEMENT OF FUNDAMENTAL RIGHTS:

45. As could be seen, apart from assailing Exhibits P1 and P4 as being violative of the principles of natural justice, the learned counsel for the respondents 7 to 10 have also called them in question on the ground that they grossly violate the fundamental rights of the private respondents. In that regard, it is appropriate to begin our discussion with ration in *Society for Un-aided Private Schools of Rajasthan Vs. Union of India (UOI)* and *Another*, . To begin with, a three-Judge Bench of the Hon"ble Supreme Court prefatorily observes that article 19(6) is a saving and enabling provision in the Constitution as it empowers Parliament to make a law imposing reasonable restriction on the Article 19(1)(g). Then poses unto itself a question whether a law enacted by Parliament under Article 21-A, enabling the State to access the network (infrastructure as well) of schools including unaided non-minority schools would be said to be unconstitutional, not saved under Article 19(6). It was, in fact, answered in the negative.

46. Placing reliance on *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*, , their Lordships have held that all citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26 but that right is subject to the provisions of Articles 19(6) and 26(a). It is very instructive to extract the observations of the Supreme Court with respect to a person's fundamental right to establish an educational institution in contradistinction to the legal compulsion

to obtain recognition or affiliation. The Court has observed thus:

"36.4. Lastly, the fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right to establish and administer an educational institution can be controlled in a number of ways. Indeed, matters relating to the right to grant of recognition and/or affiliation are covered within the realm of statutory right, which, however, will have to satisfy the test of reasonable restrictions [see Article 19(6)].

37. Thus, from the scheme of Article 21A and the 2009 Act, it is clear that the primary obligation is of the State to provide for free and compulsory education to children between the age 6 to 14 years and, particularly, to children who are likely to be prevented from pursuing and completing the elementary education due to inability to afford fees or charges. Correspondingly, every citizen has a right to establish and administer educational institution under Article 19(1)(g) so long as the activity remains charitable. Such an activity undertaken by the private institutions supplements the primary obligation of the State. Thus, the State can regulate by law the activities of the private institutions by imposing reasonable restrictions under Article 19(6).

38. The 2009 Act not only encompasses the aspects of right of children to free and compulsory education but to carry out the provisions of the 2009 Act, it also deals with the matters pertaining to establishment of school(s) as also grant of recognition (see Section 18). Thus, after the commencement of the 2009 Act, the private management intending to establish the school has to make an application to the appropriate authority and till the certificate is granted by that authority, it cannot establish or run the school. The matters relevant for the grant of recognition are also provided for in Sections 19, 25 read with the Schedule to the Act. Thus, after the commencement of the 2009 Act, by virtue of Section 12(1)(c) read with Section 2(n)(iv), the State, while granting recognition to the private unaided non-minority school, may specify permissible percentage of the seats to be earmarked for children who may not be in a position to pay their fees or charges."

47. The upshot of the above precedential discussion is that the statutory compulsion to have recognition of a school does not in any way derogate from the fundamental right of a citizen to establish an educational institution. Accordingly, the contentions of the respondents 7 to 10 on the issue of violation of fundamental rights cannot but be rejected.

SECTIONS 18 AND 19 OF THE RIGHT TO EDUCATION ACT:

48. Our statutory survey may have to focus on the twin provisions: Sections 18 and 19 of the Act. Before proceeding further, it is to be observed that Section 17 of the Act prohibits physical punishment and mental harassment to a child. In the present factual context, we may not be unduly concerned with that aspect, for in that regard a crime has already been registered and the penal law has

already been set in motion. As such, the principal provisions for our discussion are sections 18 & 19, which are as follows:

"18. No school to be established without obtaining certificate of recognition.--

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

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

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

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

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

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

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

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

"19. Norms and standards for school.--

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

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

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

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

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues."

(emphasis added)

49. It is evident in terms of Section 18 of the Act that no school, unless it is saved by the provision, can be established, and if already established, can function, without obtaining a certificate of recognition. In either eventuality the recognition is a precondition. Fulfilling the norms and standards prescribed under Section 19 is a precondition for obtaining the recognition. It is pertinent to observe that once recognition is granted, it shall not be withdrawn, even on contravention of the conditions of recognition by the school in question, without by an order in writing and without giving an opportunity of being heard to the said school. Once the withdrawal of recognition takes place, it is imperative that the school cannot continue to function. Sub-section (4) of Section 18 employs the expression "continue to function". As has already been observed, recognition is a precondition for the school's commencement; ipso facto, the continuation, too, presupposes the recognition. Sub-section (5) is a penal provision.

50. Essentially, Section 19 of the Act prescribes the norms and standards for schools requiring recognition. In fact, the schedule annexed to the act expatiates on the norms and standards. Though recognition is a precondition, nevertheless, sub-section (2) of section 19 provides for the measures to be taken in relation to schools that had been established prior to the commencement of the Act, i.e., before 01.04.2010. Such a school as had been established prior to the appointed day of the Act shall fulfil the norms and standards specified in the Schedule within a period of three years thereto.

51. At this juncture it is appropriate to observe that Section 18 of the Act speaks, inter alia, of withdrawal of recognition on the violation of norms and standards, which the school initially fulfilled entitling itself to the grant of recognition. Sub-section (2) of Section 19, in fact, concerns itself with a school that had been established prior to the commencement of Act. The school is required to obtain recognition within three years after fulfilling the norms and standards. Once it has not fulfilled the statutory requirement, it is not entitled to recognition; in other words, there is no recognition under the Act at all.

52. Sub-section (3) of Section 19 is categoric that once the preexisting school fails to fulfil the norms and standards within the said three years, the authority shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof. Be that as it may, inexplicably, to my mind, sub-section (3), in the manner of Section 18, speaks of withdrawal of recognition, which, in my considered view, is non-existent in the first place.

53. To resolve this incongruity, as it seems, it is essential to refer to the statutory rules framed under the Act. The Central Government framed the Right of Children to Free and Compulsory Education Rules, 2010 in exercise of powers conferred by Section 38 of the Act. Similarly the State of Kerala has framed the eponymous rules under the Act in 2011. Though the learned counsel for the respondents 7 to 10 profusely referred to both the rules, in the light of the definition assigned to the "appropriate government" under section 2(a) of the Act, we need to refer to only the State Rules, 2011.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION RULES, 2011:

54. Rule 14 is concerning recognition or upgradation of school. It prescribes an elaborate process for obtaining recognition. The application is required to be submitted in Form No. 1 annexed to the Rules. Sub-rule (6) mandates that the recognition is required to be given in Form No.II. Rule 14, sub-rule (1) reads thus:

"Every school, other than a school established, owned or controlled by the Central Government, State Government or the local authority, established before the commencement of this Act, and referred to under sub-clause (iv) of clause (n) of section 2 as an unaided school and which has obtained recognition under the Kerala Education Act and Rules or has obtained No Objection Certificate from the State Government for affiliation to other Boards of Education, shall make a self-declaration within a period of three months from the date of notification of the rules, in Form No. 1 to the Assistant Education Officer concerned, regarding its compliance or otherwise with the norms and standards stipulated in the Kerala Education Rules in addition to the norms in the Schedule and fulfillment of the following conditions, namely..."

(emphasis added)

55. Insofar as the schools which had been established prior to the commencement of the Act, sub-rules (7) and (8) prescribe the procedure. The said sub-rules are as follows:

"Rule 14 (7). Schools that do not conform to the norms, standards and conditions mentioned in sub-rule (1) shall be listed by the Deputy Director of Education through a public order to this effect. Such schools may request the Deputy Director of Education for an on-site inspection for grant of recognition at any time within two years and nine months from the date of commencement of the Act so that such period does not exceed three years from the commencement of the Act.

(8) Any School which does not conform to the norms, standards and conditions mentioned in sub-rule (1) within three years from the date of commencement of the Act shall stop its functioning and running of such school shall be punishable under section 19 of the Act."

(emphasis added)

56. It is further pertinent to observe that an existing unrecognized school, in terms of sub-rule (10), is required to submit its application in Form No.III. A comprehensive reading of sub-rules, (7), (8) and (10) makes it clear that the existing unrecognized school has to complete the entire exercise of obtaining recognition within three years. Sub-rule (8) admits of no middle path, except a summary closure of school on its failure to obtain the recognition within the stipulated time.

57. To make matters simple, it can be seen that insofar as the preexisting schools are concerned, there is a dichotomy of recognition. In other words, the schools that had been in existence prior to the commencement of the Act are presupposed to have a recognition from the State Government. It is evident from the definition of "school" under section 2(n), which, to the extent relevant, is as follows:

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

(iv) an unaided school not receiving aid or grants to meet its expenses from the appropriate Government or the local authority....."

(emphasis added)

58. Keeping in view the above definition, if we examine Rule 14, it gives an impression as if the procedure prescribed therein would apply only to a preexisting unaided school. In view of absence of any other provision for freshly started school, it shall be presumed that the same provision applies to both categories of school. The Rule begins to read: Every school...established before the commencement of this Act, and referred to under sub-clause (iv) of clause (n) of section 2 as an unaided school and which has obtained recognition under the Kerala Education Act and Rules or has obtained No Objection Certificate from the State Government for affiliation to other Boards of Education, shall make a self-declaration, etc.

59. From the scheme of things it is discernible that a preexisting school should not only obtain recognition under Section 18 of the Act, but should also have possessed recognition under the State Education Act. In this context, in my considered view, the withdrawal of permission referred into in Section 19 is to be understood. And, in the event of such withdrawal of recognition, the procedure prescribed under Section 18(3) is required to be followed. A fortiori, in the absence of recognition, the procedural safeguard provided under Section 18(3) is unavailable.

60. At this juncture, it is pertinent to observe that the eighth respondent school does not have any recognition under Kerala Education Act either. In the light of the above discussion, reading Section 19 along with Rule 14 (8) of the Rules, 2011, leaves no manner of doubt in my mind that in the absence any recognition

in terms of Sections 18 and 19, read with rule 14, the eighth respondent school cannot function. In the same breath, it is further required to be held that in the absence of any recognition, the question of following the procedure as mandated under Section 18(3) too does not arise. Thus, by harmonious reading of Sections 18 and 19 and Rule 14 of the State Rules, the incongruity, if it were, is avoided.

61. When the provisions of Sections 18 and 19 of Right to Education Act have fallen for consideration, a learned Division Bench of the High Court of Bombay in *Laxmibai Shantharam Doke Samajvikas Pratishthan v. State of Maharashtra* (2013 (1) MhLj 538), has held as

follows:

"17. The challenge that unless & until the School is established & starts functioning first, the compliances mandated by S. 19 or 18 of 2009 Act cannot be made or examined springs from the wrong reading of the provisions. It is not in dispute that said Act also applies to existing Schools. The schools already operating are given time of three years to achieve compliance with this mandate. When S. 18 & 19 are read together, it becomes clear that Schools already established cannot continue to function after the stipulated time limit allowed to report compliance. New Schools not established & coming up for the first time are under obligation to comply from day one i.e., they cannot be established unless & until they prepare to fulfill the obligations cast by the schedule. Words establish & function therefore govern different contingencies. Section 2 defines school to mean any recognized school imparting elementary education and thus when S. 19 of 2009 Act gives such school time of three years to achieve compliance, it is obvious that S. 2 envisages existing legal recognition i.e. under other law & from some other agency or authority. Said recognition & existence of a school therefore has to be valid in the eyes of law. In other words, an unauthorized or illegal School cannot claim entitlement to said breathing period...Petitioner has also not moved any application for grant of recognition under S. 18 of 2009 Act till date. It has also not shown that it has fulfilled or at least attempted to comply with the terms & conditions stipulated in schedule of 2009 Act..."

(emphasis added)

62. I am in respectful agreement with the views expressed by the learned Division Bench of the High Court of Bombay; I am, in fact, of the opinion that the learned Division Bench in the above extract has emphasised the mandatory nature of section 19 of the Act with telling effect.

INFRASTRUCTURE:

63. If we examine Exhibit P6, it is quite revealing that on the day when the fourth and sixth respondent inspected the school, only two teachers were present along with a few pupils. The investigation report records that the infrastructure facilities of the school are not sufficient and that a classroom was set up in a

congested room near the staircase, which is adjacent to the house of the Principal. The officers were required to go downstairs to reach other classrooms, which are also said to be equally congested. Those classrooms are said to be mere partitions of a hall, probably a drawing room of the house. Eventually the officials observed that the residential building which stood converted into school is not sufficient to run the school, that it lacked proper ventilation and that though more than a hundred pupils are studying, it does not have any recognition from the Education Department. In fact, the officials have opined that the school be closed for want of facilities, as well as recognition. They have also suggested to shift the pupils of the school to nearby aided/ Government schools.

64. In Exhibit P4, the third respondent has emphatically observed that eighth respondent school had been functioning without permission and recognition and that, its very existence is void ab initio. He has also cautioned the eighth respondent to be the official directive and close down the school, lest the Manager should be liable to punishment and penalties as stipulated in Right to Education Act, 2009.

65. Indeed, the learned counsel for the seventh and eighth respondents has strenuously contended that the third respondent invoked the powers under Section 17 of the Act, as could be seen from Exhibit P1. According to him, Section 17 does not empower the authority to close the school. In the first place, the said contention is required to be rejected by making a reference to well-established legal principle that once an authority has the power to do a particular act, mere reference to a wrong provision would not rob the official act of its validity. Further, under Exhibit P4, the third respondent has emphatically observed that the school did not have the necessary permission or recognition, that its existence is void ab initio and that, its continuation is fraught with consequences flowing from the provisions of the Act. As such, in my considered view, the contention of the learned counsel for the seventh and eighth respondents is too technical to merit consideration.

CIRCUMSTANTIAL SETTING OF EXHIBIT P5:

66. Swift as the wind, the first respondent responded to the situation. Exhibit P4 was passed on 14.10.2014; the seventh respondent is said to have filed an "appeal" on the very next day before the Hon'ble Minister for Education, who ostensibly delegated the power of adjudication to the first respondent on the same day; even the first respondent is said to have heard the matter on the same day, and eventually passed Exhibit P5 order on the same day.

67. In fact, Exhibit P5 makes an interesting reading. At the beginning, reference is made to an appeal said to have been submitted by the seventh respondent; in the body of the order, it emerges that it is not only the seventh respondent, but also "some parents" filed the appeal. The reason that has weighed with the first respondent to interdict Exhibit P4 ex-parte, albeit pending further adjudication, is as follows:

"Government have examined the matter in detail. Considering the situation that the students are in the middle of their academic year, and that the process of recognition of the schools under RTE is said to be completed, government hereby stay the orders of the DPI issued in his proceedings read as 1st paper till further orders, without prejudice to the enquiry and proceedings initiated consequent on the allegations mentioned above and also the final action to be taken thereupon."

68. The fallacy of reasoning that animated Exhibit P5 is not too far to seek. Not even a remote reference has been made by the first respondent to the direction of the third respondent that the pupils of the eighth respondent school should be accommodated in the nearby aided/Government schools. At least, there could have been a semblance of justification had the first respondent *prima facie* observed that the said arrangement was impracticable or fraught with difficulties. It is pertinent to observe that it is not the case of the eighth respondent that there are no other schools in the vicinity. On the contrary, the petitioner has placed on record that the area has more than four schools, including a Government one, within a close radius. As could be seen, this assertion has not been seriously controverted, but for the feeble plea on the part of one of the teachers who impleaded herself as an additional respondent that those schools are costly. In fact, Section 5 of the Act specifically provides for the contingency when a pupil could not complete his primary education in one school. His admission to any other school, in such as eventuality, is a matter of right.

69. The second fallacy of Exhibit P5 is that the process of recognition of schools under the Right to Education Act is yet to be completed. The eighth respondent school proudly proclaims that it has been functioning for the past twenty five years. The Right to Education Act came into force in 2010. Section 19 mandates that the schools that had been in existence by then ought to obtain the necessary recognition within three years therefrom. In mandatory terms, it has also been laid down that beyond the stipulated three-year period no school shall function without recognition. The first respondent seems to have laboured under a mistaken impression as if the eighth respondent school were a new one seeking its recognition in this academic year. Even this assumption, mistaken as it may have been, cannot be sustained, for no new school subsequent to the enforcement of the Act shall function without obtaining the recognition. In other words, for all the schools that are to be established subsequent to the Right to Education Act 2010, as a matter of precondition, shall have prior recognition.

EXHIBIT R7(b) - DOES IT AMOUNT TO RECOGNITION?

70. Though the learned counsel for seventh and eighth respondents has tried to convince the Court that Exhibit R7(b) supplies the necessary legitimacy to the existence of the eighth respondent school, I am afraid the said document is devoid of any force. In the first place Exhibit R7(b) does not bear on its face any date to know when it was issued. According to the learned counsel, it was issued in 2003 in terms of the Government Order 148/2003 dated 05.06.2003. Firstly, if the document were to be believed, it was issued prior to the birth of the

enactment, as per the provisions of which the whole issue is being considered now. Secondly, it is only a proforma of survey report containing, at best, a rudimentary recommendation of an authority to the Government to accord recognition to the school under the relevant State enactment. It is not the case of the eighth respondent that subsequent to the said survey report, the Government did consider the school for recognition. Mere recommendation, more particularly, more than a decade ago, could not impart any legitimacy to the action of the eighth respondent in running the school in gross violation of the statutory mandate.

CLOSURE - PROCEDURAL SAFEGUARDS:

71. The learned counsel for the additional ninth respondent has taken a plea that even the recognised school is required to be closed only after withdrawal of the said recognition, and as such, it can be equated with the school without recognition. As a sequitur, the same protection as is given to the recognised school should be extended to an unrecognised school, if the authority decides to close it. Appealing as the plea may be, it requires to be repelled for the reason that the recognition prima facie testifies to the initial compliance of the statutory requirements by the school in question. All the pupils get admitted into the school on the legitimate expectation that the school would continue to have the recognition and that they could pursue their studies. For any infraction on the part of the school subsequent to recognition, the pupils could not be made to suffer on abrupt closure. In other words, it offends their legitimate expectation to pursue their studies in a school which had the recognition at the time of their admission. Only to enable the said pupils to have the transition to another school came into existence the policy of not closing the recognised school in the middle of the academic year for any infraction on the part of the management. Differently put, it is a measure intended for the benefit of the pupils rather than the erring school. Once the pupils get admitted into a school, the existence of which is illegal, such ward cannot insist that the illegality has to be perpetuated in the name of allowing him to pursue studies. Accordingly, the management of an illegal school cannot train its guns keeping them on the tender shoulders of the gullible pupils.

REDRESSAL OF CHILDREN'S RIGHTS:

72. We may as well consider the contention of the learned counsel for the seventh and eighth respondents that Section 32 of the Act is required to be read in conjunction with Section 31 as well as Rule 24 of the State Rules. Section 31 of the Act concerns itself with monitoring of the child's rights to education; Section 32 provides for the redressal of those grievances; Rule 24 of the State Rules prescribes the manner furnishing complaints before the State Commission for Protection of Child Rights. In my considered view, the violation of a child's rights is a larger issue with constitutional implications. The Act thus provides for an elaborate mechanism in that regard. Insofar as the recognition of a school is concerned, it may have an incidental element of violation of a child's rights, but

it is more of a statutory violation calling for administrative checks and balances, as has been provided under Sections 18 and 19 of the Act, which are mandatory in nature.

RECOGNITION AS PER EXHIBITS R7(c), R7(d), and R7(e):

73. Indeed, the learned counsel for the seventh and eighth respondents has made strenuous efforts to impress upon the Court that Exhibits R7(c), R7(d) and R7(e) do indicate that the school in question is not a non-descript school. Exhibit R7(c) is a "Certificate of Authority" said to have been issued by the Travancore Institute of Science and Technology (TIST) - at best a non-statutory organisation - whose alleged certification is not in accordance with the provisions of the Act, thus being extra-legal. Exhibit R7(d) is an "accreditation" from the National School of Open Schooling. The very document reveals that for the year 2009-10, the school was "provisionally" accredited as a "study centre" for 15+ age group only. It also emphatically records that for all children, in 6-14 age group, enrollment should be in recognized schools as per the Right to Education Act. Exhibit R7(e) is the achievement-cum-transfer certificate issued to a pupil. The learned counsel wants the Court to accept this as a valid Transfer Certificate being given by the school. I am afraid, this exhibit is an offshoot of Exhibit R7(d), which only speaks of open school for the age group of 15+. It has no manner of application to children of primary education as has been stated in Exhibit R7(d) itself.

LAST DATE FOR RECOGNITION, NOT YET OVER:

74. It is the contention of the learned counsel for the additional tenth respondent that the very Government permitted the schools seeking recognition to submit their applications before 31.12.2014; as such, it is untenable for the third respondent to order the closure of school. The said contention, in my view, is not only fallacious but also facetious. In terms of Section 19 of the Act, the schools existing prior to 2010 could only have three years breathing time to obtain the recognition; those schools that come to be established cannot run unless they have prior recognition. Ipso facto, the last date for submitting application, with extension or without extension, has no impact on the present issue, that is, the legality of eighth respondent school's functioning without permission.

RIGHT TO LIVELIHOOD:

75. The contention on the part of the ninth respondent is that the closure of the school amounts to deprivation of the teachers' livelihood, which is in violation of Article 21 of the Constitution. In my considered view, Article 21, at least as yet, has not included in its expansive fold the livelihood as an integral facet of right to life. That apart, the right of a teacher is at best a right to profession under Article 19(g) of the Constitution, which has always been circumscribed by Article 19(6). More pertinently, working in a school which has no legal existence confers on the teacher not even a statutory right, leave alone constitutional right. Though the respondents' counsel have made heavy weather out of the contention that even

CBSE grants time to its affiliates before withdrawing its affiliation, to my specific query, it is revealed that the eighth respondent school does not have even CBSE affiliation.

THE DISMISSAL OF W.P.(C)No.27546/2014:

76. As can be seen W.P.(C)No.27546/2014 filed earlier by one Mr. Pratheep Kumar is in the nature of a public interest litigation. It is said to have been dismissed by a learned Division Bench of this Court on the ground that it was premature. The other contention of the learned counsel for the private respondents is that the present writ petition is a verbatim reproduction of the earlier writ petition. I am afraid, a counsel taking advantage of the pleadings prepared by another learned counsel on the same or similar issue may not be a vitiating factor.

THE LEGALITY OF EXHIBIT P5:

77. The very Exhibit P5 reads that the seventh respondent and some other parents of the pupils filed an indeterminate appeal. It is evident from Rule 15 of the State Rules that even when a school has recognition from the State Government, it still does not absolve the management of the school from the responsibility of its obtaining the necessary recognition under the Act. Sub-Rule 6 of Rule 15 reiterates the statutory mandate under Section 19 of the Act to the effect that, a school which does not conform to the norms, standards and conditions mentioned in sub-rule (1) within three years from the commencement of the Act shall stop its functioning and running of such school shall be punishable under Section 19 of the Act.

78. At the cost of repetition it is to be stated that the whole scheme of things concerning withdrawal of recognition makes recognition of the school a precondition to attract any procedural safeguard to the school in question. Insofar as the school without recognition is concerned, its existence is per se illegal, and accordingly, Sections 18 and 19 mandate, read with Rule 14(8) of the State Rules, in peremptory terms, the closure of school without much ceremony. For the same reason, even Section 18(3) of the Act is unavailable to the eighth respondent.

APPELLATE POWER:

79. The appellate power is not inherent in a judicial or quasi-judicial authority, but it is, on the contrary, express power conferred by a specific statute. Ipso facto, any provision conferring appellate power is required to be strictly construed. The whole scheme of things, as has been adverted to earlier, concerning the recognition of a school or withdrawal thereof, either in the substantive legislation or in the procedural subordinate legislation, focuses on remedial measures, vis-?-vis, the closure of a school only when it involves withdrawal of recognition, which in turn pre-supposes that in the first place, the school that has been subjected to closure ought to have recognition. In the

present instance, since the very existence of eighth respondent school is illegal ab initio, as preferred to be described by the third respondent, the power of appeal either against Exhibit P1 or P4, especially before the first respondent, assuming it were to be the Government, would not lie. Once the order is robbed of its statutory sanctity and rendered void, no rights flow out of it. Accordingly, all the discussion on the application of the provisions of the Act and the Rules made thereunder to Exhibit P5, in my considered view, is an exercise in futility. The eighth respondent school, I hasten to add, is not remediless. Once no statutory remedy is provided to assail any action of a particular official, who has been acting purportedly exercising the powers under a statute, the aggrieved person can always seek judicial review of the action required to be assailed. Accordingly, in my considered view, Exhibit P5 is an out come of the extra statutory exercise on the part of the first respondent.

80. In the facts and circumstances, Exhibit P5 is hereby set aside as being non est, thereby restoring Exhibits P1 and P4 to be operative, leaving it open for the eighth respondent to take remedial steps in a legally permissible manner against the said orders.

81. Before parting with the matter, it is made clear that no reference has been made to the alleged incident of corporal punishment in the present disposition. If any incidental reference is found, it is only for the narrative purpose of making the sequence of events complete and it shall not be taken as an expression of opinion of this Court on the merits of the matter in that regard.

With the above observation, the writ petition stands allowed in the manner indicated above. No order as to costs.