2025:CGHC:37885-DB

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 253 of 2021

Order reserved on: 16/07/2025

Order delivered on: 01/08/2025

Chhattisgarh Private School Management Association, A Registered Education Society registered under the Societies Registration Act, 1973, bearing No.CG Rajya 3940, having office at J.D. Daga Higher Secondary School Premises, Civil Lines, Raipur, District Raipur (CG), Through its Secretary, Motilal Jain.

--- **Petitioner**

versus

1. State of Chhattisgarh, Through the Chief Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Atal Nagar, Raipur (CG)

2. State of Chhattisgarh, Through Principal Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Raipur (CG)

3. Director (Public Instructions), Directorate of Public Instructions, Mantralaya, Indravati Bhawan, Block-3, 1st Floor, Atal Nagar, Naya Raipur, District Raipur (CG)

--- **Respondents**

AND

WPC No. 294 of 2021

Bilaspur Private School Management Association Society, A Registered Education Society registered under the Societies Registration Act, 1973, bearing reg. No.1222201936676, having office at Brilliant Public School, Mission Hospital Road,

Bilaspur, District Bilaspur (Chhattisgarh) through its President, Praveen Agrawal.

--- **Petitioner**

Versus

1. State of Chhattisgarh, Through the Chief Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Atal Nagar, Raipur (CG)

2. State of Chhattisgarh, Through Principal Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Raipur (CG)

3. Director (Public Instructions), Directorate of Public Instructions, Mantralaya, Indravati Bhawan, Block-3, 1st Floor, Atal Nagar, Naya Raipur, District Raipur (CG)

--- **Respondents**

For Petitioners	:	Mr. Ashish Shrivastava, Senior Advocate with Mr. Rahul Ambast, Advocate.
For Respondents/State	:	Mr. Rahul Tamaskar, Government Advocate.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sachin Singh Rajput, JJ.

CAV Order

Sanjay K. Agrawal, J.

1. Since common question of law and fact is involved in both the writ petitions, they were clubbed together, heard together and are being disposed of by this common order.

2. Invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners, who are Associations of Private Schools, by way of these two writ petitions, have called in question the constitutional validity of the Chhattisgarh Non-Government Schools Fees Regulation

Act, 2020 (for short, 'the Act of 2020') as well as the Rules framed under Section 15 of the Act of 2020 i.e. called the Chhattisgarh Non-Government Schools Fees Regulation Rules, 2020 (for short, 'the Rules of 2020') branding the same as violative of the constitutional provisions including violative of Articles 14 & 19(1)(g) of the Constitution of India.

Petitioners' Case

3. Chhattisgarh Private School Management Association – petitioner in W.P.(C)No.253/2021, is a registered society registered under the Chhattisgarh Societies Registration Act, 1973. Similarly, Bilaspur Private School Management Association – petitioner in W.P.(C)No.294/2021, is also a registered society registered under the Chhattisgarh Societies Registration Act, 1973. These two Associations have challenged the constitutional validity of the Act of 2020 and the Rules of 2020 on the ground that they are representing non-governmental unaided private schools being members of the petitioners Associations and the provisions contained in the Act of 2020 and the Rules of 2020 are in violation of Articles 14 & 19(1)(g) of the Constitution of India and also the well settled principles of law laid down by the 11 Judges Bench of the Supreme Court in the matter of **T.M.A. Pai Foundation and others v. State of Karnataka and others**[1].

1 (2002) 8 SCC 481

4. It is the case of the petitioners that the member schools of the petitioners Associations are duly affiliated to the Central Board of Secondary Education, New Delhi and all the schools are having sufficient playground, well equipped laboratory, standard library besides facilities for extracurricular activities, and all the member schools of the petitioners Associations have earned good reputation in the State as well as in the nearby vicinity and do not receive any single penny from the State Government as any aid or fund for managing the affairs of their schools. It is the further case of the petitioners that all the member schools of the petitioners Associations are totally dependent upon the school fees deposited by the parents of the students and, on such basis, the schools manage not only the salaries to their teachers and non-teaching staff, but also with regard to necessary payments of maintenance to local bodies, other statutory payments, etc. for smooth running of the schools. The provisions of the Act of 2020 are unconstitutional and violative of Articles 14 & 19(1)(g) of the Constitution of India as well as in serious violation of the well settled principles of law laid down by their Lordships of the Supreme Court in **T.M.A. Pai Foundation** (supra) wherein, according to the petitioners, though the right to establish an educational institution can be regulated; but such regulatory measures

must, in general, to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. According to the petitioners, the fixing of a rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be illegal and in the case of unaided private schools, maximum autonomy has to be with the management with regard to administration including the right of appointment, disciplinary powers, admission of students and the fees to be charged and as such, the manner in which different Schools Fees Committees, District Fees Committees and State Fees Committees have been directed to be formed; Section 9 of the Act of 2020 also provides for work of the State Fees Committee; Chapter III of the Act of 2020 deals with Fixation of Fees and Section 10 deals with Fixation of Fees in Non-Government Schools and participation of guardians regarding fees fixation to the School Fees Committee are totally unconstitutional and totally arbitrary and consequently, the Rules made by exercising power under Section 15 of the Act of 2020 prescribing that fees fixation proposal shall be in Form-1 is also unconstitutional and the Rules of 2020 also prescribes that records have to be kept by

Non-Government Schools regarding fees register, etc. which effects the autonomy of the schools and as such, it be declared unconstitutional and violative of Articles 14 & 19 (1)(g) of the Constitution of India.

Respondents' Case

5. The respondents/State have filed return stating inter alia that the Act of 2020 is only a Regulatory Act and the same has been enacted to give legal basis to mutual consultation among School Management and Guardians in the process of fixation of fees in Non-Governmental Schools and to provide the procedure for fixation of fees which the State Legislature has legal competence under Entry 25 of List III of the Seventh Schedule of the Constitution of India, meaning thereby 'education' falling in the Concurrent List, the State Legislature has power to legislate subject to provisions of Entries 63, 64, 65 and 66 of List I and law made by the Parliament in this regard. Furthermore, though the petitioners have challenged the constitutional validity of the Act of 2020 and the Rules of 2020, but there is no specific averment anywhere in the writ petitions with regard to any provision or in what manner the provisions contained in the said Act or the said Rules are violative of Articles 14 & 19 (1)(g) of the Constitution, as the allegations regarding violation of these constitutional provisions must be specific, clear and

unambiguous and should give relevant particulars, and the burden is on the person who impeaches the law as violative of constitutional guarantee to show that the particular provision is infirm for all or any of the reasons stated by him. It is also pleaded that in **T.M.A. Pai Foundation** (supra) it has been specifically held that the right to establish an educational institution can be regulated and the said regulatory measures must in general be to ensure the maintenance of proper academic standards, atmosphere and infrastructure and the prevention of mal-administration of those in charge of the management. It is the further case of the respondents/State that the title of the Act of 2020 itself would demonstrate that the same is a regulatory measure adopted by the State to check the fees of the Non-Governmental Schools which is specifically permissible and same is in line with the decisions of the Supreme Court. Therefore, the writ petitions deserve to be dismissed. No rejoinder has been filed on behalf of the petitioners.

Petitioners' Submissions

6. Mr. Ashish Shrivastava, learned Senior Counsel appearing on behalf of the petitioners, would submit that the Act of 2020 and the Rules made under Section 15 of the Act of 2020 i.e. the Rules of 2020 are totally unconstitutional, arbitrary and also in

violation of Articles 14 & 19(1)(g) of the Constitution of India as well as in serious violation of well settled law in this regard in **T.M.A. Pai Foundation** (supra) in which their Lordships of the Supreme Court have clearly held that in the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. The Act of 2020 is imposing unreasonable restrictions on the autonomy of the private unaided non-minority educational institutions which is otherwise guaranteed under Articles 14 & 19(1)(g) of the Constitution of India. How the private unaided institutions are to run is a matter of administration to be taken care of by the Management of those private unaided non-minority educational institutions and the State has no authority to lay down the fee structure for the unaided private schools. Mr. Shrivastava, learned Senior Counsel, would rely upon the decisions rendered by the Supreme Court in **T.M.A. Pai Foundation** (supra), **P.A. Inamdar and others v. State of Maharashtra and others**[2], **Society for Unaided Private Schools of Rajasthan v. Union of India and another**[3], **Modern School v. Union of India and others**[4], **Islamic Academy of Education and another v. State of**

2 (2005) 6 SCC 537
3 (2012) 6 SCC 1
4 (2004) 5 SCC 583

Karnataka and others[5], **Indian School, Jodhpur and another v. State of Rajasthan and others**[6] and that of the Karnataka High Court in the matter of **Rashmi Education Trust and others v. The State of Karnataka and others**[7] to buttress his submissions.

Respondents'/State's Submissions

7. Mr. Rahul Tamaskar, learned Government Advocate appearing on behalf of the State/respondents, would submit that though the petitioners have questioned the constitutional validity of the Act of 2020 and the Rules framed thereunder i.e. the Rules of 2020 in their entirety, yet there is no specific pleading questioning the constitutional validity of the Act and the Rules on the basis of legislative competence of the State, as 'education' as subject finds place in Entry 25 of List III of the Seventh Schedule of the Constitution of India and thus, falling in the Concurrent List, and the State Legislature has power to legislate subject to provisions of Entries 63, 64, 65 & 66 of List I and law made by the Parliament in this regard. He would further submit that the petitioners have confined their challenge on the basis of violation of fundamental rights particularly, Articles 14 & 19 (1)(g) of the Constitution of India. However, in **Islamic Academy of Education** (supra), **Unni**

5 (2003) 6 SCC 697
6 (2021) 10 SCC 517
7 2023:KHC:690

Krishnan, J.P. and others v. State of Andhra Pradesh and others[8], **Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others**[9] and also in **Modern School v. Union of India and others**[10], their Lordships of the Supreme Court have upheld the legislative competence of the State to place regulatory framework to ensure no excessive fees is charged as valid and taken into consideration the factors relevant for fixing the fees. Mr. Tamaskar, learned State counsel, also submits that in the matter of **Indian School, Jodhpur and another v. State of Rajasthan and others**[11], their Lordships of the Supreme Court have considered a similar challenge and upheld the validity of regulatory framework in the State of Rajasthan which squarely covers the instant case. Lastly, he would submit that the petitioners being Associations do not fall under the definition of 'citizen' to enforce right under Article 19(1)(g) of the Constitution of India and rely upon the decisions of the Supreme Court in the matter of **Indian Social Action Forum (INSAF) v. Union of India**[12] to hold that there is absolutely no ground available with the petitioners to declare the Act of 2020 and the Rules of 2020 as either unconstitutional

8 (1993) 1 SCC 645
9 (2016) 7 SCC 353
10 (2004) 5 SCC 583
11 (2021) 10 SCC 517
12 (2021) 15 SCC 60

or violative of any provisions of law and as such, both the writ petitions deserve to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Principles for Adjudging the Constitutional Validity of a Statute

9. A Statute is construed so as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat". Therefore, a presumption that the Legislature does not exceed its jurisdiction, and the burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. (See **Principles of Statutory Interpretation by Justice G.P. Singh**, 12th Edition, page 592.)

10. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand.

11. The Constitution Bench of the Supreme Court in the matter of **Shayara Bano v. Union of India and others (Ministry of Women**

and Child Development Secretary and others)[13] held that legislation can be struck down if it is manifestly arbitrary and manifest arbitrariness is the ground to negate legislation as well under Article 14 of the Constitution of India. It has been observed by their Lordships as under: -

> "101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India2 stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

12. Recently, in the matter of **Dr. Jaya Thakur v. Union of India and others**[14], it has been held by three-judge Bench of the Supreme Court that judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive by observing as under: -

> "68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the

13 (2017) 9 SCC 1
14 (2023) 10 SCC 276

> constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits."

13. Thereafter, in Dr. Jaya Thakur (supra), their Lordships of the Supreme Court relying upon their earlier judgment in the matter of **Binoy Viswam v. Union of India and others**[15] and reviewing their earlier decisions have held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly, and observed as under: -

> "70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.
>
> 71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the

15 (2017) 7 SCC 59

legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment."

14. Furthermore, in the matter of **Dental Council of India v. Biyani Shikshan Samiti and another**[16], their Lordships of the Supreme Court have held that there is always a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. B.R. Gavai, J., speaking for the Supreme Court, held in paragraphs 27 & 28 of the report as under: -

> "27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.
>
> 28. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

15. Similarly, in the matter of **PGF Limited and others v. Union of India and another**[17], their Lordships of the Supreme Court have laid down certain guidelines by taking note of certain precautions to be observed whenever the vires of any provision

16 (2022) 6 SCC 65
17 (2015) 13 SCC 50

of law is raised before the Court and cautioned the Courts in paragraph 37 as under: -

> "37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time-bound basis, so that the legal position is settled one way or the other."

Scheme of the Act of 2020

16. The Act of 2020 is divided into five Chapters. Chapter-I, which is Preliminary, deals with Definitions, etc.. Chapter-II deals with Fees Fixation Committees. Chapter-III deals with Fixation of Fees in Non-Government Schools. Chapter-IV deals with Penalties, etc. providing that all members of School Management Committees to be responsible for compliance with the provisions of the Act. Chapter-V, which is Miscellaneous, deals with Appeal, Maintenance of Records, Power of the State Government to make Rules, etc..

17. Section 3 of the Act of 2020, which is in Chapter-II, deals with School Fess Committee along with its membership as to who should be its Chairman and Members. Section 4 deals with District Fees Committee of which the Collector to be Chairman. Similarly, Section 5 deals with State Fees Committee of which Minister in-charge of School Education Department, Government of Chhattisgarh to be Chairman. Section 6 provides for Tenure of nominated members of Committees. Section 8 empowers the Committees to decide their own procedure of work. Sub-section (1) of Section 9 provides that State Fees Committee may decide the policy for fees to be charged by Non-Government Schools and other committees shall fix the fee in accordance with such policy determined.

Sub-section (2) of Section 9 provides that State Fees Committee may issue general directions to other committees. Sub-section (1) of Section 10, which is in Chapter-III, states that management of all Non-Government Schools which are running before the commencement of the Act shall, within 1 month of commencement of the Act and management of all Non-Government Schools which are opened after the commencement of the Act shall, within 3 months of opening of such Non-Government Schools, submit a proposal for approval of fees charged by the Non-Government School to the School Fess Committee and the Committee shall take a decision on the proposal within 1 month. Similarly, sub-section (2) of Section 10 provides that if the management of the Non-Government School wishes to increase the fees after approval of the fees by the Competent Committee, it will have to submit a proposal for increasing the fees at least 6 months before the beginning of the academic session along with relevant accounts to the School Fees Committee constituted under Section 3 and the Committee, will give its decision on the proposal to increase the fees, as far as may be within 3 months. Sub-section (3) of Section 10 also empowers Guardian Union to submit representation regarding fees fixation to the School Fees Committee and the committee shall consider such

representations at the time of taking a decision on fees fixation. Sub-section (4) of Section 10 provides that the committees constituted under the Act, may call for the accounts and other records from schools for the purpose of fees fixation. Sub-section (5) of Section 10 states that the committees may also hold hearings of school management and guardian for the purpose of fixation of fees. Sub-section (6) of Section 10 empowers the committees with the powers of civil courts to ensure for calling account and records or for summoning persons for hearing. Sub-section (7) provides that the school fees committee shall fix the fees of the school after considering the proposal of the Non-Government School management and representations submitted by guardian union and accounts and records of the school. Sub-section (8) of Section 10 prescribes the extent of increase of fees i.e. to a maximum of 8% of existing fees and sub-section (9) mandates that management of Non-Government Schools shall not charge fee in excess of the fees fixed by the competent committee. Section 12 states about Penalties and Section 13 is the right of appeal conferred to the School management or guardian unions. Section 14 provides for maintenance of records. Section 15 deals with power of the State Government to make Rules. In exercise of the powers conferred by Section 15 of the Act of 2020, the State

Government has made the Rules of 2020 for regulating fees of the Non-Government Schools of which Rule 6 deals with records to be kept by Non-Government Schools, which states as under: -

> "6. Records to be kept by Non-Government Schools
>
> (1) Fees register;
>
> (2) Salary payment register of teachers and employees;
>
> (3) Stock register of the Non-Government School;
>
> (4) Expenditure register, voucher, cashbook;
>
> (5) Audit reports of annual audit by CA;
>
> (6) Admission register;
>
> (7) Student attendance register;
>
> (8) Attendance register of teachers and employees;
>
> (9) Building rent register;
>
> (10) Other records as per the instructions issued by School Education Department, Government of Chhattisgarh, from time to time."

Discussion and analysis

18. Though the petitioners have challenged the Act of 2020 and the Rules of 2020 in their entirety to be constitutionally invalid, but in particular, they have not questioned the constitutional validity of the Act or the Rules on the basis of legislative competence of the State that the State of Chhattisgarh has no legislative competence to enact the Act of 2020. However, there cannot be any dispute that 'education' as subject finds place in Entry 25 of List III of the Seventh Schedule of the Constitution

of India meaning thereby, 'education' falling in the Concurrent list, the State Legislature has power to legislate subject to provisions of Entries 63, 64, 65 & 66 of List I and law made by the Parliament in this regard. The petitioners have not alleged lack of competence on the part of the State of Chhattisgarh to enact the Act of 2020 or repugnancy with any law made by the Parliament. The petitioners ought to have made specific pleadings to challenge the Act or the Rules made thereunder that the same is made beyond the legislative competence of the State.

19. In the matter of **Haji Abdul Gani Khan and another v. Union of India and others**[18], their Lordships of the Supreme Court have clearly held that when a party wants to challenge constitutional validity of a statute, he must plead in detail grounds on which validity of statute is sought to be challenged and in absence of specific pleadings to that effect, court cannot go into issue of validity of statutory provisions. It was further held by their Lordships that constitutional courts cannot interfere with law made by legislature unless it is specifically challenged by incorporating specific grounds of challenge in pleadings, reason is that there is always a presumption of constitutionality of laws. Burden is always on person alleging unconstitutionality to prove it. For that purpose, challenge has to be specifically

18 (2023) 11 SCC 432

pleaded by setting out specific grounds on which challenge is made. A constitutional court cannot casually interfere with legislation made by a competent legislature only by drawing an inference from pleadings that challenge to validity is implicit. It was also held by their Lordships that State gets a proper opportunity to defend legislation only if State is made aware of grounds on which legislation is sought to be challenged.

20. Similar proposition has been laid down by the Supreme Court in the matters of **Union of India and others v. Manjurani Routray and others**[19], **State of Kerala and others v. Shibu Kumar P.K. and another**[20] and **Ashutosh Gupta v. State of Rajasthan and others**[21].

21. On behalf of the petitioners it has been vehemently contended that the Act of 2005 is violative of the principles of law laid down by their Lordships of the Supreme Court in **T.M.A. Pai Foundation** (supra).

22. The Constitution Bench (11 Judges) of the Supreme Court in **T.M.A. Pai Foundation** (supra), has held that the private unaided school management must have absolute autonomy to determine the school fees, and while answering the questions

19 (2023) 9 SCC 144
20 (2019) 13 SCC 577
21 (2002) 4 SCC 34

framed by their Lordships, it has been held in paragraph 450 in answer to question No.5(c) 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 conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like 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 selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.
>
> Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government/ university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational

> institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed.
>
> There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not resorted to.
>
> The extent of regulations will not be the same for aided and unaided institutions."

23. As such, in **T.M.A. Pai Foundation** (supra), the Supreme Court has reiterated the principle that there should be no capitation fee or profiteering by private educational institutions.

24. Similarly, in **Islamic Academy of Education** (supra), their Lordships of the Supreme Court in yet another Constitution Bench decision held that with a view to ensure that educational institutions do not indulge in profiteering or otherwise exploiting its students financially; it shall be open to the statutory authorities and, in their absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf. It has been observed in paragraphs 158 & 159 of the report as under: -

> **"158.** Profiteering has been defined in *Black's Law Dictionary*, 5th Edn. as:
>
> > "Taking advantage of unusual or exceptional circumstances to make excessive profits;"
>
> **159.** With a view to ensure that an educational institution is kept within its bounds and does not indulge in profiteering or otherwise exploiting its students financially, it will be open to the statutory authorities and in their absence by the State to constitute an appropriate

> body, till appropriate statutory regulations are made in that behalf."

25. However, thereafter, in a Constitution Bench decision in **Modern Dental College and Research Centre** (supra), their Lordships of the Supreme Court held that though the fee can be fixed by the educational institutions and it may vary from institution to institution depending upon the quality of education provided by each of such institutions, commercialisation is not permissible; and in order to ensure that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that the private unaided schools keep playing vital and pivotal role to spread education and not to make money. Their Lordships further held that when it comes to the notice of the Government that the institution was charging fee or other charges which are excessive, it has complete authority coupled with its duty to issue directions to such an institution to reduce the same so as to avoid profiteering and commercialisation.

26. In **Modern Dental College and Research Centre** (supra), as noticed above, their Lordships of the Supreme Court held in paragraph 75 of the report as under: -

> "**75.** To put it in a nutshell, though the fee can be fixed by the educational institutions and it may vary from institution to institution depending upon the quality of

> education provided by each of such institutions, commercialisation is not permissible. In order to see that the educational institutions are not indulging in commercialisation and exploitation, the Government is equipped with necessary powers to take regulatory measures and to ensure that these educational institutions keep playing vital and pivotal role to spread education and not to make money. So much so, the Court was categorical in holding that when it comes to the notice of the Government that a particular institution was charging fee or other charges which are excessive, it has a right to issue directions to such an institution to reduce the same."

Thereafter, their Lordships proceeded to consider the question as to how a regulatory framework for ensuring that no excessive fee is charged by the educational institutions, can be put in place and held in paragraph 76 as under: -

> "**76.** The next question that arises is as to how such a regulatory framework that ensures no excessive fee is charged by the educational institutions can be put in place. In *Modern School* [*Modern School* v. *Union of India*, (2004) 5 SCC 583 : 2 SCEC 577], this Court upheld the direction of the Delhi High Court for setting up of a committee to examine as to whether fee charged by the schools (that was a case of fixation of fee by schools in Delhi which are governed by the Delhi School Education Act, 1973) is excessive or not. The ratio of judgments in *T.M.A. Pai Foundation* [*T.M.A. Pai Foundation* v. *State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] and *Islamic Academy of Education* [*Islamic Academy of Education* v. *State of Karnataka*, (2003) 6 SCC 697 : 2 SCEC 339] was discussed in the following manner: (*Modern School case* [*Modern School* v. *Union of India*, (2004) 5 SCC 583 : 2 SCEC 577], SCC pp. 600-01, para 16)
>
> > "*16.* The judgment in *T.M.A. Pai Foundation case* [*T.M.A. Pai Foundation* v. *State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] was delivered on 31-10-2002. The Union of India, State Governments and educational institutions understood the majority judgment in that case in different

perspectives. It led to litigations in several courts. Under the circumstances, a Bench of five Judges was constituted in *Islamic Academy of Education* v. *State of Karnataka* [*Islamic Academy of Education* v. *State of Karnataka*, (2003) 6 SCC 697 : 2 SCEC 339] so that doubts/anomalies, if any, could be clarified. One of the issues which arose for determination, concerned determination of the fee structure in private unaided professional educational institutions. It was submitted on behalf of the managements that such institutions had been given complete autonomy not only as regards admission of students but also as regards determination of their own fee structure. It was submitted that these institutions were entitled to fix their own fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of the institution. It was submitted that so long as there was no profiteering, there could be no interference by the Government. As against this, on behalf of the Union of India, State Governments and some of the students, it was submitted, that the right to set up and administer an educational institution is not an absolute right and it is subject to reasonable restrictions. It was submitted that such a right is subject to public and national interests. It was contended that imparting education was a State function but due to resource crunch, the States were not in a position to establish sufficient number of educational institutions and consequently, the States were permitting private educational institutions to perform State functions. It was submitted that the Government had a statutory right to fix the fees to ensure that there was no profiteering. Both sides relied upon various passages from the majority judgment in *T.M.A. Pai Foundation case* [*T.M.A. Pai Foundation* v. *State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1]. *In view of rival submissions, four questions were formulated. 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.""
>
> (emphasis supplied)

Their Lordships further held that primary education is a fundamental right, but it was not an absolute right as private schools cannot be allowed to receive capitation fee or indulge in profiteering in the guise of autonomy to determine the school fees itself. In the same judgment from paragraphs 87 to 92, their Lordships proceeded to examine the need for a regulatory mechanism and observed in paragraphs 90, 91 & 92 as under: -

> **"90.** Thus, it is felt that in any welfare economy, even for private industries, there is a need for regulatory body and such a regulatory framework for education sector becomes all the more necessary. It would be more so when, unlike other industries, commercialisation of education is not permitted as mandated by the Constitution of India, backed by various judgments of this Court to the effect that profiteering in the education is to be avoided.
>
> **91.** Thus, when there can be regulators which can fix the charges for telecom companies in respect of various services that such companies provide to the consumers; when regulators can fix the premium and other charges which the insurance companies are supposed to receive from the persons who are insured; when regulators can fix the rates at which the producer of electricity is to supply the electricity to the distributors; we fail to understand as

to why there cannot be a regulatory mechanism when it comes to education which is not treated as purely economic activity but welfare activity aimed at achieving more egalitarian and prosperous society by empowering the people of this country by educating them. In the field of education, therefore, this constitutional goal remains pivotal which makes it distinct and special in contradistinction with other economic activities as the purpose of education is to bring about social transformation and thereby a better society as it aims at creating better human resource which would contribute to the socio-economic and political upliftment of the nation. The concept of welfare of the society would apply more vigorously in the field of education. Even otherwise, for economist, education as an economic activity, favourably compared to those of other economic concerns like agriculture and industry, has its own inputs and outputs; and is thus analysed in terms of the basic economic tools like the laws of return, principle of equimarginal utility and the public finance. Guided by these principles, the State is supposed to invest in education up to a point where the socio-economic returns to education equal to those from other State expenditures, whereas the individual is guided in his decision to pay for a type of education by the possibility of returns accruable to him. All these considerations make out a case for setting up of a stable regulatory mechanism.

92. In this sense, when imparting of quality education to cross-section of the society, particularly, the weaker section and when such private educational institutions are to rub shoulders with the State managed educational institution to meet the challenge of the implementing ambitious constitutional promises, the matter is to be examined in a different hue. It is this spirit which we have kept in mind while balancing the right of these educational institutions given to them under Article 19(1)(*g*) on the one hand and reasonableness of the restrictions which have been imposed by the impugned legislation. The right to admission or right to fix the fee guaranteed to these appellants is not taken away completely, as feared. *T.M.A. Pai Foundation* [*T.M.A. Pai Foundation* v. *State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] gives autonomy to such institutions which remains intact. Holding of CET

> under the control of the State does not impinge on this autonomy. Admission is still in the hands of these institutions. Once it is even conceded by the appellants that in admission of students "*triple test*" is to be met, the impugned legislation aims at that. After all, the sole purpose of holding CET is to adjudge merit and to ensure that admissions which are done by the educational institutions, are strictly on merit. This is again to ensure larger public interest. It is beyond comprehension that merely by assuming the power to hold CET, fundamental right of the appellants to admit the students is taken away. Likewise, when it comes to fixation of fee, as already dealt with in detail, the main purpose is that the State acts as a regulator and satisfies itself that the fee which is proposed by the educational institution does not have the element of profiteering and also that no capitation fee, etc. is charged. In fact, this dual function of regulatory nature is going to advance the public interest inasmuch as those students who are otherwise meritorious but are not in a position to meet unreasonable demands of capitation fee, etc. are not deprived of getting admissions. The impugned provisions, therefore, are aimed at seeking laudable objectives in larger public interest. Law is not static, it has to change with changing times and changing social/societal conditions."

27. In **Indian School, Jodhpur** (supra), private unaided schools of the State of Rajasthan had challenged the interference made by the Rajasthan Government in their fee structure, then the State of Rajasthan had enacted a law, namely, the Rajasthan Schools (Regulation of Fee) Act, 2016, which enabled the State Government to regulate fee structure of private unaided schools. Validity of the said Act was unsuccessfully challenged by certain schools before the High Court of Rajasthan and the matter was then taken up before the Supreme Court and their Lordships of the Supreme Court held that the High Court has

rightly concluded that the provisions of the 2016 Act as well as the 2017 Rules are intra vires the Constitution of India and not violative of Articles 13 to 19(1)(g) of the Constitution. Their Lordships of the Supreme Court held in paragraphs 24, 25, 62 & 64 of the report as under: -

> **"24.** After this jurisprudential exposition, it is not open to argue that the Government cannot provide for external regulatory mechanism for determination of school fees or so to say fixation of "just" and "permissible" school fees at the initial stage itself.
>
> **25.** The question is: whether the impugned enactment stands the test of reasonableness and rationality and balances the right of the educational institutions (private unaided schools) guaranteed to them under Article 19(1)(*g*) of the Constitution in the matter of determination of school fees?
>
> **62.** These Rules deal with purely procedural matters and are in line with the powers and functions of the Committees concerned. The Rules provide for the manner in which the proposal is to be submitted by the school management and to be taken forward. These provisions in no way affect the fundamental right guaranteed under Article 19(1)(*g*) of the Constitution much less autonomy of the school management to determine the fee structure itself in the first place including the administration of the school as such.
>
> **64.** In our opinion, even this provision of Rule 11 by no stretch of imagination would affect the fundamental right of the school management under Article 19(1)(*g*) of the Constitution much less to administer the school. This provision, however, is to ensure that a meaningful inquiry can be undertaken by SLFC or the statutory regulatory-cum-adjudicatory authorities in determination of the fact whether the fee structure propounded by the school management results in profiteering or otherwise. If information is furnished in any other manner (other than the manner specified in Rule 11), it would become difficult

> for the committees/authorities concerned to answer the contentious issue regarding profiteering. The fee structure determined by the school management can be altered by the adjudicatory authorities only upon recording a negative finding on the factum of amount claimed towards school fees relating to particular activities is an essential expenditure or otherwise; and that the fee would be in excess of reasonable profit being ploughed back for the development of the institution or otherwise. The recovery of excess amount beyond permissible limit would result in profiteering and commercialisation. In our opinion, therefore, even Rule 11 is a relevant and reasonable provision and does not impact or abridge the fundamental right under Article 19(1)(*g*) of the Constitution."

28. The principles of law laid down in **Indian School, Jodhpur** (supra) has further been followed in the matter of **Independent Schools' Federation of India (Regd.) v. Union of India and another**[22] in which their Lordships of the Supreme Court relying upon **Indian School, Jodhpur** (supra) have held that regulation of fee is to ensure that there is no commercialisation and profiteering, and the effect is not to prohibit a school from fixing and collecting "just and permissible school fee".

29. In view of the aforesaid discussion, we are of the considered opinion that the State Government is well within its legislative competence in enacting the Act of 2020 as well as in promulgating the Rules of 2020 providing regulatory mechanism for determination of school fees in order to have just and reasonable and permissible school fee and the Act of 2005 is

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neither arbitrary nor violative of Article 14 of the Constitution of India.

30. Now, the next contention is that the Act of 2020 and the Rules of 2020 are violative of Article 19(1)(g) of the Constitution of India.

31. Article 19(1)(g) of the Constitution of India states as under: -

> **"19. Protection of certain rights regarding freedom of speech, etc**.—(1) All citizens shall have the right—
>
> (g) to practise any profession, or to carry on any occupation, trade or business."

32. Challenge to the constitutional validity of the impugned Act and the Rules is available to "all citizens" and not available to the petitioners, as both the petitioners are society registered under the Societies Registration Act, 1971 and do not fall under the definition of 'citizen'. Freedom guaranteed under Article 19 of the Constitution of India can only be enforced by a citizen and the petitioners not being citizens cannot challenge validity of provision on the ground of violation of Article 19(1) of the Constitution as held by the Supreme Court in the matters of **State Trading Corpn. of India Ltd. v. CTO**[23], **TELCO Ltd. v. State of Bihar**[24], **Shree Sidhbali Steels Ltd. v. State of U.P.**[25], **Jain Brothers v. Union of India and others**[26] and recently in

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23 (1964) 4 SCR 99 : AIR 1963 SC 1811
24 (1964) 6 SCR 885 : AIR 1965 SC 40
25 (2011) 3 SCC 193
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Indian Social Action Forum (INSAF) (supra), in which it has been held in paragraph 18 as under: -

> "**18.** We find force in the objection taken on behalf of the Union of India that the appellant organisation is not entitled to invoke Article 19. No member of the appellant organisation is arrayed as a party. Article 19 guarantees certain rights to "all citizens". The appellant, being an organisation, cannot be a citizen for the purpose of Article 19 of the Constitution. (See *State Trading Corpn. of India Ltd.* v. *CTO* [*State Trading Corpn. of India Ltd.* v. *CTO*, (1964) 4 SCR 99 : AIR 1963 SC 1811]; *Bennett Coleman & Co.* v. *Union of India* [*Bennett Coleman & Co.* v. *Union of India*, (1972) 2 SCC 788]; *TELCO Ltd.* v. *State of Bihar* [*TELCO Ltd.* v. *State of Bihar*, (1964) 6 SCR 885 : AIR 1965 SC 40] and *Shree Sidhbali Steels Ltd.* v. *State of U.P.* [*Shree Sidhbali Steels Ltd.* v. *State of U.P.*, (2011) 3 SCC 193]) In the absence of any member of the association as a petitioner in the writ petition, the appellant organisation cannot enforce the rights guaranteed under Article 19 of the Constitution."

33. As such, the petitioners Societies/Associations are not entitled to invoke Article 19 of the Constitution, as Article 19 guarantees certain rights to all citizens and the petitioners being Societies/ Associations cannot be citizens for the purpose of Article 19(1) of the Constitution. Hence, on this ground also, the petitions fail.

34. According to the petitioners, determination of school fees by the Act of 2020 would cause serious hardship to the unaided private schools who are not getting any grant-in-aid from the State authorities. It is appropriate to notice that hardship of an individual, if any, cannot be a ground to challenge the constitutional validity of an Act/Rule. Where the Rules framed under

Article 309 of the Constitution of India are for general good, but cause hardship to an individual, the same cannot be a ground for striking down the Rules. (See **R.N. Goyal v. Ashwani Kumar Gupta and others**[27].) In that view of the matter, the Act of 2020 as also the Rules of 2020 are constitutionally valid and do not suffer from any vice of unreasonableness.

35. As a fallout and consequence of the aforesaid discussion, we do not find any merit in the challenge to the Act of 2020 as also the Rules of 2020, as the same are neither unconstitutional nor violative of Articles 14 & 19(1)(g) of the Constitution of India. In such view of the matter, the writ petitions fail and are dismissed leaving the parties to bear their own cost(s). However, this will not bar the members of the petitioners Associations from invoking the remedy of appeal available under Section 13 of the Act of 2020, if aggrieved.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Sachin Singh Rajput)
JUDGE

Soma

27 (2004) 11 SCC 753